

1
2
3
4
5
6
7
8

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

American Leadership Academy - Applied
Technologies,
Petitioner,

No. 25C-DP-033-ADE

v.

**ADMINISTRATIVE LAW JUDGE
DECISION**

██████ a Student, by and through Parents ██████
and ██████
Respondents.

9
10
HEARING: Convened February 03-04, 2025, followed by review of closing arguments received February 07, 2025, and review of the official record received February 11, 2025.

11
12
APPEARANCES: Attorneys David Garner, Esq. and Gloria Farrisi, Esq. of OSBORN MALEDON, P.A., appeared on behalf of American Leadership Academy – Applied Technologies (“Petitioner”).

13
14
██████ appeared on behalf of ██████ (“Student”), by and through Parents ██████ (collectively as “Petitioners”). Student’s appearance was waived.

15
WITNESSES:

16 Michael Melendez – **Dean of Students**
17 Macall Varner – **Exceptional Students Services Assistant Director**
18 Nicholas Gratzl – **Director**, and
19 ██████ – **Parent**

20
OBSERVER:

21
22
HEARING RECORD: Certified Court Reporter Cynthia “Cindy” Mahoney (CCR No. 50680), COASH COURT REPORTING & VIDEO, LLC, recorded the proceedings as the official record of the hearing.¹

23
24
ADMINISTRATIVE LAW JUDGE: Jenna Clark.

25
26
27
28
29
EXHIBITS ADMITTED INTO EVIDENCE: The EXPEDITED NOTICE OF HEARING (“EXPEDITED NOTICE”), January 14, 2025, HEARING ORDER, January 22, MINUTE ENTRY, Hearing Transcripts, Petitioner Exhibits B (ALA-██████_000007-000010 only), C, E (ALA-██████_000062-000065 only), F (ALA-██████_000077-000084, 000087-000101, 000103-000111, & 000412-000421 only), G (ALA-██████_0000111-000112 only), H (ALA-██████_000171 and 000173 only), I (ALA-██████_000184-000200, 000256-

30
¹ The parties stipulated that the court reporter’s transcript would be the official record of the proceedings, which were timely received on February 11, 2025. The transcript is comprised of Volume 1 (pages 1-393).

000269 & 000325-000374 only), and J, Respondent Exhibit 1, and the parties' CLOSING ARGUMENTS were admitted into the evidentiary record.

Petitioner brings this Expedited Due Process action before the Arizona Department of Education ("Department"), under the Individuals with Disabilities Education Act ("IDEA"); specifically, pursuant to 20 United States Code ("U.S.C.") § 1415 and 34 Code of Federal Regulations ("C.F.R.") § 300.532, seeking an Order to change the placement of Student to an appropriate Interim Alternative Educational Setting ("IAES"), for up to forty-five (45) school days, because maintaining Student's current placement is alleged to substantially and likely result in injury to Student and/or others.

The law governing these proceedings is the IDEA, found at 20 U.S.C. §§ 1400-1482 (as re-authorized and amended in 2004),² and its implementing regulations, 34 C.F.R. Part 300, as well as the Arizona Special Education statutes, Arizona Revised Statutes ("ARIZ. REV. STAT.") §§ 15-761 through 15-774, and implementing rules, Arizona Administrative Code ("ARIZ. ADMIN. CODE") R7-2-401 through R7-2-406.

PROCEDURAL HISTORY

On January 06, 2025, Petitioner filed its Expedited Due Process Complaint ("Complaint") with the Department.³ On January 14, 2025, the Department issued a NOTICE OF HEARING setting the matter for hearing at 9:00 a.m. February 03-04, 2025, before the Office of Administrative Hearings ("OAH"), an independent state agency.

ISSUES AT HEARING

Based on a review of the Complaint, the Administrative Law Judge ("ALJ") determined the following issues were raised for determination at the due process hearing:

- (1) Petitioner seeks an Order under 34 C.F.R. § 300.532(a) to uphold Student's December 10, 2024, school suspension, determined to be a manifestation of his disability during a January 06, 2025, Manifestation Determination Review ("MDR").** Specifically, Petitioner alleges that Student (a) engaged in intentional verbal and sexual harassment of multiple students,

² By Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of 2004," IDEA 2004 became effective on July 01, 2005.

³ Respondent did not submit a written reply to the Complaint to the Department or Office of Administrative Hearings.

1 (b) intentionally assaulted and disfigured another student, (c) engaged in a
2 physical altercation with another student on campus, and (d) issued a death
3 threat to another student and his family. Petitioner asserts that it utilized
4 informal counseling, non-disciplinary supports, and increased supervision,
5 which was met with elopement, prior to implementing Student's suspension.

6 **REQUESTED REMEDIES**

- 7 • Petitioner seeks an IAES Order pursuant to 34 C.F.R. §§ 300.532(b) and
8 300.533 that requires Student to temporarily remain in an alternative
9 educational setting for a period not to exceed forty-five (45) school days.

10
11 The Tribunal has considered the entire hearing record, including witness testimony
12 and admitted Exhibits, and now makes the following Findings of Fact, Conclusions of
13 Law, and Ruling finding that Petitioner has sustained its evidentiary burden of proof and
14 established grounds to uphold Student's December 10, 2024, disciplinary school
15 suspension. Furthermore, Petitioner's request for an IAES Order under the IDEA is
16 granted. The credible and material evidence of record is as follows:

17 **FINDINGS OF FACT**

18 **BACKGROUND**

19 1. Student (DOB [REDACTED]) was first identified as eligible for special
20 education and related services in preschool, when he was 3 years old, in or around
21 November [REDACTED], under the Speech-Language Impairment category. He was enrolled at
22 the Sue Sossamen Early Childhood Development Center in Queen Creek, Arizona at the
23 time.⁴

24 2. In October 2016, Student was dismissed from special education services.

25 3. For Kindergarten and part of 1st grade, Student attended Cortina
26 Elementary in Queen Creek, Arizona.⁵ On December 12, 2018, Student was reevaluated
27 in 1st grade and identified as eligible for special education and related services under the
28 Emotional Disability and Speech-Language Impairment categories.

29 ⁴ See Petitioner Exhibit E (ALA-[REDACTED]-000066). Notably, Student was previously enrolled at Patriot
30 Academy in Queen Creek, Arizona for Kindergarten.

⁵ *Id.*

1 4. Student transferred to Power Ranch Elementary School in Gilbert, Arizona
2 where he finished his 1st grade term and started 2nd grade.⁶ On December 04, 2019,
3 during his 2nd grade term, an Individualized Education Program (“IEP”) was created for
4 Student.

5 a. Between 2019 and 2021 Student was diagnosed with Attention-Deficit
6 Hyperactivity Disorder (“ADHD”), Unspecified Bipolar Disorder,
7 Oppositional Defiant Disorder (Severe Type), Unspecified Anxiety Disorder
8 with Obsessive-Compulsive Disorder (“OCD”) Traits, Developmental
9 Disorder of Speech and Language, and Tic Disorder.

10 5. Sometime in 2020, Student was transferred to the Austin Centers for
11 Exceptional Students (“ACES”), a Level D placement, to finish his 2nd term and complete
12 grades 3 and 4.

13 6. In Fall of 2022, Student was enrolled as a Level D placement in Arizona
14 Virtual Academy for online study in his 5th and 6th grade terms.

15 7. On or about July 31, 2024, Student was enrolled at American Leadership
16 Academy (“ALA”), a Level A placement, where he commenced his 7th grade term. ALA
17 held its first IEP meeting for Student on September 27, 2024. ALA conducted a Functional
18 Behavior Assessment (“FBA”) for Student on November 14, 2024,⁷ and also conducted a
19 mandatory multidisciplinary psychoeducational reevaluation for Student on November 15,
20 2024, whereby a Behavior Intervention Plan (“BIP”) was created for Student and
21 immediately implemented by school staff.⁸

22 8. As of the last date of hearing, Student was thirteen (13) years old and still
23 in the 7th grade.

24 HEARING EVIDENCE

25 9. During Student’s first semester at ALA he was involved in the following
26 disciplinary incidents:
27

28 ⁶ *Id.*

29 ⁷ See Petitioner Exhibit I (ALA-██████████_000179-183). It was determined that Student “engages in disruptive
30 behaviors in order to gain attention from his peers” and that “when working on non-preferred activities
[Student] engages in classroom disruptions in order to escape the demands of the task at hand.

⁸ See Petitioner Exhibits B (ALA-██████████_000007-000010) and I (ALA-██████████_000325-000374).

- 1 a. On August 12, 2024, Student and another student were kicking each other's
2 chairs during class and shoving each other.⁹ The behaviors between the
3 children escalated when the other student threatened to harm Student's pet,
4 and Student responded by threatening to shoot the student and his family if
5 his pet were to be harmed. As a result, Student was suspended for one (1)
6 school day.¹⁰
- 7 b. On August 20, 2024, Student was involved in an altercation with another
8 student ("Child"), whom he had been bullying since the start of the term.¹¹
9 Over the course of two (2) classes, Student called Child disparaging names,
10 including using the word "gay" as a slur towards Child, which resulted in
11 Child punching Student in the stairwell at the end of the day and Student
12 punching him back. During the subsequent investigation of the event, both
13 teachers confirmed that Student left his desk to taunt Child, who was seated
14 away from him, and that Student had been observed taking things from
15 Child's desk and backpack and had to be instructed to return the items. As
16 a result, Student was suspended for one (1) school day.¹²
- 17 c. On August 30, 2024, one of Student's teachers gave him a "yellow card" in
18 class due to behaviors described as being "increasingly disruptive and
19 inappropriate."¹³ Specifically, it was reported that Student roamed around
20 the classroom, refused to participate in the day's lesson, disrupted his
21 classmates, and made an untoward gesture to the teacher during an
22 attempt to redirect him.¹⁴
- 23 d. On September 05, 2024, Student was involved in an altercation with Child.
24 During Auto-Tech class, students were working with soldering materials.
25 Child put a piece of wire down Student's shirt.¹⁵ Both children threw small
26

27 ⁹ See Petitioner Exhibit E (ALA- [REDACTED]_000065).

28 ¹⁰ *Id.*

29 ¹¹ See Petitioner Exhibit F (ALA- [REDACTED]_000097-000101).

30 ¹² See Petitioner Exhibits C (ALA- [REDACTED]_000011) and E (ALA- [REDACTED]_000064).

¹³ See Petitioner Exhibit E (ALA- [REDACTED]_000063-000064).

¹⁴ *Id.*

¹⁵ See Petitioner Exhibit F (ALA- [REDACTED]_000088-000096).

1 pieces of material at one another.¹⁶ Student, using protective materials for
2 his hands, placed a “nugget” of hot solder down Child’s tucked shirt,
3 resulting in injury and scarring.¹⁷ As a result, Student was suspended for six
4 (6) school days.¹⁸

5 i. Child’s parents contact local law enforcement to file a report against
6 Student, but later requested that pending assault charges be
7 dismissed against him.

8 e. On November 22, 2024, Student was caught mimicking a teacher behind
9 her back, causing a disruption in the class.¹⁹ After being pulled out of the
10 class to discuss his behavior, Student was observed stealing property out
11 of another student’s backpack.²⁰ As a result, Student was given detention
12 for 45 minutes.²¹

13 f. On December 09, 2024, a student complained to school administration that
14 Student was sexually harassing her.²² During the subsequent investigation,
15 five (5) Student Statement Forms were obtained from first-hand witnesses
16 who gave accounts that Student had commented on other students’ bodies,
17 such as remarking they were “fat” or “big,” making sexual innuendoes and
18 overtly sexual comments such as giving students “back-shots” or wanting
19 to “make love” to them, or telling a student he wanted to “f*ck” her.²³ Another
20 student shared that Student “went down on the ground” during class,
21 grabbed her feet, put his face between her legs and looked up.²⁴ Student
22 later admitted that his intent had been to “startle” his classmate, but denied
23 the existence of sexual undertones in his conduct. As a result, Student was
24 suspended for two (2) school days, pending a disciplinary hearing.²⁵

25
26 ¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Petitioner Exhibit E (ALA- [REDACTED] _000063).

¹⁹ See Petitioner Exhibit E (ALA- [REDACTED] _000062-000063).

²⁰ *Id.*

²¹ *Id.*

²² See Petitioner Exhibit F (ALA- [REDACTED] _000074-000084 and 000102-000105).

²³ *Id.*

²⁴ *Id.*

²⁵ See Petitioner Exhibit E (ALA- [REDACTED] _000062).

1 10. On August 22, 2024, Parent issued a Cease & Desist Letter to ALA, at
2 Director's attention that demanded, amongst other things, that staff stop requesting
3 written statements from Student in connection with disciplinary investigations regarding
4 his alleged conduct.²⁶

5 11. In late-November/early-December, ALA administration assigned
6 paraprofessional staff to unofficially escort Student during transitional time between
7 classes to thwart inappropriate conduct. Shortly after implementation, Student began to
8 elope and would actively run and hide from paraprofessional staff. On a number of
9 occasions staff were unable to locate Student, and on other occasions Student was
10 located in inappropriate or undesignated areas such as the bathroom, which crated
11 additional safety concerns for the campus.

12 12. On December 30, 2024, ALA issued a Meeting Notice to Parents regarding
13 a Manifestation Determination Review scheduled for 7:30 a.m. on January 06, 2025.²⁷

14 The following advisement was included in the notice:

15 In the event that the behavior is determined to be a manifestation of the student's
16 disability, the school may invoke its right to appeal the impact of such a
17 determination under 34 C.F.R. § 300.532(a), in which case the team will also
18 determine an appropriate interim alternative educational setting, pending the
19 outcome of such appeal, under 34 C.F.R. § 300.533.

20 13. On January 06, 2025, a Manifestation Determination was conducted by ALA
21 during an IEP Addendum team meeting to determine whether alleged acts of sexual
22 harassment by Student, occurring on or about December 10, 2024, were factually
23 accurate, and if so, were a manifestation of Student's disabilities.²⁸ The following
24 considerations²⁹ were noted by the IEP team:

- 25 a. An FBA was conducted as part of Students re-evaluation in Fall 2024. The
26 target behaviors reported by teachers were disruptive behavior such as
27 talking out, talking to peers, verbal disrespect, inappropriate language and
28 touching of others.
- i. The function of the behavior was determined to be attention-seeking.

29 ²⁶ See Respondent Exhibit 1.

30 ²⁷ See Petitioner Exhibit H (ALA-██████████-000171 and 000173.)

²⁸ See Petitioner Exhibits G (ALA-██████████-000111-000169) and I (ALA-██████████-000184-000202).

²⁹ See Petitioner Exhibits G (ALA-██████████-000111-000112).

1 b. A BIP was developed whereby if and when Student was disruptive or
2 inappropriate in class, he was to be pulled out of class and spoken to
3 privately by a teacher. After reviewing expectations, if it was determined that
4 Student could be returned to task, he would be permitted to reenter the
5 classroom. Breaks would be provided, if necessary.

6 i. Implementation of the BIP lessened some of Student's disruptive
7 behaviors.

8 c. To assist Student with peer interactions, he received special education
9 services during a designated time, to reinforce tools for self-advocacy,
10 positive peer interactions, and compliance with redirection.

11 d. Per teacher logs, progress notes, and classroom teacher reports, Student's
12 special education services and BIP were in place since initiated in Fall 2024.

13 e. Staff and Parents agree that Student has challenges with the following
14 behavioral concerns:

15 i. Student "indicate[s] a heightened tendency for aggressive
16 interactions."

17 ii. Student has a "greater likelihood of conduct-related challenges" and
18 engaging in behaviors "that violate societal norms and rules."

19 iii. Student may struggle "to manage impulses and interact with others
20 in a socially acceptable manner."

21 iv. Student has a "tendency to become irritable quickly and have
22 difficulty maintaining self-control."

23 v. Student has a "tendency to be disruptive, intrusive, or threatening to
24 others."

25 vi. Student may have "difficulty regulating emotions and may become
26 easily upset in response to [his] environment."

27 14. The IEP team unanimously agreed that the behavior in question was directly
28 and substantially related to Student's emotional disability and identified behavioral needs,
29 and warranted disciplinary action. There was disagreement between staff and Parents
30 regarding ALA's implementation of the IEP. Staff opined that the IEP was implemented
as written at the time of the incident, but Parent opined that the behavior in question was

1 a result of ALA's failure to properly implement the IEP. Ultimately, a change of placement
2 was temporarily effectuated for Student, and he was enrolled in a private day school,
3 Empower Academy, a Level D placement, located in Mesa, Arizona.

4 15. On January 06, 2025, ALA issued a Prior Written Notice ("PWN") to Parents
5 that proposed to add a behavior goal to Student's IEP to "target response to peer
6 interaction," by adding a twenty (20) minute session of support per week to Student's
7 service time.³⁰ In a second PWN issued by ALA to Parents that same date, notice was
8 provided that Petitioner planned to file an expedited due process appeal under 34 C.F.R.
9 300.532, in light of the MDR outcome, regarding ALA's proposal to provide Student's
10 services (i.e. a free and appropriate public education "FAPE") in an IAES at Empower
11 Academy private school, pending outcome of the appeal.³¹

12 **ADDITIONAL EVIDENCE**

13 16. From December 20, 2024, through January 03, 2025, ALA was on a
14 scheduled break for winter.

15 17. On or about January 07, 2025, ALA temporarily transferred Student to
16 Empower Academy.

17 **CLOSING ARGUMENTS**

18 **Respondents**

19 18. In closing, Respondent argued, overall, that it was unfair for Petitioner to
20 place Student at a level D day school based on policies and rules that had not been
21 communicated to him or Parents.

22 19. Per Respondent, Petitioner's disciplinary records for Student were
23 unreliable because they were based on "subjective and inconsistent assessments."
24 Respondent opined that Petitioner acted improperly by refusing or otherwise failing to
25 include Parents in disciplinary investigations, and that Petitioner's expectation that
26 Student would comply with behavioral expectations, without Parents present, was
27 discriminatory. Respondent argued that Parents were unaware of any elopements by
28 Student, as Petitioner failed to notify them of any such incidents. Respondents posited
29 that had they been included, a determination could have been made as to what alternative

30 ³⁰ See Petitioner Exhibit I (ALA-██████████_000199-000200).

31 ³¹ *Id.*

1 supports, if any, could have been implemented to support Student and prevent elopement
2 occurrences.

3 20. Regarding Student's underlying behaviors, Respondent argued that in most
4 instances he was the victim of bullying and provoked by other Students, which would not
5 have occurred but for Petitioner's failure to observe and intervene. Specifically,
6 Respondent argued that Student's threat of harm against a classmate was conditional
7 and predicated on that child's initial threat of harm to Student's pet. Respondent also
8 argued that Student was defending himself when he punched another classmate, and
9 denied having provoked the child's initial attack. Respondent further argued that it was
10 not Student's intent to burn or otherwise harm Child with a hot piece of solder, but that
11 Student was initially victimized and merely retaliating after his complaints were ignored.
12 Regarding the allegation of sexual harassment, Respondent argued that, notwithstanding
13 Parent's demand that ALA not question Student for investigatory purposes, that he was
14 never afforded an opportunity to defend himself against meritless claims. Respondent
15 noted that most if not all of Student's statements were taken adversely due to his poor
16 attempts at flirting. Respondent vehemently denied that Student ever engaged in bullying
17 of other ALA students.

18 21. Interestingly, Respondent offered that Student was flourishing at his
19 temporary placement with Empower Academy, and that he was responding well to
20 redirection and handling conflicts appropriately.

21 22. Respondent concluded by asserting that because Student had been
22 "targeted, denied due process, and placed at a Level D facility without just cause" that
23 Petitioners request for an IAES Order should be denied and that Petitioner should be
24 ordered to return Student to the ALA campus.

25 **Petitioner**

26 23. In closing, Petitioner argued that Student's misconduct escalated to
27 dangerous levels in a single semester despite multiple applied interventions, resulting in
28 actual physical and/or emotional harm to at least 2 other students, and threatened to
29 continue unless the Tribunal intervened.

30 24. Per Petitioner, interim placement was warranted to protect Student as well
as other ALA students as evidenced by (a) ALA had exhausted its ability to utilize

1 traditional discipline methods for addressing Student’s misconduct, consistent with the
2 IDEA; (b) Student’s injurious behavior continued despite the IEP team’s efforts to address
3 his inappropriate behaviors through positive behavior interventions, supports, and
4 strategies; (c) ALA’s efforts to provide increased supervision as a mitigating measure
5 resulted in Student eloping, thus creating an additional concern for his own safety; (d)
6 Student’s harassing behavior of a sexual nature towards other students was determined
7 to be a manifestation of his disability, thus precluding ALA from changing Student’s
8 placement without parental consent; and (e) Parents declined to consent to a change of
9 placement.

10 25. Petitioner opined that a temporary placement in a more intensive
11 educational placement was needed to ensure ALA maintained a safe environment for all
12 students on its campus, during which time the IEP team could make appropriate
13 adjustments to mitigate Student’s acknowledged behavioral concerns.

14 26. Ultimately, Petitioner beseeched the Tribunal to grant its motion for
15 temporary placement under 34 C.F.R. § 300.532.

16 **CONCLUSIONS OF LAW**

17 **APPLICABLE LAW**

18 1. Congress enacted the IDEA to ensure that all students with disabilities are
19 offered a FAPE that meets their individual needs.³² The IDEA does not define the level of
20 education that must be provided, except that it must be “reasonably calculated to enable
21 the student to receive educational benefits.”³³ Through the IDEA, Congress has sought
22 to ensure that all students with disabilities are offered a FAPE that meets their individual
23 needs.³⁴ These needs include academic, social, health, emotional, communicative,
24 physical, and vocational needs.³⁵ To do this, school districts must identify and evaluate
25 all students within their geographical boundaries who may be in need of special education
26 and services. The IDEA sets forth requirements for the identification, assessment and
27 placement of students who need special education, and seeks to ensure that they receive

28 ³² *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996).

29 ³³ *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 201 (1982)

30 ³⁴ 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

³⁵ *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).

1 a free appropriate public education. The IDEA mandates that school districts provide a
2 “basic floor of opportunity.”³⁶

3 2. A FAPE consists of “personalized instruction with sufficient support services
4 to permit the child to benefit educationally from that instruction.”³⁷ The FAPE standard is
5 satisfied if the student’s IEP sets forth his or her individualized educational program that
6 is “reasonably calculated to enable the child to receive educational benefit.”³⁸ Therefore,
7 a school offers a FAPE by offering and implementing an IEP “reasonably calculated to
8 enable [a student] to make progress appropriate in light of [the student’s]
9 circumstances.”³⁹ The IDEA does not require that each student’s potential be
10 maximized.⁴⁰ A student receives a FAPE if a program of instruction “(1) addresses his
11 unique needs, (2) provides adequate support services so he can take advantage of the
12 educational opportunities and (3) is in accord with an individualized educational
13 program.”⁴¹

14 3. Once a student is determined to be eligible for special education services,
15 a team composed of the student’s parents, teachers, and others formulate an IEP that,
16 generally, sets forth the student’s current levels of educational performance and sets
17 annual goals that the IEP team believes will enable the student to make progress in the
18 general education curriculum.⁴² The IEP tells how the student will be educated, especially
19 with regard to the student’s needs that result from the student’s disability, and what
20 services will be provided to aid the student. The student’s parents have a right to
21 participate in the formulation of an IEP.⁴³ The IEP team must consider the strengths of
22 the student, concerns of the parents, evaluation results, and the academic,
23

24 ³⁶ *Rowley*, 458 U.S. at 200.

25 ³⁷ *Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

26 ³⁸ *Id.*, 485 U.S. at 207. In 2017, in *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. ____, 137 S. Ct.
27 988, 2017 West Law 1234151 (March 22, 2017), the Supreme Court reiterated the *Rowley* standard, adding
28 that a school “must offer an IEP that is reasonably calculated to enable a child to make progress appropriate
29 in light of the child’s circumstances,” but the Court declined to elaborate on what “appropriate progress”
30 would look like case to case (*i.e.*, in light of a child’s circumstances).

³⁹ *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. ____ (2017).

⁴⁰ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 198 (1982).

⁴¹ *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)).

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

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

1 developmental, and functional needs of the student.⁴⁴ To foster full parent participation,
2 in addition to being a required member of the team making educational decisions about
3 the student, school districts are required to give parents written notice when proposing
4 any changes to the IEP,⁴⁵ and are required to give parents, at least once a year, a copy
5 of the parents' "procedural safeguards," informing them of their rights as parents of a
6 student with a disability.⁴⁶

7 4. The IEP team must consider the concerns of a student's parents when
8 developing an IEP.⁴⁷ In fact, the IDEA requires that parents be members of any group
9 that makes decisions about the educational placement of a student.⁴⁸

10 5. A district who requests a due process hearing under the IDEA must bear
11 the burden of proving that claim.⁴⁹ The standard of proof is "preponderance of the
12 evidence," meaning evidence showing that a particular fact is "more probable than not."⁵⁰

13 6. 20 U.S.C. § 1415(b)(7)(A)(ii) requires that a party provide notice of a due
14 process complaint to their adverse party, including a description of the nature of the
15 problem of the child relating to such proposed initiation or change and a proposed
16 resolution of the problem, and forward a copy of such notice to the State educational
17 agency.

18 7. 20 U.S.C. § 1415(b)(3)(A) requires that a local educational agency provide
19 written prior notice to the parents of a student whenever it proposes to initiate or change
20 the educational placement of the student.

21 8. 34 C.F.R. § 300.532 provides that the parent of a student with a disability
22 who disagrees with any decision regarding a manifestation determination under section
23 300.530(e), or a local educational agency that believes maintaining the current placement

24 ⁴⁴ 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324(a).

25 ⁴⁵ 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503.

26 ⁴⁶ 20 U.S.C. § 1415(d); 34 C.F.R. § 300.503. Safeguards may also be posted on the Internet.
20 U.S.C. § 1415(d)(B).

27 ⁴⁷ 20 U.S.C. § 1414(d)(3)(A)(ii); 34 C.F.R. §§ 300.324(a)(1)(ii).

28 ⁴⁸ 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.327 and 300.501(c)(1).

29 ⁴⁹ *Schafer v. Weast*, 546 U.S. 49, 56 (2005).

30 ⁵⁰ *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 of a student is substantially likely to result in injury to the child or others, may appeal the
2 decision by requesting a hearing.

3 9. Statutes should be interpreted to provide a fair and sensible result.⁵¹ “In
4 applying a statute its words are to be given their ordinary meaning unless the legislature
5 has offered its own definition of the words or it appears from the context that a special
6 meaning was intended.”⁵²

7 10. The Tribunal is required to apply equitable principles when rendering
8 decisions.⁵³ The application of equity entails offering a remedy to avoid an
9 unconscionable or unjust result.⁵⁴

10 11. This Tribunal’s determination of whether Student received a FAPE must be
11 based on substantive grounds.⁵⁵ A FAPE consists of “personalized instruction with
12 sufficient support services to permit the child to benefit educationally from that
13 instruction.”⁵⁶ Courts do not “substitute their own notions of sound educational policy for
14 those of the school authorities which they review.”⁵⁷ In addition, the appropriateness of
15 an offer of FAPE must be judged in light of the circumstances at the “snapshot in time”
16 when the IEP was developed, not with the benefit of hindsight.⁵⁸

17 12. [W]hen a school district does not perform exactly as called for by the IEP,
18 the district does not violate the IDEA unless it is shown to have materially failed to
19 implement the child’s IEP.”⁵⁹ “There is no statutory requirement of perfect adherence to
20 the IEP, nor any reason rooted in the statutory text to view minor implementation failures
21 as denials of a free appropriate public education.”⁶⁰

22 DECISION

23 ⁵¹ See *Gutierrez v. Industrial Commission of Arizona*, 226 Ariz. 395, 249 P.3d 1095 (2011)(citation omitted);
24 *State v. McFall*, 103 Ariz. 234, 238, 439 P.2d 805, 809 (1968) (“Courts will not place an absurd and
unreasonable construction on statutes.”).

25 ⁵² *Mid Kansas Federal Savings and Loan Ass’n of Wichita v. Dynamic Development Corp.*, 167 Ariz. 122,
128, 804 P.2d 1310, 1316 (1991).

26 ⁵³ *Seitz v. Industrial Commission of Arizona*, 184 Ariz. 599, 603 (Ariz. Ct. App., Div. 1, 1995).

27 ⁵⁴ *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)).

28 ⁵⁵ 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. § 300.513(a)(1).

29 ⁵⁶ *Rowley*, 458 U.S. at 203.

30 ⁵⁷ *Id.* at 206.

⁵⁸ *J.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 439 (9th Cir. 2010).

⁵⁹ *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 815 (9th Cir. 2007)

⁶⁰ *Id.* at 821.

1 13. Here, the crux of the issue in the case at bar is whether Student is
2 substantially likely to engage in conduct that places himself or others at risk of harm –
3 regardless of whether that conduct is initiated by Student, or if it is in response to
4 perceived slights or threats directed at him by others. The Tribunal is in agreement with
5 Petitioner that, based on the credible evidence of record, the answer to that question is
6 yes.

7 14. The record establishes that in a short span of the few months that
8 comprised Student's first semester at ALA, his behaviors escalated from making
9 inappropriate comments to classmates, to physically touching them in inappropriate ways;
10 including punching causing physical injury, placing hot solder down a student's back
11 causing physical injury, and putting his face between another student's legs near her
12 crotch causing emotional injury. Notably, when ALA provided Student with additional
13 paraprofessional support for increased supervision during transitional periods, he began
14 to elope and created security risks for the campus.

15 15. A child, like Student, whose behaviors flow directly and demonstrably from
16 their disability remain subject to removal where that child poses a substantial risk of injury
17 to themselves or others in a school setting.⁶¹ It is clear from the record that due to the
18 litany of Student's emotional issues, he has significant difficulty with behavior regulation
19 and interacting with his peers. Despite Respondent's assertions to the contrary, many of
20 which are not factually supported by the record or legally accurate, it is also clear from
21 the record that Petitioner's IAES Order request is not punitive or retaliatory, but is sought
22 in recognition of the determination that Student's behavior is manifestation of his
23 disabilities.

24 16. Student's increased aggression, defiance, refusal to follow ALA staff
25 direction, and his elopements warrant IAES placement where increased interventions,
26 such as BIPs and paraprofessional support, failed to eliminate or reduce the problematic
27 behaviors. Temporary placement, in a more controlled and safe setting, affords Student
28 his right to receive FAPE in a manner that does not cause an undue hardship on either
29 party.

30

⁶¹ See *In Light v. Parkway C-2 School Dist.*, 41 F.3d 1223 (8th Cir. 1995).

1 17. Because Petitioner sustained its burden of proof by a preponderance of the
2 evidence, its requests must be granted.

3 **RULING**

4 Based on the foregoing,

5 **IT IS ORDERED** that Student's December 10, 2024, school suspension is upheld.

6 **IT FURTHER IS ORDERED** that pursuant to 34 C.F.R. §§ 300.532(b) and 300.533
7 Student shall be required to temporarily remain at Empower Academy in Mesa, Arizona
8 for a period not to exceed forty-five (45) school days from the date of this Order.

9 Done this day, February 18, 2025.

10 **Office of Administrative Hearings**

11 /s/ Jenna Clark
12 Administrative Law Judge

13
14 **NOTICE OF RIGHT TO SEEK JUDICIAL REVIEW**

15 Pursuant to 20 U.S.C. § 1415(i)(1)(A), 34 C.F.R. §§ 300.514(b) and
16 300.516, and ARIZ. REV. STAT. § 15-766(E)(3), this DECISION AND ORDER is
17 the final decision at the administrative level. Furthermore, any party
18 aggrieved by the findings and decisions made herein has the right to bring
19 a civil action, with respect to the complaint presented, in any State court of
20 competent jurisdiction or in a district court of the United States. Pursuant to
21 ARIZ. REV. CODE R7-2-405(H)(8), any party may appeal the decision to a
22 court of competent jurisdiction within thirty-five (35) days of receipt of the
23 decision.

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

25 Jeff Studer, Director
26 Arizona Department of Education
27 Director of Dispute Resolution
28 100 N. 15th Ave.
29 Phoenix, AZ 85007
30 Jeffrey.Studer@azed.gov
Laura.Boever@azed.gov

David D. Garner, Esq.
Gloria D. Farrisi, Esq.

1 Osborn Maledon, PA, Counsel for Petitioner
2 2929 N. Central Ave., 20th Fl.
3 Phoenix, AZ 85012-2793

4 dgarner@omlaw.com
5 gfarrisi@omlaw.com

6 [REDACTED] Co-Respondent
7 [REDACTED] Co-Respondent
8 [REDACTED]

9 By: OAH Staff
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30