

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 J.H., Student, by and through Parent Z.H.,
3 Petitioners,

No. 24C-DP-035-ADE

4 v.

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 Florence Unified School District,
6 Respondent.

7 **HEARING:** May 22, 2024 at 9:00 AM.

8
9 **APPEARANCES:** [REDACTED] (“Parent”) appeared on behalf of
10 student [REDACTED] (“Student”) (collectively as “Petitioners”).

11 Attorney Kathleen H. Brantingham, Esq. appeared on behalf of Florence Unified
12 School District (“District” and “Respondent”).

12 **WITNESSES:**

- 13 • James Eric Turner – **District Director of Special Education Services**

14 **HEARING RECORD:**

15 Certified Court Reporter transcriptionist services waived. Audio captured via
16 Google Meets and held by the Office of Administrative Hearings (“OAH”).

17 **ADMINISTRATIVE LAW JUDGE:** Jenna Clark

18 **EXHIBITS ADMITTED INTO EVIDENCE:** The NOTICE OF HEARING, Special
19 Education Due Process Complaint (“Complaint”), December 08, 2023, HEARING ORDER,
20 January 17, 2024, and February 10, 2024, CONTINUED HEARING ORDERS, May 15, 2024,
21 and May 21, 2024, MINUTE ENTRIES were admitted into the hearing record for
22 administrative purposes only.

23 Parent brings this due process action on behalf of Student, claiming that
24 Respondent violated the Individuals with Disabilities Education Act (“IDEA”), alleging no
25 less than one (1) procedural and/or substantive error.

26 The law governing these proceedings is the IDEA found at 20 United States Code
27 (“U.S.C.”) §§ 1400-1482 (as re-authorized and amended in 2004),¹ and its implementing
28 regulations, 34 Code of Federal Regulations (“C.F.R.”) Part 300, as well as the Arizona
29 Special Education statutes; Arizona Revised Statutes (“ARIZ. REV. STAT.”) §§ 15-761

30 ¹ By Public Law 108-446, known as the “Individuals with Disabilities Education Improvement Act of 2004,”
IDEA 2004 became effective on July 01, 2005.

1 through 15-774, and implementing rules, Arizona Administrative Code (“ARIZ. ADMIN.
2 CODE”) R7-2-401 through R7-2-406.

3 PROCEDURAL HISTORY

4 On or about December 02, 2023, Petitioners filed their Complaint with the Arizona
5 Department of Education (“Department”) that alleged a single violation of the IDEA
6 against Respondent. On December 05, 2023, the Department issued a NOTICE OF
7 HEARING setting the matter for hearing at 9:00 a.m. on January 18, 2024, before OAH, an
8 independent state agency.² Pursuant to stipulations made during a telephonic prehearing
9 conference on January 03, 2024, the matter was continued and reset for hearing on
10 February 20, 2024. Pursuant to a MOTION TO CONTINUE from Petitioners received February
11 02, 2024, and over Respondent’s objection, the matter was again continued and reset for
12 hearing on May 22, 2024.³

14 ² On January 13, 2024, Petitioners submitted a MOTION TO CONTINUE that was granted by the Tribunal. As
15 a result, the proceeding was reset for continued hearing on February 20, 2024. On February 02, 2024,
16 Petitioners submitted a second MOTION TO CONTINUE, which was also granted by the Tribunal. On May 22,
17 2023, a MINUTE ENTRY – GRANTING CONTINUANCE was issued that reset the matter for continued hearing on
18 May 22, 2024, whereby the case was heard.

19 ³ The order included the following advisement, in pertinent part:

20 The subpoena deadline in this matter is hereby set for May 01, 2024, and the disclosure deadline
21 is hereby set for May 08, 2024.

22 Correspondence was not returned as undeliverable to either party.

23 On May 15, 2024, the Tribunal received proposed hearing exhibits 1-13 on behalf of Respondent,
24 as well as a Subpoena *Duces Tecum*. By that same date, an ORDER DENYING SUBPOENA REQUEST was
25 issued by the Tribunal which included the following advisement:

26 Petitioner(s) may either stipulate to the admission of Respondent’s untimely proposed exhibits, or
27 object to their admission at the hearing.

28 On May 21, 2024, the Tribunal received a MOTION TO DISMISS OR IN THE ALTERNATIVE TO ACCEPT
29 RESPONDENT’S PROPOSED EXHIBITS AS TIMELY from Respondent. By that same date, a MINUTE ENTRY was
30 issued by the Tribunal which included the following advisement:

Respondent is correct that neither party timely submitted obligatory proposed exhibits and/or lists
of potential witnesses, per disclosure requirements set forth in this matter. Regardless, those
omissions do not bar [Parent] from testifying, and by the very nature of that facts creates the
possibility that [Parent] may sustain her burden of proof in this matter on behalf of Petitioners.

Notably, the Tribunal is not inclined to reverse its prior ruling regarding Respondent’s untimely
disclosure, as “regrettably overlooking” the disclosure deadline fails to constitute good cause.
Respondent’s assertion that the current state of proceedings would “[L]eave Respondent in a

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EXHIBITS

Neither party submitted timely proposed hearing exhibits, nor stipulated to the admission of any untimely submitted proposed hearing exhibits.⁴

CLAIMS AT HEARING

Based on a review of the underlying Complaint, the Administrative Law Judge (“ALJ”) determined the following claim was raised for determination at the due process hearing:

- (1) **Respondent allegedly changed Student’s placement from Level D to Level C in connection with the August 17, 2023, IEP addendum meeting.**
- (2) **Respondent allegedly removed Student from the Foundation for Blind Children School’s (“FBC”) prior to the end of the school day; one hour early, on multiple occasions, for administrative convenience.**

REQUESTED REMEDIES

Petitioners requested the following remedies:

- **Proposed Resolution 1** – Respondent reverse its decision to change Student’s placement from FBC to a self-contained classroom at Copper Basin, on an IEP.
- **Proposed Resolution 2** – Compensatory education, paid directly to Parent for any and all instructional time Student missed at FBC due to being picked up early from school by the District.

The Tribunal has considered the entire hearing record, including the testimony, and now makes the following Findings of Fact, Conclusions of Law, and Ruling finding that Petitioners have failed to demonstrate that Respondent substantively violated the IDEA

difficult position preparing for next week’s hearing” while likely true in sentiment, is factually incorrect as adjudication of these matters remain scheduled for hearing tomorrow, May 22, 2024.³

Further, Petitioners may choose to stipulate to the admission of Respondent’s proposed exhibits for use during proceedings. Therefore,

IT IS ORDERED that Respondent’s motions are **denied**.
(*Emphasis in original.*)

Correspondence was not returned as undeliverable to either party.

⁴ To be clear, neither party referred to Respondent’s proposed hearing exhibits during the presentation of evidence, or asked that they be admitted into the evidentiary record prior to its closing.

1 through the aforementioned allegation set forth in the Complaint. The credible and
2 material evidence of record is as follows:

3 **FINDINGS OF FACT**

4 **BACKGROUND**

5 1. On or about March 29, 2022, Student (DOB 01/10/2017), who is blind, was
6 evaluated and first identified by the Mesa Unified School District (“Mesa Unified”) as
7 eligible for special education and related services. Student was placed on an
8 Individualized Education Program (“IEP”) under the severe sensory impairment,
9 moderate intellectual disability, and vision impairment categories. Student’s IEP included
10 academic, speech-language, occupational therapy, physical therapy, and vision
11 impairment service areas. Student’s IEP also included transportation services, nursing
12 services, and support services to assist with Activities of Daily Living (“ADL”) including
13 feeding, grooming, dressing, toileting, transferring, and use of assistive devices. At that
14 time, Student was placed in a private day school, the FBC preschool program in Phoenix,
15 Arizona.

16 2. In February 2023, Student was enrolled in the Franklin Accelerated
17 Academy East Campus in Mesa, Arizona.

18 3. In an IEP meeting held on or about May 17, 2023, Mesa Unified’s IEP team
19 determined that it could not offer Student the specialized education services he required.
20 As a result, they drafted an IEP that changed Student’s placement to FBC, a Level D
21 placement, for the 2023-24 term.

22 4. In an IEP addendum meeting held on or about August 17, 2023, Mesa
23 Unified’s IEP team drafted an IEP addendum to modify Student’s medical management.
24 At that time, Student’s progress report from FBC was also reviewed in the areas of math,
25 communication, and related services.

26 5. On or about October 30, 2023, Petitioners relocated their residence into the
27 District.

28 6. In an IEP addendum meeting held on or about November 14, 2023, the
29 District’s IEP team drafted a new IEP that changed Student’s placement from FBC to
30 Copper Basin Primary School (“Copper Basin”), a Level C placement, in San Tan Valley,
Arizona, effective December 05, 2023.

1 7. As of the last date of hearing, Student was seven (7) years old and
2 completing his 1st grade year at FBC under Stay Put.⁵

3 **ADDITIONAL EVIDENCE**

4 8. Student is blind, nonverbal, and uses a wheelchair. Student has a history of
5 adrenal insufficiency, chronic ear infections, and seizures. Student uses diapers because
6 of constipation and incontinence resulting from diabetes insipidus. Student only eats
7 pureed foods due to a pediatric feeding disorder.

8 9. A Health Aide accompanies Student on his bus ride to and from school.
9 Student's commute from his home in San Tan Valley to FBC is sixty (60) miles and takes
10 approximately seventy (70) minutes each way.

11 10. At FBC, Student's teacher is certified in visual impairment. Student uses
12 assistive technology; including braille and orthotic devices, to access his curriculum.
13 Student has a dedicated assistant that provides all day support. Student does not have
14 access to non-disabled peers or general education courses.

15 **HEARING EVIDENCE**

16 11. On an unknown date in Fall 2023, Director Turner and Parent, along with
17 other members of Student's IEP team, including a speech pathologist and program
18 specialist, toured FBC. At that time they conducted an onsite observation of Student's
19 specialized instruction and monitored his activities inside and outside the classroom.

20 a. Soon afterwards, Director Turner purchased assistive environmental items,
21 including a modified table, chair, and tricycle, he had observed Student
22 using at FBC, for Student's use at Copper Basin.

23 12. Sometime after Student relocated into the District, the District obtained all
24 of Student's prior evaluations, IEPs, and academic reports. The District also obtained
25 some of Student's medical records, including a recent vision report.

26 13. Recently, Copper Basin's severe and profound disabilities program was
27 "revamped" to include medically fragile students. A full-time nurse is assigned to the
28 special education classroom, whose office is located directly across the hall. The
29 classroom ratio is two (2) paraprofessionals and one (1) teacher to four (4) special

30 _____
⁵ FBC's last day of school for the 2023/24 academic term was June 04, 2024.

1 education students. The special education classroom is also equipped with specialized
2 technology. Special education students have access to non-disabled peers and the
3 general education curriculum.

4 a. The blind and visually impaired teacher's proficiency in braille is unknown.

5 14. Copper Basin is six (6) miles away from Student's residence, and it would
6 take approximately eight (8) minutes for Student to be transported there with a Health
7 Aide.

8 15. On November 14, 2023, Student's IEP team met to review Student's data
9 and IEP to determine what changes, if any, needed to be made. Ultimately, the IEP team
10 determined to "carry over" the bulk of items within Student's May 17, 2023, IEP from Mesa
11 Unified, including service minutes and their delivery. The District further determined that,
12 based on a review of staff feedback, prior observations at FBC, Student's FBC progress
13 report, Student's IEP, and considerations from Parent, the District was capable of fulfilling
14 those items itself and could provide FAPE to Student.

15 a. After the District conducted an "apples to apples" discussion with physical
16 therapists, occupational therapists, speech pathologists, and teachers
17 certified for educating blind and visually impaired students from FBC, it
18 concluded that the Least Restrictive Environment ("LRE") for Student would
19 be a Level C placement at Copper Basin. Director Turner clarified that
20 "inclusion" with non-disabled peers was more than wheeling Student down
21 an integrated hallway, but rather being in a classroom with nondisabled
22 grade-level peers and participating in the general education curriculum, to
23 whatever extent appropriate.

24 b. Additionally, the IEP determined that Student would benefit from a
25 significantly shorter commute, by approximately 90%, given his
26 incontinence issues.

27 16. Director Turner testified that the District, specifically Copper Basin, are
28 "ready to meet [Student's] needs" and "looking forward to the opportunity to work with
29 him."

30 17. Parent testified that Student currently receives services for the entire day at
FBC from a certified teacher of the visually impaired and opined that the District's

1 proposed self-contained placement at Copper Basin will not be able to provide for all of
2 Student's needs. Parent also testified that the District has picked Student up from FBC
3 an hour early, on multiple occasions, to accommodate the transportation needs of another
4 FBC student, without Parent's knowledge or consent. Per Parent, the District has done
5 this for "administrative convenience" an unknown number of times.

6 **CLOSING ARGUMENTS**

7 18. In closing, Respondent opined that Petitioners failed to sustain their burden
8 of proof to establish that the IEP drafted November 14, 2023, did not provide FAPE in the
9 LRE, or alternatively that the District had improperly changed Student's placement from
10 Level D to Level C. Respondent argued that the IEP at issue was exactly the same as the
11 IEP Student was on when he transferred into the District from Mesa Unified and argued
12 that sufficient data was used to justify the change in placement so Student could be
13 serviced by the District instead of a private day school. Respondent argued Copper Basin
14 could provide Student with comparable services to FBC, as they have skilled staff and
15 technological devices to ensure that Student's needs can be met. Respondent further
16 argued Copper Basin would afford Student meaningful opportunities to engage with his
17 non-disabled peers and would also afford him a much shorter commute which would
18 prevent him from being strapped-down for hours a day and prevent him from suffering
19 incontinence-related accidents on the bus to and from school.

20 19. In closing, Petitioners argued that Student should not be forced to transfer
21 to Copper Basin because it was unknown whether he would have appropriate braille
22 support. Petitioners also argued that Student's commute was a red herring non-issue and
23 opined that Student's interactions with non-disabled peers outside of school were
24 sufficient for the purposes of inclusion.

25 **CONCLUSIONS OF LAW**

26 **APPLICABLE LAW**

27 1. Congress enacted the IDEA to ensure that all students with disabilities are
28 offered a FAPE that meets their individual needs.⁶ The IDEA does not define the level of
29 education that must be provided, except that it must be "reasonably calculated to enable
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⁶ *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996).

1 the student to receive educational benefits,”⁷ that meets their individual needs.⁸ These
2 needs include academic, social, health, emotional, communicative, physical, and
3 vocational needs.⁹ To do this, school districts must identify and evaluate all students
4 within their geographical boundaries who may be in need of special education and
5 services. The IDEA sets forth requirements for the identification, assessment and
6 placement of students who need special education, and seeks to ensure that they receive
7 a free appropriate public education. The IDEA mandates that school districts provide a
8 “basic floor of opportunity.”¹⁰

9 2. A FAPE consists of “personalized instruction with sufficient support services
10 to permit the child to benefit educationally from that instruction.”¹¹ The FAPE standard is
11 satisfied if the student’s IEP sets forth his or her individualized educational program that
12 is “reasonably calculated to enable the child to receive educational benefit.”¹² Therefore,
13 a school offers a FAPE by offering and implementing an IEP “reasonably calculated to
14 enable [a student] to make progress appropriate in light of [the student’s]
15 circumstances.”¹³ The IDEA does not require that each student’s potential be
16 maximized.¹⁴ A student receives a FAPE if a program of instruction “(1) addresses his
17 unique needs, (2) provides adequate support services so he can take advantage of the
18 educational opportunities and (3) is in accord with an individualized educational
19 program.”¹⁵

20 3. Once a student is determined to be eligible for special education services,
21 a team composed of the student’s parents, teachers, and others formulate an IEP that,
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23 ⁷ *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 201 (1982)

24 ⁸ 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

25 ⁹ *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).

26 ¹⁰ *Rowley*, 458 U.S. at 200.

27 ¹¹ *Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

28 ¹² *Id.*, 485 U.S. at 207. In 2017, in *Andrew 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).

29 ¹³ *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. ____ (2017).

30 ¹⁴ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 198 (1982).

¹⁵ *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)).

1 generally, sets forth the student's current levels of educational performance and sets
2 annual goals that the IEP team believes will enable the student to make progress in the
3 general education curriculum.¹⁶ The IEP tells how the student will be educated, especially
4 with regard to the student's needs that result from the student's disability, and what
5 services will be provided to aid the student. The student's parents have a right to
6 participate in the formulation of an IEP.¹⁷ The IEP team must consider the strengths of
7 the student, concerns of the parents, evaluation results, and the academic,
8 developmental, and functional needs of the student.¹⁸ To foster full parent participation,
9 in addition to being a required member of the team making educational decisions about
10 the student, school districts are required to give parents written notice when proposing
11 any changes to the IEP,¹⁹ and are required to give parents, at least once a year, a copy
12 of the parents' "procedural safeguards," informing them of their rights as parents of a
13 student with a disability.²⁰

14 4. The IEP team must consider the concerns of a student's parents when
15 developing an IEP.²¹ In fact, the IDEA requires that parents be members of any group
16 that makes decisions about the educational placement of a student.²²

17 5. A parent who requests a due process hearing alleging non-compliance with
18 the IDEA must bear the burden of proving that claim.²³ The standard of proof is
19 "preponderance of the evidence," meaning evidence showing that a particular fact is "more
20 probable than not."²⁴ Therefore, Petitioners bear the burden of proving their claim(s) and
21 complaint(s) by a preponderance of evidence.

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23 ¹⁶ 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324.

24 ¹⁷ 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. §§ 300.321(a)(1).

25 ¹⁸ 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324(a).

26 ¹⁹ 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503.

27 ²⁰ 20 U.S.C. § 1415(d); 34 C.F.R. § 300.503. Safeguards may also be posted on the Internet.
28 20 U.S.C. § 1415(d)(B).

29 ²¹ 20 U.S.C. § 1414(d)(3)(A)(ii); 34 C.F.R. §§ 300.324(a)(1)(ii).

30 ²² 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.327 and 300.501(c)(1).

²³ *Schaffer v. Weast*, 546 U.S. 49, 56 (2005).

²⁴ *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 ARIZ. REV. STAT. § 41-1092.07(G)(2);
ARIZ. ADMIN. CODE R2-19-119(B)(1); *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).

1 6. The IDEA’s statute of limitations requires courts to bar claims made more
2 than two years after the parents “knew or should have known” about the actions forming
3 the basis of the complaints.²⁵

4 7. Statutes should be interpreted to provide a fair and sensible result.²⁶ “In
5 applying a statute its words are to be given their ordinary meaning unless the legislature
6 has offered its own definition of the words or it appears from the context that a special
7 meaning was intended.”²⁷

8 8. The Tribunal is required to apply equitable principles when rendering
9 decisions.²⁸ The application of equity entails offering a remedy to avoid an
10 unconscionable or unjust result.²⁹

11 9. This Tribunal’s determination of whether Student received a FAPE must be
12 based on substantive grounds.³⁰ A FAPE consists of “personalized instruction with
13 sufficient support services to permit the child to benefit educationally from that
14 instruction.”³¹ Courts do not “substitute their own notions of sound educational policy for
15 those of the school authorities which they review.”³² In addition, the appropriateness of
16 an offer of FAPE must be judged in light of the circumstances at the “snapshot in time”
17 when the IEP was developed, not with the benefit of hindsight.³³

18 10. Procedural violations in and of themselves do not necessarily deny a student
19 a FAPE. If a procedural violation is alleged and found, it must be determined whether the
20 procedural violation either (1) impeded the student’s right to a FAPE; (2) significantly
21 impeded the parents’ opportunity to participate in the decision-making process; or (3)

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23 ²⁵ 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*
24 *and J.C. on behalf of themselves and K.K-R v. Missoula County Publ. Schools*, 713 F. App’x 666 (9th Cir.
2018).

25 ²⁶ *See Gutierrez v. Industrial Commission of Arizona*, 226 Ariz. 395, 249 P.3d 1095 (2011)(citation omitted);
26 *State v. McFall*, 103 Ariz. 234, 238, 439 P.2d 805, 809 (1968) (“Courts will not place an absurd and
27 unreasonable construction on statutes.”).

28 ²⁷ *Mid Kansas Federal Savings and Loan Ass’n of Wichita v. Dynamic Development Corp.*, 167 Ariz. 122,
128, 804 P.2d 1310, 1316 (1991).

29 ²⁸ *Seitz v. Industrial Commission of Arizona*, 184 Ariz. 599, 603 (Ariz. Ct. App., Div. 1, 1995).

30 ²⁹ *Sanders v. Folsom*, 104 Ariz. 283, 289, 451 P.2d 612 (Ariz. 1969)(quoting *Merrick v. Stephens*, 337
S.W.2d 713, 719 (Mo. App. 1960)).

31 ³⁰ 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. § 300.513(a)(1).

32 ³¹ *Rowley*, 458 U.S. at 203.

33 ³² *Id.* at 206.

³³ *J.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 439 (9th Cir. 2010).

1 caused a deprivation of educational benefit.³⁴ If one of the three impediments listed has
2 occurred, the student has been denied a FAPE due to the procedural violation.

3 11. [W]hen a school district does not perform exactly as called for by the IEP,
4 the district does not violate the IDEA unless it is shown to have materially failed to
5 implement the child’s IEP.”³⁵ “There is no statutory requirement of perfect adherence to
6 the IEP, nor any reason rooted in the statutory text to view minor implementation failures
7 as denials of a free appropriate public education.”³⁶

8 **DECISION**

9 12. Here, Parent filed the Complaint in this matter on December 02, 2023; thus,
10 the relevant period of time for the issues at bar run between when Student started his
11 education in pre-K through his 1st grade term. Therefore, any actions or inactions that
12 occurred before Fall of the 2021/22 academic year, or after the Complaint was filed, fall
13 outside the relevant limitations period.

14 13. To prevail in the case at bar, Petitioners must establish by a preponderance
15 of the evidence that Respondent procedurally and/or substantively violated the IDEA as
16 alleged in the Complaint.

17 ***Claim #1 - Respondent’s alleged change of Student’s placement from Level D to 18 Level C***

19 a. 34 CFR § 300.116(a)(1) provides that in determining the educational
20 placement of a student with a disability a Local Educational Agency (“LEA”)
21 must ensure that the placement decision is made by a group of persons
22 knowledgeable about the student; including the parent(s), the meaning of the
23 evaluation data, and the placement options.

24 b. 34 CFR § 300.324(a)(2) provides that in developing a student’s IEP, in the
25 case of a student’s whose behavior impedes their learning or that of others, the
26 IEP team must consider the use of positive behavioral interventions and other
27 strategies to address that behavior.

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29 ³⁴ 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2).

30 ³⁵ *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 815 (9th Cir. 2007)

³⁶ *Id.* at 821.

1 c. 34 CFR § 300.324(b)(ii) provides that an LEA must ensure that the IEP team
2 revises the IEP, as appropriate, to address any lack of expected progress
3 toward the annual goals in the general education curriculum and the student's
4 anticipated needs.

5 d. 34 CFR § 300.114 provides that an LEA must ensure that removal of
6 students with disabilities from the regular education environment occurs only if
7 the nature or severity of the disability is such that education in regular classes
8 with the use of supplementary aids and services cannot be achieved
9 satisfactorily.

10 e. 34 CFR § 300.42 provides that supplementary aids and services means
11 supports that are provided in regular education classes and nonacademic
12 settings to enable students with disabilities to be educated with nondisabled
13 children to the maximum extent appropriate.

14 f. The IDEA requires that IEP team members come to an IEP team meeting
15 with an open mind, not a blank mind.

16 g. While Student's IEP team certainly proposed a change in placement for
17 Student, no such change took place after the November 14, 2023, IEP
18 addendum meeting. Due to the enforcement of Stay Put provisions after 24C-
19 DP-035-ADE was filed, Student remained enrolled at FBC.

20 h. To the extent that Petitioners argue that a change in placement, from Level
21 D to Level C, is not appropriate for Student for the 2024/25 academic term, the
22 record does not support that contention. The credible evidence of record
23 establishes that the District reviewed data sufficient to determine that it could,
24 at Copper Basin, provide Student with an education and also meet his specific
25 individualized needs, as set forth in an IEP indistinguishable from the preceding
26 IEP implemented by Mesa Unified. Thus, placing Student in the least restrictive
27 setting.

28 i. Moreover, Respondent has shown that a Level C placement is appropriate
29 for Student because, in addition to the foregoing, Student would also be able
30 to interact with his non-disabled peers.

1 j. An IEP team member's considerations do not outweigh those of the team.
2 The decision to enroll Student at Copper Basin as the location of his Level C
3 placement rests with Respondent, not Parent, which was supported by the
4 cumulative data collected; as the District reasonably believed Copper Basin
5 could successfully deliver an education specialized to Student and give him
6 access to non-disabled peers.

7 k. As for the related matter regarding the length and duration of Student's
8 commute to and from FBC, the Tribunal finds it to be tenuously relevant but
9 ultimately a non-determinative factor. It is merely a resulting consequence of
10 Student's change in placement. The record establishes that Respondent's
11 basis for moving Student from FBC to Copper Basin was because, in short, the
12 District could mirror the delivery of Student's IEP in-house. The fact that the
13 District, who would also include transportation as part of Student's service
14 delivery, could reduce Student's overall commute and likely thwart his
15 incontinence issues during said transport is, simply put, an added bonus.

16 l. Petitioners failed to sustain their burden of proof as to this allegation. No
17 procedural or substantive due process violations exist.

18 ***Claim #2 – Respondent's alleged early removal of Student from FBC***

19 m. 34 CFR § 300.34 provides, in part, that related services means
20 transportation services as are required to assist a student with a disability to
21 benefit from special education.

22 n. 34 CFR § 300.9(a) provides that "consent" means that a parent has been
23 fully informed of all information relevant to the activity for which consent is
24 sought.

25 o. Federal regulations do not define "informed consent." Instead, 34 CFR §
26 300.300 only requires that an LEA make reasonable efforts to obtain informed
27 parental consent for an initial special education evaluation and related services.

28 p. 34 CFR § 300.513(a)(2) provides that substantive procedural due process
29 violations amounting to a denial of FAPE occur when a procedural inadequacy
30 impedes the student's right to a FAPE, significantly impedes a parent's
opportunity to participate in the decision-making process regarding the

1 provision of a FAPE to the student, and/or if the procedural inadequacy caused
2 a deprivation of educational benefit.

3 q. The record clearly establishes that Respondent was required to provide
4 Student with transportation to and from FBC for the 2023/24 academic year.
5 However, Parent's assertion that Respondent removed Student from school
6 early on numerous occasions, without her consent, is not corroborated by the
7 record. The record is devoid of any specific dates, times, or persons who were
8 allegedly involved in removing Student from FBC for transportation
9 conveniences or otherwise. There was no material evidence offered by Parent
10 to substantiate these allegations.

11 r. Petitioners failed to sustain their burden of proof as to this allegation. No
12 procedural or substantive due process violations was proven.

13 **RULING**

14 14. The evidentiary record does not support a finding of any procedural or
15 substantive due process violations regarding the Complaint issue(s) contained herein.

16 Based on the foregoing,

17 **IT IS ORDERED** that claims 1 and 2 are **denied**.

18 **IT IS FURTHER ORDERED** that Petitioners' corresponding requests for relief are
19 also **denied**.

20 **IT IS FURTHER ORDERED** that 24C-DP-035-ADE be dismissed, with prejudice.

21 Done this day, June 13, 2024.

22 **OFFICE OF ADMINISTRATIVE HEARINGS**

23 /s/ Jenna Clark
24 Administrative Law Judge
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NOTICE OF 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.

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

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By: OAH Staff