

1                                   **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3   ██████, a Student, by and through Parent D.F.

**No. 23C-DP-004-ADE**

4                   Petitioners,

**ADMINISTRATIVE LAW JUDGE  
DECISION**

5   v.

6  
7   Tucson Unified School District

8                   Respondent

9  
10                   **HEARING:** February 27, 2023<sup>1</sup>

11                   **APPEARANCES:** Petitioners did not appear. Respondent Tucson Unified School  
12   District was represented by Denise Lowell-Britt.

13                   **ADMINISTRATIVE LAW JUDGE:** Tammy L. Eigenheer

14  
15                                   **FINDINGS OF FACT**

16                   1.     On or about July 21, 2022, Petitioners filed a Due Process Complaint.<sup>2</sup> The  
17   matter was originally set for hearing on September 6, 2022.

18                   2.     Respondent School District filed a Notice of Insufficiency and Petitioners  
19   were permitted to amend the Due Process Complaint.

20                   3.     On or about December 1, 2022, the parties engaged in mediation through  
21   the Office of Administrative Hearings in an effort to resolve the issues raised in the Due  
22   Process Complaint.

23                   4.     Because the mediation failed, a prehearing conference was scheduled to  
24   convene on January 9, 2023.

25                   5.     During the January 9, 2023 prehearing conference, the parties agreed to  
26   tentatively set the due process hearing to convene during the week of February 27, 2023,  
27

28                   <sup>1</sup> The hearing was also scheduled to convene on March 2, 2023, but that did not occur as detailed in this  
29   Decision.

30                   <sup>2</sup> Petitioners previously filed a Due Process Complaint on May 27, 2022, designated as 22C-DP-030-ADE,  
which was dismissed for insufficiency.

1 and to reconvene for a prehearing conference on January 30, 2023, to confirm the dates  
2 of the hearing.

3 6. During the January 30, 2023 prehearing conference, the parties agreed the  
4 due process hearing would convene at 9:00 a.m. on February 28, 2023, and March 2,  
5 2023, via Google Meet.

6 7. On or about February 14, 2023, the Administrative Law Judge issued a  
7 Minute Entry – Granting Continuance in which the matters discussed and decided at the  
8 prehearing conference were recorded. The Google Meet links and telephone numbers  
9 for the February 28, 2023, and March 2, 2023 hearing dates were included.

10 8. Petitioners failed to appear at the hearing. The tribunal waited 30 minutes  
11 beyond the scheduled start time, but no one appeared for Petitioners.

12 9. At no time prior to or since the hearing was scheduled to convene did  
13 Petitioners submit an advisement that they had technical difficulties connecting to the  
14 hearing or a request to continue the hearing for any reason.

#### 15 **CONCLUSIONS OF LAW**

16 1. A parent who requests a due process hearing alleging non-compliance with  
17 the IDEA must bear the burden of proving that claim.<sup>3</sup>

18 2. The standard of proof is “preponderance of the evidence,” meaning evidence  
19 showing that a particular fact is “more probable than not.”<sup>4</sup>

20 3. Therefore, in this case Petitioners bear the burden of proving by a  
21 preponderance of evidence that Respondent violated the IDEA through the alleged actions  
22 or inactions.

23 4. By failing to appear at the hearing, Petitioners did not meet the burden to  
24 present evidence in support of the Due Process Complaint. See A.A.C. R2-19-119.

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26 *////*

27 <sup>3</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

28 <sup>4</sup> *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279  
29 (1993) quoting *In re Winship*, 397 U.S. 358, 371-72 (1970); see also *Culpepper v. State*, 187 Ariz. 431, 437,  
30 930 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).

**ORDER**

Based on the findings and conclusions above, **IT IS HEREBY ORDERED** that that the relief requested in the Due Process Complaint is **denied** as set forth above and Petitioners' Complaint is dismissed with prejudice.

Done this day, March 3, 2023.

/s/ Tammy L. Eigenheer  
Administrative Law Judge

**RIGHT TO SEEK JUDICIAL REVIEW**

Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this Decision and Order is the final decision at the administrative level. Furthermore, any party aggrieved by the findings and decisions made herein has the right to bring a civil action, with respect to the complaint presented, in any State court of competent jurisdiction or in a HUD court of the United States. Pursuant to Arizona Administrative Code § R7-2-405(H)(8), any party may appeal the decision to a court of competent jurisdiction within thirty-five (35) days of receipt of the decision.

Transmitted electronically or by mail to:

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By: OAH Staff