

**STATE OF ARIZONA
IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

Student, by and through Parents
Petitioners,
v.
CATALINA FOOTHILLS School District,
Respondent.

No. 22C-DP-018-ADE

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARING: Hearing sessions conducted on March 15, 2022, May 11, 2022, and May 12, 2022, followed by post-hearing memoranda submission and extended review.

APPEARANCES: , Mother, represented Petitioner (Student) and Parents (collectively, Parents).

Denise M. Bainton, Esq., represented Catalina Foothills School District (District); Counsel was accompanied by the District's co-representatives Dr. Denise Bartlett, Assistant Superintendent, and Dr. Erin Matyjasik, Student Services Director.

WITNESSES:¹

- (Mother).
- (Father).
- (Student).
- , Special Education Teacher.
- , Kindergarten Teacher.
- , First Grade Teacher.
- , Second Grade Teacher.
- , Principal, .
- , Principal, Elementary.
- , School Psychologist.
- , Assistant Superintendent, District.
- , Student Services Director, District.

HEARING RECORD: Certified Court Reporter Raynbo Silva recorded the proceedings as the official record of the hearing.²

¹ Throughout the body of this Decision, proper names of Student and Parents are not used to protect the confidentiality of Student and to promote ease of redaction; pseudonyms, designated here in bold typeface, will be used for multiple witnesses.

² The parties stipulated that the court reporter's transcript would be the official record of the proceedings; the three volume transcript contains successive pagination over the three hearing sessions. The Tribunal does not begin its review process with the use of a transcript until the hearing sessions are complete and the post-hearing submissions are complete for the reason that parties may stipulate, concede, and/or withdraw issues that, therefore, would not be considered or addressed in a final decision.

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

Parents brought this due process action on behalf of Student, claiming that District violated the Individuals with Disabilities Education Act (IDEA) and alleging that Respondent failed to provide a free and appropriate public education (FAPE). 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 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

The due process complaint notice (Complaint) in this matter was filed on January 7, 2022 and amended on February 11, 2022. A three-day due process hearing was conducted through virtual means followed by post-hearing written legal argument. The due process timeline is typically recalculated by the Administrative Law Judge after a multiple-day due process hearing, taking into account any further proceedings including post-hearing legal memoranda in lieu of closing argument. Based on Petitioners' request for a written record, the request for post-hearing written legal memorandum submission following the parties' receipt of the due process hearing court reporter's transcript, the parties' submitted written arguments to the Tribunal, and finally, the Tribunal's receipt of the due process hearing court reporter's transcript (*i.e.*, the official hearing session record) thereafter, the 45th day is October 27, 2022.

EVIDENCE AND ISSUES AT HEARING

Exhibits – Hearing Record

Petitioners had pre-marked Exhibits A through Z, AA through AZ, BA through BZ, CA through CZ, DA through DZ, EA through EX, FA through FO, FP through IC [Student's work papers], and ID through IH. District had pre-marked Exhibits 1 through 29.

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.

1 The parties did not stipulate to the admission of exhibits and, during the hearing,
2 the parties presented various exhibits; exhibits specifically admitted during the hearing
3 are reflected in the Transcripts.⁴ Multiple exhibits were duplicative; of the duplicative
4 exhibits, if one is admitted, both are considered as being admitted.⁵

5 The parties submitted post-hearing closing arguments in the form of written
6 statements.

7 **Issues**

8 By ORDER dated February 24, 2022, the issues for the due process hearing were
9 clarified to be as follows:⁶

- 10 i. Respondent violated the IDEA when it inappropriately determined
11 Student to be ineligible for special education/related services on
12 January 10, 2020 because (a) Student was eligible under multiple
13 disability categories: (b) Student had not met his IEP goal(s), and (c)
14 the data regarding his functional capacities and attendance that was
15 utilized to make the ineligibility determination was inaccurate or had
16 been falsified. Additionally, (d) Respondent violated the IDEA when
17 it refused to allow Student to be present at the IEP meeting.
- 18 ii. Respondent violated the IDEA when it failed to implement Stay-Put
19 for the duration of the previously-filed due process complaint notice
20 on February 28, 2020.⁷
- 21 iii. Respondent violated the IDEA when it failed to “submit” Student’s
22 educational records pursuant to Parent’s November 11, 2021
23 request and made Parent wait until January 6, 2022.

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26 ⁴ While writing this decision, the Administrative Law Judge utilized additional concurrent or closely related
27 exhibits to reflect some facts which assist either in the chronology of this matter or the parties’
28 positions/arguments; if so noted herein, those exhibits are also considered admitted to the hearing record.

29 ⁵ For example, the January 10, 2020 MET report was Petitioners’ Exhibit BW and District Exhibit 4, and the
30 PWN dated January 14, 2020 was Petitioners’ Exhibit BZ and District Exhibit 5.

⁶ The issues reiterated herein reflect the amendments/clarifications Parents made on February 11, 2022.

⁷ The statement of the issue is corrected herein, as the hearing record demonstrates that this referenced
complaint was filed on February 28, 2020 and not on February 23, 2020.

1 The Administrative Law Judge has considered the entire hearing record including
2 the testimony and the admitted exhibits,⁹ and now makes the following Findings of Fact,
3 Conclusions of Law, and Decision that Petitioners failed to demonstrate that District
4 violated the IDEA procedurally, through determining Student's ineligibility on January 10,
5 2020 and the alleged actions then and thereafter.

6 **FINDINGS OF FACT**

7 **PRIOR PERIODS/BACKGROUND**

8 1. Student qualified for special education/related services as a [REDACTED] in
9 February 2017 under the category of [REDACTED] in the areas of
10 [REDACTED].¹⁰ Student's
11 three-year evaluation was due to be completed in January 2020.

12 2. In the 2019-2020 school year, Student was in Kindergarten at [REDACTED]
13 Elementary School, a District school. Student was receiving specially designed
14 instruction in the area of Social/Emotional Skills in the general education setting,
15 Occupational Therapy in the special education classroom, and Speech Language therapy
16 in a Homebound setting.¹¹ School records showed multiple absences between August 8,
17 2019 and January 10, 2020: 25 full day, 20 partial day, and 22 tardy.¹²

18 3. In the 2020-2021 school year, Student was in [REDACTED]; Student's
19 attendance in [REDACTED] Grade was entirely remote.

20 4. For the 2021-2022 school year, Student attended [REDACTED] Elementary
21 School; Student attended [REDACTED] Grade in-person.

22 5. On January 10, 2020, District completed its three-year re-evaluation
23 through the multidisciplinary evaluation team (MET) meeting. School Psychologist
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27 ⁹ The Administrative Law Judge has read and considered each admitted Exhibit, even if not mentioned in
28 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.

29 ¹⁰ See District Closing Brief; see *also* District Exhibit 4 at 3 of 40.

¹¹ See District Exhibit 2 (April 2019 IEP) at 7.

¹² See District Exhibit 4 at 4 of 40; see *also* District Exhibit 9.

1 [REDACTED] drafted the MET report and conducted the meeting.¹³ Student's
2 team, including both Parents, participated in the MET meeting.

3 6. Mother had claimed that Student could not read and write and, apparently,
4 at the time of the meeting, wanted Student to be brought into the MET meeting so that
5 Mother could prove her claim.¹⁴ District declined to have Student in the MET meeting for
6 any testing or assessments because such action was not within the purposes of a MET
7 meeting.¹⁵ District had informed Mother that, if she disagreed with the District's existing
8 evaluation results, she could ask for an independent education evaluation (IEE) from a
9 qualified evaluator.¹⁶

10 7. At, and after, the MET meeting, Mother disagreed with the information
11 and/or results of multiple assessment and evaluations and she believed that District had
12 inaccurately characterized or "falsified" the existing information (both District and
13 parentally-provided) to come to the eligibility determination (here, an ineligibility
14 determination). Evidence of Mother's overall disagreements can be seen through (a) the
15 Behavior Assessment System for Children 3rd Ed. (BASC-3)¹⁷ and Autism Spectrum
16 Rating Scales (ASRS)¹⁸ assessments, as her scoring and personal opinions were, for the
17 most part, widely divergent from the scoring and observations of the general education
18 and special education teachers, and (b) her efforts to emphasize the medical opinions
19 and diagnostic evaluations as definitive in comparison.
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23 ¹³ See District Exhibit 4. Drafting of a MET report typically includes the use of, and inclusion of, reports
24 previously prepared by other team members and other reports previously provided by parents.

25 ¹⁴ School Psychologist testimony. See Day One Transcript at page 79 – 82. The disconnect in this regard
26 was that Student had computer/type-written a full sentence in First Grade (as reflected in the MET report),
27 but Mother was insistent that Student could not "hand-write" a full sentence. See Petitioners' Exhibit CV;
28 see also District Exhibit 11 at 23 of 28. With the DIBELS information, the apparent disconnect was that the
29 December 2020 test date results were incorrectly labeled for Kindergarten benchmarks when Student, in
30 fact, was in First Grade at that time. See Petitioners' Exhibit CW.

¹⁵ The purpose of a MET meeting is to review the evaluation and assessment information already available.

¹⁶ At the time of the MET meeting, the Occupational Therapist assessment results from December 18, 2019
and January 9, 2020 were available for the MET review.

¹⁷ See District Exhibit 4 at 17-20.

¹⁸ *Id.* at 21-27.

1 8. The MET report contains thorough explanations of the information reviewed
2 and considered on January 10, 2020. The Summary of prior assessments in the MET
3 included:

- 4 a. the contents of the 2017 MET report,
- 5 b. statements regarding Dr. [REDACTED] 2015 diagnosis of Autism, Speech Delay
6 and Sensory Disintegration,
- 7 c. statements regarding Dr. [REDACTED] 2016 medical evaluation/results,
- 8 d. the contents of Dr. [REDACTED] April/May 2019 Comprehensive
9 Neuropsychological Evaluation report.¹⁹

10 The Background, medical and developmental review in the MET included:

- 11 e. statements regarding Student's April 2019 District Individual Health Plan,
- 12 f. an April 2, 2019 medical clearance for Student to return to school and activities,
- 13 g. Parental impressions:²⁰ Mother's opinion of "very mild autism;" not seeing
14 "inattention" at home but seeing repetitive communications; Student's difficulty in
15 fine motor skills as to tracing, zippers, and dressing; and, Student's current health
16 being "ok" blood count numbers and "stable," but Student having continued
17 [REDACTED]²¹ and, therefore, absences from school for doctors and therapists.

18 The Current classroom assessment and performances in the MET included:²²

- 19 h. Student doing well in class, jumping right in and joining, going with the flow and
20 asking questions, has made friends, is a hard worker, compliant with directives,
21 maintaining conversations with peers, staying focused on task;
- 22 i. Student challenged with social emotional (using kind words), voice levels
23 (needing reminders to use lower voice level), fine motor (letter and number

24 ¹⁹ Dr. [REDACTED] gave diagnostic impressions of Acute Lymphoid Leukemia (in remission), Attention Deficit
25 Hyperactivity Disorder (ADHD) (combination presentation, severe), and Oppositional Defiant Disorder
26 (severe). *Id.* at 8 of 40. At the MET meeting, Mother expressed her opinion that the results of that
assessment were invalid because the testing had been cut short (due to Student's behaviors) and because
Student had been taking steroids. *Id.*

27 ²⁰ See District Exhibit 4 at 8 of 40. Student receives private occupational therapy once a week and physical
therapy once a week.

28 ²¹ Due to his [REDACTED] and treatments, Student is immunocompromised. *Id.* at 9 of 40. The MET indicates
29 that Student is to go home right away if any other students come to class ill or with signs or symptoms of
illness; ill students are also to go home. *Id.*

30 ²² *Id.* at 9-10 of 40; see also *Id.* at 12-13 (classroom observations).

formation), off task during longer assignments and writing assignments, showing adequate interest and persistence on tasks, easily redirected.

Assessments in the MET reviewed:²³

j. Speech-Language – December 13, 2019;²⁴

k. Occupational Therapy – December 18, 2019 and January 9, 2020;²⁵

l. Social/Emotional – through BASC-3 by Parent, General Education Teacher and Special Education Teacher;²⁶

m. Autism – through ASRS by Parent, General Education Teacher and Special Education Teacher;²⁷

n. Intellectual – Dr. [REDACTED], April and May 2019.²⁸

9. On January 10, 2020, the MET team considered Student's progress under his April 2019 individualized education program (IEP) goals²⁹ as follows:³⁰

a. Social emotional goal to regulate emotions and behaviors by using appropriate tone of voice and social verbal language instead of aggressive behaviors on 3 out of 4 times; this was considered as progress was being made. The writer noted that Student was able to describe his emotion at the moment and ask for adult help as needed during the day.

b. Social emotional goal to use appropriate respectful responses to adults as to directives and non-preferred/challenging activities on 4 out of 5 times; this was considered as progress was being made.

c. Writing goal of maturing his tripod grasp for 80% more legibility in writing his first/last name in upper/lower case letters by February 2020 on 3 out of 5 times; this was considered as making progress. The writer noted that, when prompted, Student maintained use of tripod grasp.

²³ *Id.* at 13-27 of 40.

²⁴ *Id.* at 13-16.

²⁵ *Id.* at 16-17.

²⁶ *Id.* at 17-20.

²⁷ *Id.* at 21-27.

²⁸ *Id.* at 27-28.

²⁹ See Petitioners' Exhibit AJ; see also Petitioners' Exhibit AK (District's 4-4-2019 notice of development of Student's IEP).

³⁰ See District Exhibit 4 at 10-11 of 40 and 36 of 40.

10. The MET team specifically noted that Mother was included in the members who reviewed existing data and participated in the decision regarding the need to gather additional data, stating the following:

The determinant factor in this student's difficulty in progressing in the general curriculum is lack of appropriate instruction in reading, is lack of appropriate instruction in math and is not limited English proficiency. [Student] has missed 26 days³¹ of school so far which is considered to be a lack of instruction of math and reading. [Student's] mother has reported [Student's] health has been stable. His absences have been primarily due to follow up doctor appointments and therapy appointments. Despite the frequent absences, the team would like to collect additional data to determined [Student's] current strengths and needs in the areas of social/emotion, adaptive behavior, academic, language, fine motor, cognitive (review of records from May 2019), and characteristics related to autism to determine need for continuation of specialized instruction through special education.³²

11. At the January 10, 2020 meeting, despite having indicated to the MET team that she did not believe the results were valid,³³ Mother complained that District (a) was not following Dr. [REDACTED] recommendations from the April/May 2019 Comprehensive Neuropsychological Evaluation report and (b) that the [REDACTED] report had not been included in the MET draft. Mother further complained that District was not following recommendations from physicians and therapists.³⁴

12. At the January 10, 2020 meeting, Mother also complained that "only" the information from April/May 2019 Comprehensive Neuropsychological Evaluation had been used (in the November 2019 MET³⁵) and that two other reports had also not been included.³⁶ Mother referenced the following two reports:

a. Phoenix Children's Hospital End of Visit Summary – December 26, 2019;³⁷ and

³¹ The MET report specified Student's attendance as: 25 full days absent, 20 partial days absent, and 22 days tardy, which the report noted as Student having missed 71% of the school year thus far. *Id.* at 36 of 40.

³² *Id.* at 11 of 40.

³³ *Id.* at 8 of 40.

³⁴ *Id.* at 28 of 40.

³⁵ The November 2019 MET can be found at District Exhibit 21.

³⁶ See Department Exhibit 4 at 30 of 40.

³⁷ Mother e-mailed this report to the Special Education Teacher on January 7, 2020. *Id.*

b. Final Report Pediatric Office/Clinic noted – April 27, 2019.³⁸

These two reports were then included in the January 10, 2020 MET report.³⁹

13. Following the team's review of all the prior and current assessments, evaluations and observations, the team next considered Student's eligibility under the criteria for each of the possible exceptionalities: Developmental Delay; Speech Language Impairment; Specific Learning Disability; Other Health Impairment; and, Autism.⁴⁰ The MET report's lengthy reviews document the MET team's depth of review and consideration.

14. At the meeting, Parents expressed concern about any "regression," mentioning decline in cognitive abilities, memory and academic skills.⁴¹ In response, School Psychologist noted, if they were to see regression in Student's skills, that the team could reconvene, review and collect additional data to determine if Student then required more extensive support and to determine if Student would be eligible for special education services.⁴²

15. As a result of its review and considerations on January 10, 2020, the MET team determined that Student no longer met the exceptionality criteria under [REDACTED] for specially designed education instruction and for related services of speech and occupational therapy within the school setting.⁴³ While the MET team acknowledged that Student had an impairment, the MET team determined that Student's impairment had not resulted in adverse impact on his educational performance and that Student did not require specially designed instruction in order to make appropriate educational progress.⁴⁴ Therefore, by consensus, the MET team determined that Student no longer qualified as a "child with a disability" under the IDEA, and determined that

³⁸ Mother brought this report with her to the January 10, 2020 MET meeting. *Id.*

³⁹ *Id.* at 30-33 of 40.

⁴⁰ *Id.* at 35-39 of 40.

⁴¹ *Id.* at 39 of 40.

⁴² *Id.*

⁴³ *Id.* at 36-36 of 40.

⁴⁴ *Id.* at 40 of 40.

1 Student was no longer was in need of special education services. As a result, Student
2 was from IDEA services.⁴⁵

3 16. On January 11, 2020, Mother e-mailed Special Education Teacher
4 regarding obtaining a copy of the PWN and the procedural safeguards.⁴⁶ Mother further
5 wrote “Also, please keep all of [Student’s] services intact [sic] and in place as I will be
6 filing an appeal”

7 17. On January 13, 2020, Mother received an email from Special Service
8 Director regarding Stay Put, informing Mother that it applies only after parent initiates
9 certain processes, *i.e.*, due process.⁴⁷

10 18. On January 14, 2020, District issued its PWN regarding the termination of
11 IDEA services, e-mailing it to Mother.⁴⁸ School Psychologist further informed Mother that
12 Stay Put attached when certain processes are initiated.

13 19. On February 28, 2020, Mother filed a due process complaint notice [20C-
14 DP-065-ADE]. After a pre-hearing process, a formal due process hearing was scheduled
15 for April 6, 2020.

16 20. On March 17, 2020, Mother had requested Student’s special education
17 records “once school resumes and is in session.”⁴⁹ Student Services Director noted in
18 (unknown date response) that the records had been sent via email on April 1, 2020 and
19 were being emailed again that (unknown) day.

20 21. Disclosure from the parties to each other was due on March 30, 2020. While
21 District did make its Disclosure on March 30, 2020, Mother did not make Disclosure on
22 March 30, 2020. On March 30, 2020, Mother indicated to the Tribunal that District had
23 not complied with her subpoenas.⁵⁰ On March 31, 2020, District filed a motion to dismiss
24 the matter for the reason that Mother had not made disclosure and should not be

25 ⁴⁵ One of the arguments Mother continued to make in this matter was that District had predetermined the
26 outcome; however, predetermination was not an issue for this due process hearing.

27 ⁴⁶ See Petitioners’ Exhibit CA [ALJ admitted].

28 ⁴⁷ See Petitioners’ Exhibit CC (same as CE-CF) [ALJ admitted].

29 ⁴⁸ See District Exhibit 5 and Petitioners’ Exhibit BZ [ALJ admitted]; see *also* Petitioners’ Exhibit CD [ALJ
30 admitted].

⁴⁹ See Petitioners’ Exhibit AT.

⁵⁰ Mother copied District counsel on this filing.

permitted to present any evidence in the matter. On March 31, 2020, Mother filed a motion to vacate the hearing for the reason that District had not complied with providing subpoenaed information and further indicating that she would retain counsel and file a new complaint.⁵¹ On April 1, 2020, the Tribunal vacated the matter pursuant to Arizona Administrative Code (A.A.C.) R2-19-111(3).

22. District's position on the Stay Put issue is that, while Stay Put may have been applicable on the filing of the February 28, 2020 due process complaint notice, it was not applicable now because Mother terminated that February 2020 due process and because Student was exited on January 10, 2020. District argued that Student's right to FAPE ended on January 10, 2020, Student's right to Stay Put ended on January 10, 2020, that Student's entitlement to FAPE was not revived with the filing of the 2022 Complaint and, therefore, there can be no remedy of compensatory services for Petitioners' Stay Put issue.⁵²

23. In January 2021, District called a meeting to review the IEE Mother had requested and obtained; this is typically called a review of existing data (RED) meeting.⁵³

24. On January 27, 2021, School Psychologist emailed Mother a Draft MET, the agenda, and the basic ground rules for the January 29, 2021 meeting.⁵⁴

25. The agenda indicates that it was to be meeting at which the existing data would be reviewed.⁵⁵ The draft MET report for that meeting indicates that the meeting was scheduled to review the available data along with the IEE completed by Dr. [REDACTED].⁵⁶ Mother informed School Psychologist that Father would not be participating "unless there is a solution."⁵⁷ School Psychologist responded, explaining the MET

⁵¹ Mother attempted to copy District counsel on this filing; however, she used an incorrect email address.

⁵² During an April 1, 2020 pre-hearing conference in 20C-DP-065-ADE, Petitioners were directed to contact counsel for District regarding Stay Put. See Petitioners' Exhibit IF (recording). In its Closing Brief, District inferred that, at or about that time, Petitioners did not contact counsel for District regarding Stay Put. See District Closing Brief at 5.

⁵³ See District Exhibit 10 at 1.

⁵⁴ See District Exhibit 29 at 2.

⁵⁵ See District Exhibit 10 at 4.

⁵⁶ See Petitioners' Exhibit Q. It was noted at Day One of the hearing that the last page of the report was missing; the Tribunal requested Mother to supplement the exhibit, which she did on March 15, 2022.

⁵⁷ See District Exhibit 10 at 2.

process being important to determine if any additional information is needed to make a determination regarding eligibility for special education service.⁵⁸

26. At the January 29, 2021 meeting, existing data was reviewed.⁵⁹ Mother participated in this meeting by telephone, beginning at 3:04 p.m.⁶⁰ At approximately 3:35-3:39 p.m., Mother indicated she had set aside about an hour for the meeting, and expressed her frustration that it had been a waste of time because she/they had already seen the past data.⁶¹ After more discussion, School Psychologist suggested that due to the statements about declines in Student's skills, the team wanted to collect additional data; at that point, Mother expressed more frustration and hung up at 3:56 p.m.⁶²

27. On February 15, 2021, District issued its PWN regarding the meeting, which included the team's determination to collect additional performance data, medical data, language, executive functioning, and fine and gross motor skills.⁶³ District also provided the MET report the parental consent form to conduct evaluations and procedural safeguards.

28. On March 10, 2021, Mother e-mailed Principal [REDACTED] indicating that "her recording" documented that the IEE was never discussed at the RED meeting.⁶⁴

29. Principal [REDACTED] responded to Mother that the IEE had been included in the draft material and had been discussed at length at the RED meeting.⁶⁵ Principal [REDACTED] requested that Mother provide a copy of the recording.⁶⁶

30. A series of emails ensued, with Mother questioning statements in the PWN, demanding correction of the PWN, insisting that the IEE was not discussed at the RED meeting and, after receiving paperwork from District, refusing consent to evaluate on

⁵⁸ *Id.*

⁵⁹ At the beginning of the meeting, the participants were asked if anyone was recording the meeting, and it was noted that no one was recording. See District Exhibit 12.

⁶⁰ Times regarding the meeting are set forth in the PWN dated February 15, 2021. See District Exhibit 14.

⁶¹ See District Exhibit 12.

⁶² *Id.*

⁶³ See District Exhibit 14; see also District Exhibit 29 at 2.

⁶⁴ See District Exhibit 13. The PWN indicates that the [REDACTED] report was used as one basis for determining that additional data should be collected. See District Exhibit 14 at 2 of 3.

⁶⁵ *Id.*

⁶⁶ The hearing record does not contain a copy of the "recording."

1 March 2, 2021.⁶⁷ Subsequently, Mother again questioned the PWN contents to School
2 Psychologist and to Principal [REDACTED].

3 31. Not receiving parental consent to evaluate, District issued its PWN dated
4 March 8, 2021, indicating that parents had refused consent, but that the District stood
5 ready and willing to collect data if parents changed their mind.⁶⁸ District further indicated
6 its recommendation to refer Student for evaluation for a 504 Accommodation Plan.

7 32. Although Petitioners had alleged in the Complaint that there was a March
8 2021 MET meeting, the hearing record contains no evidence regarding any meeting in
9 March of 2021.

10 33. The hearing record contains multiple emails on March 11, 2021, one of
11 which was an indication by School Psychologist that corrections had been made to “pages
12 18, 19 and 26.”⁶⁹ District records indicate School Psychologist emailed Mother on March
13 11, 2021, writing:⁷⁰

14 Attached are pages 18, 19 and 26 that contain corrections.

15 Pages 18 and 19 had reported the DIBELS 8 results for Kindergarten and
16 1st grade. 2 corrections were made:

17 December 2020 was corrected to Winter 2019. 2020 was the error in the
18 year the DIBELS was administered.

19 All of the months have been corrected to Fall, Winter or Spring:
20 August 2019 was corrected to Fall 2019; December 2019 was corrected to
21 Winter 2019; May 2020 was corrected to Spring 2020; August 2020 was
22 corrected to Fall 2020.

23 2 typos were corrected on page 26:

24 Page 26 paragraph that begins with “After reviewing the IEE completed on
25 10-20-2020, it was noted the independent ...”
26 “[IEEn] in the first sentence of that paragraph was corrected to IEE.

27 ⁶⁷ See District Exhibit 16.

28 ⁶⁸ See District Exhibit 15.

29 ⁶⁹ See Petitioners' Exhibit CV and CW; see also District Exhibit 29 at 2. Exhibit CW, the last page of which
30 mentions corrections, does not contain a copy of that entire email.

⁷⁰ See Exhibit 29 at 2-3; Exhibit 29 is a chart of various emails received from, and District responses to,
Mother; on March 11, 2021, School Psychologist emailed Mother three pages, corrected, from the January
29, 2021 MET report.

1 “1-10-2020 at the end of the 2nd sentence in that paragraph was corrected
2 to the correct date of 10-20-20.

3 I sincerely apologize for these errors and any confusion they may have
4 created.

5 34. On October 28, 2021, Mother emailed Second Grade Teacher regarding
6 having Student evaluated by her staff for “either an IEP or 504 Plan.”⁷¹ Mother signed off
7 on a November 1, 2021 “Request” for evaluation.⁷² Mother reiterated her request to
8 Second Grade Teacher on November 2, 2021.⁷³

9 35. On November 9, 2021, District issued its PWN regarding the request, noting
10 that Mother had requested an evaluation alleging Student’s “severe” learning problems,
11 autism, oppositional defiant disorder, ADHD aggression, and obsessive behavior.⁷⁴

12 36. On November 9, 2021, Mother indicated to School Psychologist that she
13 would sign off on the meeting notice; Mother also questioned why District had not honored
14 Stay Put from the day due process had been initiated.⁷⁵

15 37. On November 11, 2021, Mother sent an email questioning the non-
16 correction of a meeting request and noted that the November 1, 2021 evaluation request
17 was from a physician. Additionally, Mother requested disclosure of Student’s “full records
18 ... my child’s independent handwriting ... to substantiate your statements made on his
19 MET report ...statements were written and authored by you.”⁷⁶

20 38. At hearing, Student Services Director acknowledged the November 2021
21 records request had been received and testified as follows:

22 At that time ... you were in possession of every record that you had
23 requested. So we had already provided them to you. However, I provided
24 them to you again in January of 2022.⁷⁷

25
26 ⁷¹ See District Exhibit 19 at 1.

27 ⁷² See District Exhibit 19 at 3. This document contains also the name of a physician, Dr. [REDACTED].

28 ⁷³ See District Exhibit 19 at 2.

29 ⁷⁴ See District Exhibit 20.

30 ⁷⁵ See Petitioners’ Exhibits CG, CH, and CI.

⁷⁶ See Petitioners’ Exhibit BC.

⁷⁷ See Day Three Transcript (TR) at 593.

1 Generally, regarding record requests, Student Services Director also acknowledged that
2 Mother would ask for the same records “over and over and over.” Student Services
3 Director indicated that, when that would happen (*i.e.*, a repetitive request):

4 We either let her know that they’ve already been provided to her, we
5 generally refer her to the email, the date or dates, multiple dates that they
6 were provided or we just provide them to her again.⁷⁸

7 39. On November 17, 2021, and November 18, 2021, Mother requested
8 “handwriting” and records including reading DRA and DIBELS.⁷⁹

9 40. On November 19, 2021, Student Services Director emailed Mother with a
10 variety of the relevant records regarding the MET in 2019, the MET in 2020, and the MET
11 in 2021 in addition to the [REDACTED] (2019) and [REDACTED] (2019) medical records.⁸⁰ Student
12 Services Director also specified the records that had previously been provided to Mother:
13 “handwriting” in March 2021 by [REDACTED] Principal; the MET reports or drafts previously
14 provided; and, the DIBELS data from prior to September 17, 2021 and the DRA data on
15 November 9, 2021 from Second Grade teacher.

16 41. On November 19, 2021, District conducted a MET1 meeting.⁸¹ Mother
17 participated by telephone.⁸² During the meeting, Mother indicated that she would obtain
18 a more current reading evaluation and an assessment regarding writing; additionally,
19 Mother indicated that she had a physical therapy evaluation to provide to District.
20

21 ⁷⁸ See Day Three TR at 591-2; see *also* District Exhibit 29. District Exhibit 29 documents the receipt of
22 Mother’s multiple and various requests and each of the District responses; the District responses entries
23 list the documents provided at that time or note the documents that were previously provided. A request
24 for attendance records on March 11, 2021 is particularly disturbing as Mother emailed, then called, then
25 arrived at the school the same day demanding the records and disturbing the District person’s work;
26 [REDACTED] Principal followed up the incident advising Mother that her conduct and demand was
27 unacceptable and that, by law, District was to provide records within a reasonable time frame not to exceed
28 45 days. See 34 C.F.R. § 300.613.

29 ⁷⁹ See District Exhibit 29 at 2

30 ⁸⁰ *Id.*

⁸¹ A review of existing data meeting is typically known as a RED meeting; in District Closing Brief, District
indicated it is now known as a MET1 meeting. A draft MET report had been prepared for the meeting. See
District Exhibit 21. The Draft MET report indicated that Mother also emailed District on November 9, 2021
alleging Student’s learning disabilities in reading and writing. *Id.*

⁸² See District Exhibit 22. Mother indicated that she also had two child school psychologist “observers” on
the call who would be listening and recording. *Id.*

1 42. The MET team determined to seek additional data in the following areas “to
2 determine whether the student is or continues to be a student with a disability:” Speech
3 Language; classroom observations; Psychoeducational; Social Emotional; Education
4 achievements; gross motor and fine motor; and Medical review regarding any medical
5 problems that may “impede” learning.⁸³ District issued its PWN on November 29, 2021.⁸⁴

6 43. On November 29, 2021, School Psychologist provided paperwork to Mother
7 including: MET report; PWN; record request/release form; and parental consent form for
8 evaluation.⁸⁵

9 44. On November 30, 2021, Mother demanded a list of the tests that would be
10 used for Student’s evaluation.⁸⁶ Mother further requested Student’s “full records.”

11 45. On November 30, 2021, School Psychologist provided a list of the proposed
12 assessments and the available data.⁸⁷ School Psychologist provided the requisite
13 parental consent and record request/release forms.

14 46. On December 3, 2021, Mother provided a consent “with amendments.”⁸⁸
15 Mother wrote conditions and limitations on the parental consent form, one of which was
16 refusal to agree to an Autism review.⁸⁹

17 47. On December 3, 2021, Student Services Director wrote Mother further
18 clarifying the requisite evaluation process and the need for parental consent not to be
19 limited because that would impede District being able to evaluate in all the suspected
20 areas of disability (including Autism).⁹⁰ With her response, Student Services Director
21 provided the requisite consent and record release form.

25 ⁸³ See District Exhibit 21.

26 ⁸⁴ See District Exhibit 22.

27 ⁸⁵ See District Exhibit 23.

28 ⁸⁶ See District Exhibit 24; see *also* Petitioners’ Exhibit BD.

29 ⁸⁷ *Id.*

30 ⁸⁸ See District Exhibit 25.

⁸⁹ Mother continued her oft-repeated characterizations of personnel and the process.

⁹⁰ See District Exhibit 26.

1 48. In December 2021, Mother sent emails in which, among grievances, she
2 continued to request Student's records.⁹¹ In December 2021 and January 2022, District
3 made multiple notations that the records had previously been provided to Mother.⁹²

4 49. On January 4, 2022, Mother responded regarding giving consent to
5 evaluate. In her email, Mother reiterated her continuing objection to the ASRS and the
6 District personnel as well as repeating multiple past grievances as to the prior
7 processes.⁹³ However, within her January 4, 2022 response, Mother did agree to the
8 ASRS. To demonstrate her "agreement," Mother again modified the previously-submitted
9 modified consent form by crossing out her hand-written rejection of the ASRS; Mother did
10 not execute an unmodified consent form. Further, although it was submitted to District
11 on January 4, 2022, Mother did not re-date, or clarify the date of, her newly-modified
12 consent form.

13 50. On January 4, 2022, Student Services Director emailed Mother, indicating
14 that the District had already provided "all" of the educational records that Mother was
15 requesting.⁹⁴

16 51. There followed a series of emails from Mother on January 6, 2022 regarding
17 requests for Student's records, demanding records immediately, and other grievances.⁹⁵
18 According to Mother, a "missing" record was a prior IEP and/or meeting notices for an
19 IEP;⁹⁶ the last meeting regarding Student was a MET and no IEP had been developed at
20 that meeting. On January 6, 2022, Student Services Director advised Mother that Mother
21 had been provided that specific IEP along with all other then-existing records on April 1,
22 2020.⁹⁷

23
24 ⁹¹ See Petitioners' Exhibits AU, AV, BA, and BB.

25 ⁹² See District Exhibit 29.

26 ⁹³ See District Exhibit 27. Mother's grievances include her allegations of inaccurate and falsified data;
27 additionally, her other grievances were delay of the evaluation and records never having been sent to her
28 on her multiple requests. Overall, Mother's position with regard to the ASRS refusal was that Student
29 already had an Autism diagnosis that District could use, and hadn't used, and District's efforts obtain this
30 consent were simply more evidence that District was delaying the matter.

⁹⁴ See District Exhibit 29 at 6.

⁹⁵ See Petitioners' Exhibits AN, AQ, AR, AS (same as AQ), and AT; see *a/so* District Exhibit 29 at 6.

⁹⁶ See Petitioners' Exhibit AQ.

⁹⁷ See Petitioners' Exhibit AT.

52. While meetings were scheduled, or attempted to be scheduled, the hearing record does not demonstrate that any other meetings were conducted by District prior to Petitioners' Complaint being filed and amended.⁹⁸

CONCLUSIONS OF LAW

APPLICABLE LAW

FAPE

1. Through the IDEA, Congress has sought to ensure that all children with disabilities are offered a free appropriate public education (FAPE) that meets their individual needs.⁹⁹ These needs include academic, social, health, emotional, communicative, physical, and vocational needs.¹⁰⁰ To provide a FAPE, a school district 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."¹⁰¹ The FAPE standard is satisfied if the child's IEP sets forth his or her individualized educational program that is "reasonably calculated to enable the child to receive educational benefit."¹⁰² The IDEA mandates that school districts provide a "basic floor of opportunity."¹⁰³ The IDEA does not require that each child's potential be maximized.¹⁰⁴ A child eligible for special education services receives a FAPE if a program of specialized instruction "(1) addresses the child's "unique" needs, (2) provides adequate

⁹⁸ See Petitioners' Exhibit AG and AH; see also District Exhibit 28. While Mother wrote in Exhibit AG of a February 22, 2022 due process hearing date, the prior due process hearing was originally scheduled for February 26, 2022 not February 22, 2022.

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

¹⁰⁰ *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).

¹⁰¹ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

¹⁰² *Id.*, 485 U.S. at 207. In 2017, in *Endrew F. v. Douglas County 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).

¹⁰³ *Rowley*, 458 U.S. at 200.

¹⁰⁴ *Id.* at 198.

support services so that child can take advantage of the educational opportunities and (3) is in accord with that child's individualized educational program."¹⁰⁵

Child Find

2. States are required to have policies and procedures in place to identify, locate and evaluate children with disabilities who are in need of special education and accompanying related services.¹⁰⁶ "Child with a disability" is a defined term and, with regard to the specific categorized impairments listed in the IDEA and rules, who is in need of special education and accompanying related services.¹⁰⁷

3. In Arizona, the "full and individual evaluation" of a child mandates that the local education agency have procedures in place to determine whether a child is a child with a disability and to determine the nature and extent of the special education and related services that particular child needs.¹⁰⁸ Such evaluation includes: a review of existing data; a decision regarding the need for any additional information; if needed, the collection of additional data; and a "review of all information about the child and a determination of eligibility for special education services and needs of the child.

4. If an Arizona parent makes a written request for an evaluation of a child, the local education agency, within 15 days, must either begin the evaluation process by reviewing existing data or providing PWN refusing to conduct an evaluation.¹⁰⁹ The mandated 60-day evaluation period begins upon receipt of the parent's written consent and ends with the date of the MET team's determination regarding eligibility.¹¹⁰

The IEP

5. After the MET team has determined a student is eligible for special education services, a team composed of the student's parents, teachers, and others familiar with the student formulate an individualized education program (IEP) that generally sets forth the student's current levels of educational and functional performance

¹⁰⁵ *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)).

¹⁰⁶ 20 U.S.C. §§ 1401(3) and 1412(a)(3); 34 C.F.R. § 300.111(a).

¹⁰⁷ 20 U.S.C. §§ 1401(3) and (30); 34 C.F.R. § 300.8.

¹⁰⁸ Arizona Administrative Code (A.A.C.) R7-2-401(B)(8).

¹⁰⁹ A.A.C. R7-2-401(E)(4). A school may also provide a PWN agreeing to conduct an evaluation.

¹¹⁰ A.A.C. R7-2-401(E)(3) and (4).

and sets annual measurable goals that the IEP team believes will enable the student to make progress in the general education curriculum.¹¹¹ The IEP tells how the student will be educated, especially with regard to the student's unique needs that result from the student's disability, and what instructional and related services will be provided to aid the student.¹¹² The student's parents have a right to participate in the formulation of an IEP.¹¹³ An appropriately composed IEP team must consider the strengths of the student, concerns of the parents, evaluation and assessment results, and the academic, developmental, and functional needs of the student.¹¹⁴ The local education agency is required to have, at the beginning of each school year, an IEP in effect for each eligible student that resides in the agency's jurisdiction.¹¹⁵

Substantive versus Procedural

6. A determination of whether a student eligible for special education services has received a FAPE must be based on substantive grounds.¹¹⁶ For a substantive analysis of an IEP, the review of the IEP is limited to the contents of the document.¹¹⁷ Therefore, any question regarding 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.

7. 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 (1) impeded the student's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision

¹¹¹ 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324. The MET team members typically are persons that also participate in development of an IEP. It is possible that the student, as a child with a disability, might be a member of an IEP team; however, the rules allow for that possibility only whenever it might be "appropriate." 34 C.F.R. § 300.321(a)(7).

¹¹² *Id.*

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

¹¹⁴ 20 U.S.C. § 1414(d)(1)(B) and (3)(A); 34 C.F.R. § 300.324(a).

¹¹⁵ 20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a).

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

¹¹⁷ *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)).

of a FAPE to the child; or (3) caused a deprivation of educational benefit.¹¹⁸ If one of those three impediments occurred, the student was denied a FAPE due to the procedural violation.

8. Procedural violations that “result in the loss of educational opportunity, or seriously infringe the parent’s opportunity to participate in the IEP formulation process, clearly result in the denial of a FAPE.”¹¹⁹ “Educational opportunity” is lost, “where, absent the error, there is a strong likelihood that alternative educational possibilities for the student would have been better considered.”¹²⁰

9. Once a procedural error is found, it must be determined whether that violation affected the substantive rights of the parent or the child.¹²¹

Stay Put

10. Upon the filing of a due process complaint notice, and during the pendency of a due process hearing and appeal, unless the local education agency and parents agree otherwise, the student involved in the complaint must remain in his or her “current educational placement.”¹²²

Educational Records

11. Each local education agency must permit parents to “inspect and review” the education records relating to their child “that are collected, maintained or used by the agency”¹²³ The IDEA does not allow parents to demand to be given copies and parents do not automatically have the right to request copies; additionally, schools may charge a fee for copies of records.¹²⁴ Parents have the right to request copies when a failure to provide copies would “effectively prevent the parent from exercising the right to

¹¹⁸ 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2). This provision was enacted in the 1997 amendments to IDEA.

¹¹⁹ *Capistrano*, 556 F.3d at 909 (citing *W.G. v. Bd. of Trs. of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir 1992) (superseded on other grounds by IDEA Amendments 1997, Public Law 105-17, § 614(d)(B), 111 Stat. 37)).

¹²⁰ *M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634, 657 (9th Cir. (2004, amended 2005)).

¹²¹ *Capistrano*, 556 F.3d at 910; see also *Federal Way*, 394 F.3d at 652 and *Target Range*, 960 F.2d at 1484.

¹²² See 34 C.F.R. § 300.518(a).

¹²³ See 34 C.F.R. § 300.613(a).

¹²⁴ See 34 C.F.R. § 300.617.

inspect and review the records.”¹²⁵ The school must comply with records requests “without unnecessary delay” and before any meeting regarding an IEP, or any due process hearing, or any resolution session “no more than 45 days after the request has been made.”

Burden of Proof and Basis of Decision

12. A parent who requests a due process hearing alleging non-compliance with the IDEA must bear the burden of proving that claim.¹²⁶ The standard of proof is “preponderance of the evidence,” meaning evidence showing that a particular fact is “more probable than not.”¹²⁷

13. Therefore, in the matter at hand, Petitioners bear the burden of proving by a preponderance of evidence their allegations as set forth in Issues 1 through 7.

DECISION

Issue #1

14. Petitioners have not demonstrated that District violated the IDEA when, on January 10, 2020, the MET team determined Student ineligible for special education and related services. The MET Report evidences that, at the January 10, 2020 meeting, the MET team thoroughly reviewed all of the existing data, including the assessment information Mother brought forward at the time of the meeting, including the parental input given at that meeting, including medical assessments and records, and including current observations and progress on Student’s April 2019 IEP goals.¹²⁸ While the IEP team acknowledged and discussed Student’s various medical-related concerns, the MET team found that those concerns did not create an adverse impact on Student’s educational performance. The MET team reviewed the criteria for each of the IDEA exceptionalities in depth against the existing and then-most recent assessments of Student and found that, at

¹²⁵ However, if a fee would effectively prevent the parent from exercising the right to inspect and review, the school may not charge a fee.

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

¹²⁷ *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, 371-72 (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).

¹²⁸ Student was progressing on his goals. A child with a disability need not meet all the IEP goals in order to be considered to be making educational progress on the goals.

that time, Student did not meet the criteria for any of the exceptionalities. As a result, in the absence of data demonstrating an adverse impact on Student's educational progress, the IEP team appropriately determined that Student did not require special education services or related services to make appropriate educational progress.

15. The hearing record failed to demonstrate that any of the data used at the January 10, 2020 meeting was substantively inaccurate or falsified. Petitioner's pervasive arguments as to falsification appear to have sprung from inaccuracies and mistakes in attributions of data to several incorrect time-periods; however, on review herein, the time-period attribution did not evidence any substantive error in the data itself, the data being based on either assessments and/or observations.¹²⁹ Overall, Petitioners simply disagreed with the MET team determination.

16. Petitioners failed to demonstrate that the IDEA requires, allows, or even contemplates, that a MET team is tasked with creating a scenario for a student to "perform" a task in front of the team.¹³⁰ The MET team's purview and responsibility is to review the available and existing data, not to create data. A lack of current or relevant evaluations may prevent a MET team from proceeding to a determination at any given meeting and, thus, may result in the team determining that additional data is required before making an eligibility determination.

Issue #5

17. Petitioners failed to demonstrate that District failed to provide PWN as to the January 10, 2020 MET determination "until the PWN was requested by Parent."

18. The term "prior written notice" can be taken out of context; PWN typically can't be given at the moment a discussion is taking place or a determination is being made. "Prior" entails the local education agency notifying parents in writing before the local education agency actually takes the "action" that it had determined to take. The

¹²⁹ District corrected the inaccurate attributions in March of 2021 after the January 29, 2021 MET meeting.

¹³⁰ Observations of students as to academic/skills performance and behaviors are required to be done in the child's learning environment; the observations are to be done in routine classroom instruction and performance which was completed prior to a child being referred for an evaluation, or, as in this instance, clearly prior to the child's evaluations and assessments being considered with regard to eligibility. See 34 C.F.R. § 300.310(a).

PWN assures that parents are advised in writing of the action about to be taken by the local education agency.

19. The hearing record clearly demonstrated that on January 14, 2020, District provided the PWN regarding the January 10, 2020 determination to terminate Student's special education services and related services. By law, District could not terminate services until the PWN was issued to Parent. The fact that Mother requested "a copy of the PWN" the day after the meeting is inconsequential.

Issue #2

20. Petitioners failed to demonstrate that District violated the IDEA regarding Stay Put for Student during the pendency of the prior due process filed on February 28, 2020.

21. On January 10, 2020, the MET team determined Student to be ineligible for special education services and it was determined that Student would be exited from special education, essentially on January 10, 2020, but effectively on January 14, 2020, once PWN was given.

22. Mother emailed Special Education Teacher on January 11, 2020, requesting that Student's services remain in place because she was going to be filing a complaint. However, Stay Put does not arise or attach to a District determination until a the due process complaint notice is filed, *i.e.*, until a local education agency is properly notified of an appeal of the adverse determination through the filing of a written due process complaint notice. Regarding Stay Put, the IDEA specifies that a child must remain in his or her current placement "during the pendency of a due process complaint notice" unless parents and the school agree otherwise.¹³¹

23. Mother filed a due process complaint notice on February 28, 2020. Therefore, presuming that District received its copy of that complaint on the same date, by operation of law, Stay Put would attached to the due process regarding Student's then "current placement." If applicable, Stay Put would attach and remain in place during the pendency of that due process. However, pursuant to the PWN, Student had been exited

¹³¹ 34 C.F.R. § 300.518(a).

1 from special education status and, as of January 14, 2020, Student was a general
2 education student. Given the hearing record, it seems unlikely that District and Parents
3 would have come to an agreement otherwise as to Student's status or "placement" during
4 the pendency of that due process filing; clearly, the hearing record does not evidence any
5 such agreement. Therefore, Student, as a general education student had no "current"
6 special education placement.

7 24. Regarding the MET termination of services, the prior Complaint and Stay
8 Put, School Psychologist testified that, after January 10, 2020, Student received no
9 special education or related services.¹³²

10 25. Regarding the MET termination of services, the prior Complaint and Stay
11 Put, Student Services Director testified that, after January 10, 2020, Student's placement
12 was in the general education setting. Student Services Director testified that Student was
13 not receiving OT or Speech after February 23, 2020.¹³³

14 **Issue #3**

15 26. Petitioners failed to demonstrate that District violated the IDEA regarding
16 provision of Student's educational records after Mother's November 11, 2021 request.
17 The hearing record demonstrated Mother's repeated requests, and repetitive requests for
18 the same records. District provided Student's educational records or referenced Mother
19 to the last date on which those same requested record had been provided to her. The
20 IDEA does not require immediate provision of records; the IDEA allows a parent to
21 "inspect and review" educational records within a reasonable period of time not to exceed
22 45 days.

23 27. Specifically, on November 19, 2021, Student Services Director emailed
24 Mother with a variety of the relevant records regarding the MET in 2019, the MET in 2020,
25 and the MET in 2021 in addition to the [REDACTED] (2019) and [REDACTED] (2019) medical
26 records.¹³⁴

27
28 ¹³² See Day One TR at 54, Day Three TR at 552.

29 ¹³³ See Day One TR at 157-8.

30 ¹³⁴ *Id.*; see also District Exhibit 29. In that email, Student Services Director also specified the records that
had previously been provided to Mother: "handwriting" in March 2021 by [REDACTED] Principal; the MET

Issue #4

28. Petitioners failed to demonstrate that District violated the IDEA regarding parental participation in the IEP and eligibility determination processes.

29. Any question or concern regarding parental participation in the April 2019 IEP falls outside the 2-year limitations period. The hearing record demonstrated that Student's April 2019 IEP was the last IEP developed by District.

30. The hearing record demonstrated that both parents attended and participated in the January 10, 2020 MET meeting. Parental input was memorialized in the MET report along with evaluations and assessments.

31. The hearing record demonstrated that Mother participated by telephone in the January 29, 2021 MET meeting until the time at which she disconnected from the meeting; Father had been invited but declined to attend. The meeting notes indicate Mother's participation; additionally, parental input from Mother is found within the MET Report.¹³⁵ The MET Report contains evaluations and assessments.

32. The draft MET Report for the November 19, 2021 meeting contains parental input provided to District prior to the meeting.¹³⁶ Mother participated by telephone in the November 19, 2021 meeting; in addition to discussion of parental concerns, Mother offered up that she had additional a PT evaluation to give to the team and that she would obtain reading and writing assessments. The MET Report contains evaluations and assessments. At the November 19, 2021 meeting, the MET team determined that additional information was needed to make an eligibility determination.

Issues #6 and #7

33. Petitioners failed to demonstrate that District violated the IDEA with regard to child find, evaluations, or time periods for evaluations.

34. After the January 29, 2021 MET meeting, Mother refused to give parental consent for District to evaluate Student. District issued its March 8, 2021 PWN indicating

reports or drafts previously provided; and, the DIBELS data from prior to September 17, 2021 and the DRA data on November 9, 2021 from Second Grade teacher.

¹³⁵ See District Exhibit 11 at 19, 10, 21, 25.

¹³⁶ See District Exhibit 21 at 20, 21, 22, 25, 26.

1 the refusal and that District was ready, willing, and able to proceed with evaluations if
2 parents changed their minds.

3 35. After Mother's October 28, 2021 request for Student to be evaluated either
4 for an IEP or 504 Plan, District issued its PWN dated November 9, 2021 agreeing to
5 evaluate.

6 36. District conducted a MET1 meeting on November 19, 2021. District
7 determined to seek additional data in the areas of: Speech Language; classroom
8 observations; Psychoeducational; Social Emotional; Education achievements; gross
9 motor and fine motor; and Medical review regarding any medical problems that may
10 "impede" learning.¹³⁷ District issued a PWN on November 29, 2021 with regard to MET
11 team's determination to seek additional information. On November 30, 2021 District
12 provided Mother with a list of the testing intended to be completed and provided the
13 requisite parental consent and record request/release forms.

14 37. Rather than give the parental consent, Mother provided a limited and
15 conditioned consent form dated December 3, 2021, specifically refusing ASRS regarding
16 Autism. On December 3, 2021, District explained the need for unlimited consent so that
17 Student could be evaluated in all areas of suspected disability. Subsequently, on January
18 4, 2021, Mother made her filing continuing her objections regarding the ASRS but Mother
19 did also give consent for ASRS in that January 4, 2022 filing.

20 38. District appropriately determined that Mother gave, and District received,
21 parental consent for evaluation on January 4, 2022 and not on December 3, 2021. By
22 law, District then had 60 days from January 4, 2022 to make its evaluations and make a
23 determination with regard to eligibility for special education status/services.¹³⁸

24 **ORDER**

25 Based on the findings and conclusions above,

26 **IT IS ORDERED** that Petitioners have failed to meet their burden to demonstrate
27 any of the alleged District violations of the IDEA.
28

29 ¹³⁷ See District Exhibit 21.

30 ¹³⁸ A.A.C. R7-2-401(E)(3) and (4).

1 Jeffrey Studer
2 Chief of Dispute Resolution
3 Arizona Department of Education
4 Jeffrey.Studer@azed.gov

5
6 By Miranda Alvarez
7 Legal Secretary
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