

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

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

No. 24C-DP-022-ADE

4
5 Petitioners,
6 v.

**ADMINISTRATIVE LAW JUDGE
DECISION**

7 Gadsden Elementary School District

8 Respondent.

9

HEARING: November 16, 2023

10 **APPEARANCES:** Parent [REDACTED] represented Student [REDACTED] Michael Gonzalez
11 represented Respondent Gadsden Elementary School District.

12 **WITNESSES:**¹

- 13 • Parent [REDACTED] (**Parent**);
14 • [REDACTED] Father of Student [REDACTED]
15 • [REDACTED] nephew of Parent [REDACTED]
16 • Michael Gonzalez, **Special Education Director**.
17 • Meredith Nelson, **Principal**.

18 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

19 **EXHIBITS ADMITTED INTO EVIDENCE:** Petitioners' Exhibits 1 and 2.
20 Respondent's Exhibits C through F.²

21 Petitioner [REDACTED] is bringing this due process action on behalf of Student [REDACTED] (Student),
22 claiming that Respondent Gadsden Elementary School District (Respondent) violated the
23 Individuals with Disabilities Education Act (IDEA), alleging procedural and substantive
24 errors. The law governing these proceedings is the IDEA found at 20 United States Code

25
26 ¹ Throughout the body of this Decision, proper names of Student, Parents, and Student's teachers are not
27 used in order to protect the confidentiality of Student and to promote ease of redaction. Where necessary,
28 pseudonyms (designated here in bold typeface) will be used instead. Pseudonyms are not used for
29 administrators, service providers, evaluators, and other professionals.

30 ² At the hearing, the Administrative Law Judge erroneously stated on the record that Respondent's
Exhibits A through G were admitted. Respondent agreed that any exhibits related to Student [REDACTED]
brother's education plan, that were submitted to the tribunal, should not be considered. The marked
exhibits that related to the education plan for Student [REDACTED] brother were Exhibits A, B, and G.

(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.

The Administrative Law Judge has considered the entire hearing record including the testimony and the admitted Exhibits,⁴ and now makes the following Findings of Fact, Conclusions of Law, and Decision finding that Petitioners have failed to demonstrate that Respondent violated the IDEA through the allegations set forth in the Complaint.

FINDINGS OF FACT

1. Student is [REDACTED] years old and attends Desert View Elementary in Respondent.⁵ Student has been diagnosed with [REDACTED].⁶

2. On March 1, 2023, Student was found eligible for special education services in the category of eligibility: [REDACTED].⁷

3. On September 29, 2023, the due process complaint notice (Complaint) in this matter was filed with the Arizona Department of Education (Department). The Complaint provided, in relevant part, as follows:

Please list issue(s)

I hope this letter finds you in good health. I am writing to express my deep concerns regarding the recent mediation process at DESERT VIEW ELEMENTARY SCHOOL in San Luis Arizona and to formally request a due process hearing in accordance with the Individuals with Disabilities Education Act (IDEA). As you are aware, my child, [REDACTED], is a student at DESERT VIEW ELEMENTARY SCHOOL and has an Individualized Education Plan (IEP) in place to ensure that

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

⁴ The Administrative Law Judge has read and considered each page of each admitted Exhibit, even if not mentioned in this Decision. The Administrative Law Judge has also considered the testimony of every witness, even if the witness is not specifically mentioned in this Decision. The review of the hearing record in relation to the only appropriate due process complaint notice, the documentation, the testimony.

⁵ See Exhibit E, pg. 1.

⁶ See id.

⁷ See Exhibit E, pg. 1.

his educational needs are met. I was hopeful that the mediation process would provide an opportunity for open dialogue and collaboration between all parties involved to address the issues we have been facing. However, I regret to inform you that the mediation process has fallen far short of our expectations. Despite our best efforts to find common ground and work towards a mutually acceptable resolution, it has become evident that the school's actions and decisions regarding my child's education have not been in compliance with their IEP or the requirements of IDEA. The specific areas in which the school has failed to meet mediation expectations include: Failure to Implement the IEP: The school has consistently failed to implement crucial components of my child's IEP, that were requested during our mediation thereby denying them the necessary support and accommodations to succeed academically. Lack of Communication: Communication with the school has been ineffective, with repeated requests for updates on my child's progress and educational plan revisions going unanswered after mediation back in May. Inadequate Support: My child's educational and emotional well-being have suffered as a result of the school's inability to provide appropriate support and services, as outlined in the mediation meeting. In light of these ongoing concerns and the failure of mediation to yield a satisfactory resolution, I am left with no choice but to request a due process hearing to address the issues at hand. I believe that this formal proceeding will provide a fair and impartial platform to address the violations of IDEA and the failure to provide my child with the education to which they are entitled. I kindly request that you initiate the due process hearing as soon as possible to begin addressing these issues promptly. I hope that through this process, we can work collaboratively to ensure that my child receives the education and support they need to thrive. Please consider this letter as my formal request for a due process hearing. I am open to discussing this matter further and hope that we can find a resolution that benefits my child's educational journey.

Proposed Solutions

Please list proposed solution(s)

Review and Clarify the IEP: Schedule a meeting to review the child's current IEP in detail with all relevant parties, including

parents, educators, and special education professionals. Clarify any ambiguous or unclear language in the IEP to ensure that all stakeholders have a shared understanding of the child's needs, goals, and required services. Monitoring and Accountability: Implement a system for regular monitoring and reporting on the child's progress toward IEP goals. Assign specific responsibilities to school staff members for ensuring that each element of the IEP is implemented as required. Professional Development: Provide professional development and training to teachers and staff members who work with the child to ensure they have the skills and knowledge to effectively implement the IEP. Foster an inclusive and supportive classroom environment where all students, including those with disabilities, can thrive. Open Communication: Establish a clear and efficient communication plan between parents and school personnel. Ensure that parents receive regular updates on their child's progress, and encourage them to provide feedback and express concerns. Mediation Assistance: Consider involving a neutral third-party mediator or special education consultant to facilitate communication between the school and parents, helping to find common ground and resolutions. Additional Support and Services: Assess whether the child requires any additional services or accommodations beyond what is currently outlined in the IEP. Explore alternative teaching methods or assistive technology that may better meet the child's needs. Dispute Resolution Mechanisms: Encourage all parties to seek dispute resolution options outside of formal due process hearings, such as facilitated IEP meetings or dispute resolution sessions. Collaboratively develop and agree upon a dispute resolution plan. Timelines and Deadlines: Establish clear timelines for addressing IEP-related issues and ensure that all parties adhere to these deadlines. Develop a process for promptly addressing and resolving disputes or concerns as they arise. Regular Progress Reviews: Schedule regular IEP progress review meetings to assess whether the child's needs are being met and make necessary adjustments to the plan. Documentation: Ensure thorough documentation of all IEP-related meetings, decisions, and communications to maintain a transparent record of the child's educational journey. Parental Involvement: Encourage active parental involvement in the child's education and decision-making processes. Solicit parent feedback on the effectiveness of the IEP and its

implementation. Legal Resources: Provide information to parents about their rights under IDEA, including the option to seek legal counsel or file a formal complaint if necessary.

Errors in original only.

4. In May of 2023, Parent participated in a mediation with Respondent. Respondent agreed to the following terms:

Issue 1: Spanish/English Communication

[Principal] will work with cafeteria and transportation personnel on the development and utilization of picture cards to be used by [Student] to select menu items and follow directions during a bus evacuation.

Start date: August 2023 End date: May 2024

Issue 2: Disability Awareness

Mr. Gonzalez will establish a schedule of professional development classes regarding various disabilities, accommodation strategies, modification strategies and IEP implementation. Parents perspectives will also be included. He will pursue securing parental accessibility to these sessions.

Start date: August 2023 End date: May 2024

Issue 3: Individual Teacher Awareness

Mr. Gonzalez will establish an IEP addendum meeting prior to the start of the school year with special education personnel, regular education personnel and the parents to share information regarding [REDACTED] and his IEP. In addition, a plan to support [Student] in situations of stress/anxiety as it relates to proximity of a specific non-preferred teacher, will be developed at that time.

Start date: August 2023 End date: September 2024

Issue 4: Contact with Specific Non-Preferred Teacher

[Principal] will ensure that [Student] will not be assigned to this teacher's classroom for 2023/24 school year. In addition, should students in [redacted] classroom need to be dispersed, [Student] will not be assigned to the specific non-preferred teacher.

Start date: August 2023

End date: May 2024

Issue 5: Discipline

The school will share with parents when [redacted] is disciplined on the day of the occurrence.

Start date: August 2023

End date: May 2024

5. The teacher and non-preferred teacher referenced in the mediation agreement represented [redacted] a teacher at Desert View Elementary.⁸

6. [redacted] was not assigned to Student as a teacher during the 2023-2024 school year.

7. On October 13, 2023, an IEP meeting was held and an IEP was written for Student. Parent, Father, the Principal, and the Special Education were present at the IEP Meeting.⁹ The Special Education Education director explained at hearing that the October 2023 appropriately addressed Student's areas of need.

8. The October 2023 IEP includes the following accommodations:¹⁰

- Seat student near someone who will be helpful [redacted] must be pair with someone who can support him during lunch to remind him of grabbing lunch/milk. [redacted] needs to use the microwave to warm his lunch.
- [redacted] needs to have a warning before giving him a consequence in school (taking away academic enrichment classes/specials, lunch recess, class recess, and detention).

⁸ Parent stated at hearing that at the time the mediation agreement was created, the non-preferred teachers were [redacted] and [redacted]. However, Parent confirmed at hearing that [redacted] did not work for Desert View Elementary at the start of the 2023-2024 school year.

⁹ See Exhibit D, pg. 2 for a full list of attendees.

¹⁰ See Exhibit D.

- [REDACTED] has a hard time understanding the reason why consequences are given to him, [REDACTED] understanding the reason why consequences are given to him, [REDACTED] mother must be notified about the consequences for [REDACTED] PRIOR implementing the consequences.
- Use visual aids
- [REDACTED] needs to visually see his lunch choices as well as assistance communicating what he wants/likes to eat.

9. Parent does not contend that Respondent failed to implement the IEP that existed at the time the Complaint was filed.¹¹ Parent contends that Respondent failed to implement all of the terms of the mediation agreement, or otherwise incorporate them into the IEP as an addendum.¹² Parent expressed at hearing that the main point of her concern was Respondent's failure to ensure that Student would have no contact with Mr. [REDACTED].¹³ Parent testified to the effect that Mr. [REDACTED] exhibited intimidating behavior toward Student in the past. Parent stated that Student is afraid of Mr. [REDACTED]

10. Principal instructed teachers not to speak Spanish to Student because Student only speaks English.¹⁴ Visual aids/cards have not been provided to Student for bus evacuations because there have been no bus evacuations. Desert View Elementary has implemented measures to help keep Student separate from Mr. [REDACTED]. Student is in a classroom four rooms down from Mr. [REDACTED] on the opposite side. Student's class leaves for the cafeteria 5 minutes earlier than Mr. [REDACTED] class to avoid any interaction between Mr. [REDACTED] and Student.¹⁵

¹¹ See Parent's testimony on the Hearing Audio Record at 9:00 – 10:50 minutes.

¹² See Parent's testimony on the Hearing Audio Record at 9:00 – 11:10 minutes.

¹³ See id.

¹⁴ See Principals testimony on the Hearing Audio Record at 1:14:45 to 1:20:00 minutes.

¹⁵ See id.

CONCLUSIONS OF LAW

APPLICABLE LAW

FAPE

1. Through the IDEA, Congress has sought to ensure that all children with disabilities are offered a FAPE (free appropriate public education) that meets their individual needs.¹⁶ These needs include academic, social, health, emotional, communicative, physical, and vocational needs.¹⁷ 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.”¹⁸ 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.”¹⁹ The IDEA mandates that school districts provide a “basic floor of opportunity.”²⁰ The IDEA does not require that each child’s potential be maximized.²¹ A child receives a FAPE if a program of specialized instruction “(1) addresses the child’s “unique” needs, (2) provides adequate support services so the child can take advantage of the educational opportunities and (3) is in accord with the child’s individualized educational program.”²²

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

¹⁷ *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).

¹⁸ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

¹⁹ *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).

²⁰ *Rowley*, 458 U.S. at 200.

²¹ *See id.* at 198.

²² *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)).

The IEP

2. Once a student is determined eligible for special education services, a team composed of the student's parents, teachers, and others familiar with the student formulate an IEP (individualized education program) that generally sets forth the student's current levels of educational and functional performance and sets annual goals that the IEP team believes will enable the student to make progress in the general education curriculum.²³ 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 services will be provided to aid the student. The student's parents have a right to participate in the formulation of an IEP.²⁴ 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.²⁵

Substantive versus Procedural

3. A determination of whether or not a student received a FAPE must be based on substantive grounds.²⁶ For a substantive analysis of an IEP, the review of the IEP is limited to the contents of the document.²⁷ 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.

4. Procedural violations in and of themselves do not necessarily deny a student a FAPE. If a procedural violation is alleged and found, it must be determined whether the procedural violation either (1) impeded the student's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefit.²⁸ If one of those three impediments has occurred, the student has been denied a FAPE due to the procedural violation.

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

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

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

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

²⁷ *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)).

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

Burden of Proof and Basis of Decision

5. A parent who requests a due process hearing alleging non-compliance with the IDEA must bear the burden of proving that claim.²⁹ The standard of proof is “preponderance of the evidence,” meaning evidence showing that a particular fact is “more probable than not.”³⁰ Therefore, in this case Petitioners bear the burden of proving by a preponderance of evidence that Respondent substantively violated the IDEA through the alleged actions or inactions. If a procedural violation is alleged and demonstrated, Petitioners must then show that the procedural violation either (1) impeded Student’s right to a FAPE, (2) significantly impeded Parents’ opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit to Student.³¹

6. Petitioners do not contend that Respondent failed to implement the IEP that existed at the time that the Complaint was filed. Petitioners contend that Student was denied a FAPE because Respondent had not implemented all of the terms of the mediation agreement, including but not limited to, holding an IEP addendum meeting before the start of the 2023-2024 school year, and ensuring that Student was kept separate from Mr. [REDACTED]

7. Upon review of the evidence presented at hearing, the Administrative Law Judge concludes that Petitioners have failed to establish by a preponderance of the evidence that Respondent substantively violated the IDEA. Petitioners have failed to establish that Respondent committed a procedural violation of the IDEA. Even if Petitioners established that Respondent failed to implement all of the terms of the mediation agreement at the time the Complaint was filed, there was no evidence provided to establish that the failure to implement the mediation agreement, or any other purported procedural violation, impeded Student’s right to a FAPE, significantly impeded Parents’ opportunity to participate in the decision-making process, or caused a deprivation of educational benefit to Student.

²⁹ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

³⁰ *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).

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

1 8. Because the evidentiary record does not demonstrate any violation of the
2 IDEA by Respondent, and, therefore, no remedies would be fashioned, the Administrative
3 Law Judge does not address Petitioners' requested remedies. The Administrative Law
4 Judge concludes that Petitioners' Complaint shall be dismissed.

5
6 **RULING**

7 Based on the findings and conclusions above,

8 **IT IS HEREBY ORDERED** that Petitioners' Complaint is dismissed in its entirety.

9 **ORDERED** this day, December 13, 2023.

10 /s/ Velva Moses-Thompson
11 Administrative Law Judge

12 **RIGHT TO SEEK JUDICIAL REVIEW**

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

21 Transmitted by either mail, e-mail, or facsimile to:

22
23 Jeffrey Studer, Director of Dispute Resolution
24 Arizona Department of Education
25 Jeffrey.Studer@azed.gov

26 [REDACTED]
27 [REDACTED]

28 Miguel Gonzalez, Special Education Director
29 Gadsden Elementary School District

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2 Lizette Esparza, Superintendent
3 Gadsden Elementary School District
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5 By: OAH Staff