



State of Arizona
Department of Education

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Tom Horne
Superintendent of
Public Instruction

November 16, 2010

Ms. Marcia Lee, Owner, and Charter Holder
Scottsdale Horizons Charter School
33955 N. Cave Creek
P O Box 2208
Peoria, AZ 85380

RE: Scottsdale Horizons Charter School: Reference Number 2170

Dear Ms. Lee:

On September 24, 2010, our office received a formal state administrative complaint from Mr. John Nyberg (Complainant), alleging that the Scottsdale Horizons Charter School (School) is in noncompliance in special education matters relating to the following two students at the Montage Academy campus: [REDACTED] (Student A) and [REDACTED] (Student B); and the following 11 students at the Peoria Horizons campus: [REDACTED] (Student C); [REDACTED] (Student D); [REDACTED] (Student E); [REDACTED] (Student F); [REDACTED] (Student G); [REDACTED] (Student H); [REDACTED] (Student I); [REDACTED] (Student J); [REDACTED] (Student K); [REDACTED] (Student L); and [REDACTED] (Student M).

As required by 34 C.F.R. §§ 300.151-300.153 and the Arizona Administrative Code R7-2-405.01, our office conducted an investigation into this matter. This investigation included contact with the following: the Complainant; Ms. Jill Plonski, special education coordinator; Ms. Sandra Geraghty, special education teacher; Ms. Le Ellyn Nyberg, teacher; Mr. Jorge Vega, site director; Ms. Janet Hnat, site director; Ms. Lisa Piccininni, speech-language pathologist; Ms. Rachel Landau, teacher; Ms. Nancy Winship, former employee of the School; Mr. David Cole, parent of three former students at the School; and you. In addition, the Students' records maintained by your School were reviewed, as were documents and emails provided by the Complainant.

The Complainant's allegations apply to three schools that operate under two separate charters, both of which you own. For this reason, two separate Letters of Findings are being issued: the Letter of Findings for the two Scottsdale Horizons schools is enclosed; the Letter of Findings specific to Back-to-Basics Charter School will be issued separately under reference number 2173. In accordance with 34 C.F.R. § 300.152(a), these written decisions address each allegation in the complaint and include our findings of fact, conclusions of law, and the reasons for our final decisions.

Although it is typical for a parent to file a complaint, the regulations that implement the Individuals with Disabilities Education Act (IDEA) also permit organizations or individuals to file complaints. [34 C.F.R. § 300.153(a)] Because complaints are usually filed by parents, they are routinely sent a copy of the Letter of Findings as a matter of course. However, because the Complainant in this instance is not a parent of any of the students named in this complaint, and because this Letter of Findings includes personally identifiable student information, the Complainant will not automatically receive a copy of this Letter of Findings. He has been informed that he can receive a redacted copy of this Letter of Findings by requesting one in writing from this office.

Even though the parents of the students named in this complaint did not file this complaint and may be unaware that a complaint has been filed on behalf of their child, they will receive a copy of this Letter of Findings, along with a cover letter (see Example) explaining to them that the IDEA regulations permit others to file complaints and that this state administrative complaint was filed by the Complainant on behalf of their child. In addition, the cover letter will offer to the parents the services of the Arizona Department of Education/Exceptional Student Services (ADE/ESS) so that they fully understand the allegations, the investigation, and the implications of the corrective action that is hereby ordered. In this regard, we will conduct a parent forum, conduct conference calls, or have individual conversations with any parents who wish to avail themselves of this opportunity.

Please do not hesitate to contact the ADE/ESS Education Program Specialist assigned to your School, or me, if our office can be of further assistance to you. If you have any questions regarding the corrective action, please contact me at 520-628-6616.

Sincerely,



Bob Fitzsimmons
Education Program Specialist/
Complaint Investigator
Exceptional Student Services
Phone: 520 628-6616
Fax: 520 628-6324



Kacey Gregson
Director of Dispute Resolution
Exceptional Student Services
Phone: 602-364-4011
Fax: 602-364-0641

cc: Ms. Jill Plonski, Director of Special Education, Scottsdale Horizons Charter School
Ms. DeAnna Rowe, Executive Director, Arizona State Board for Charter Schools
ADE File

ec: Ms. Maura Mall, Education Program Specialist, Exceptional Student Services, ADE



State of Arizona
Department of Education

Tom Horne
Superintendent of
Public Instruction

Example

November 16, 2010

Parent name
Address
Address

RE: Scottsdale Horizons Charter School; Reference Number 2170

Dear Parent:

I am writing to inform you that on September 24, 2010, Mr. John Nyberg, a former employee of the Scottsdale Horizons Charter School, which includes Peoria Horizons Charter School and Montage Academy (referred to collectively as "School"), filed a state administrative complaint against the School on behalf of your child and other special education students at the School (Students). He alleges that the School has failed to properly implement the Students' individualized education programs (IEPs), and that the School is therefore in violation of the Individuals with Disabilities Education Act (IDEA). While it is typical for a parent to file such a complaint, the law permits anyone to make a complaint. Therefore, in accordance with 34 C.F.R. §§ 300.151-300.153 and the Arizona Administrative Code R7-2-405.01, our office conducted an investigation into this matter.

Attached you will find a copy of the Letter of Findings issued as a result of the investigation just completed. In order to maintain confidentiality, your child is identified in the Letter of Findings as Student ____.

The School should be in contact with you shortly to discuss the compensatory educational services that this office has ordered the School to provide your child to make-up for its lapse in providing special education instruction and related services in accordance with your child's IEP. If your child does not receive the compensatory educational services by the due dates indicated in the Letter of Findings, please contact Bob Fitzsimmons, as soon as possible, at the number listed below.

Finally, the information in the Letter of Findings and in the corrective action may be confusing. The Arizona Department of Education/Exceptional Student Services (ADE/ESS) will be happy to conduct a parent forum, conduct telephone conference calls, or have individual conversations with any of the parents involved so that we can address your concerns and answer any questions you may have. To make your wishes known regarding these options please contact Mr. Fitzsimmons.

Sincerely,

Bob Fitzsimmons
Education Program Specialist/
Complaint Investigator
Exceptional Student Services
Phone: 520 628-6616
Fax: 520 628-6324

Kacey Gregson
Director of Dispute Resolution
Exceptional Student Services
Phone: 602-364-4011
Fax: 602-364-0641

cc: Ms. Marcia Lee, Charter Holder and Owner, Scottsdale Horizons Charter School
Ms. Jill Plonski, Special Education Coordinator, Scottsdale Horizons Charter School
Ms. DeAnna Rowe, Executive Director, Arizona State Board for Charter Schools
ADE File

ec: Ms. Maura Mall, Education Program Specialist, ADE/Exceptional Student Services

Complainant: Mr. John Nyberg
Public Education Agency: Scottsdale Horizons Charter School
Reference Number: 2170
Investigator: Bob Fitzsimmons
Date Issued: November 16, 2010

LETTER OF FINDINGS

Introduction

Two charter schools, Peoria Horizons Charter School and Montage Academy, operate under the corporate umbrella of Scottsdale Horizons Charter School. The charter holder for Scottsdale Horizons is Ms. Marcia Lee, who also holds a charter for Back-to-Basics Charter School. All three schools (Peoria Horizons, Montage Academy, and Back-to-Basics Charter School) are identified by the Complainant in his complaint form, and the allegations apply equally to all three schools. Although this Letter of Findings focuses on the two Scottsdale Horizons schools, it also includes information and a discussion of special education services at the Back-to-Basics Charter School. This is because the staff members who provide special education and related services at the two Scottsdale Horizons schools are the same as those who provide services at the Back-to-Basics Charter School. Therefore, to determine whether the Complainant's allegations are true, it was necessary to look at the totality of services provided at all three schools. However, the particular students attending Back-to-Basics Charter School are not identified below; they are discussed separately in a different Letter of Findings: reference number 2173.

Montage Academy Students:

Student A is a nine-year-old female who is eligible to receive special education and related services under the category of mild mental retardation (MIMR).¹ She is in the third grade at the Montage Academy.

Student B is an 11-year-old male who is eligible to receive special education and related services under the categories of autism, visual impairment, and speech-language impairment. He is in the fifth grade at the Montage Academy.

Peoria Horizons Charter School Students:

Student C is a 14-year-old female who is eligible to receive special education and related services under the categories of SLI and specific learning disability (SLD) [for basic reading, reading comprehension, reading fluency, written expression, and math calculation]. She is in the eighth grade at Peoria Horizons.

Student D is a 13-year-old male who is eligible to receive special education and related services under the categories of specific learning disability (SLD) [in basic reading, reading fluency, reading comprehension, written expression, math reasoning, and math calculation] and SLI. He was in the eighth grade at the School at the start of the current school year, but he has withdrawn and is no longer a student at Peoria Horizons.

Student E is an eight-year-old male who is eligible to receive special education and related services under the categories of developmental delay (DD) and SLI. He was in the second grade at the School at the start of the current school year, but he has withdrawn and is no longer a student at Peoria Horizons.

¹ President Obama recently signed Rosa's law, which mandates a change in terminology. Henceforth, the term "intellectual disability" will replace "mental retardation." However, the IDEA regulations have not yet been updated, and the term MIMR appears in several of the IEPs discussed in this letter of findings. Therefore, for the purpose of clarity, this letter of findings will rely on the older terminology.

Student F is a 12-year-old male who is eligible to receive special education and related services under the categories of SLD (for basic reading, reading fluency, and written expression) and SLI. He was in the sixth grade at the start of the current school year, but he has withdrawn and is no longer a student at Peoria Horizons.

Student G is an 11-year-old male who is eligible to receive special education and related services under the category of SLI. He was in the fourth grade at the start of the current school year, but he has withdrawn and is no longer a student at Peoria Horizons.

Student H is a nine-year-old male who is new to the School in the current school year. Staff at the School report that when his parents enrolled him this fall, they reported to the School that he was a student eligible to receive special education instruction. However, the School reports that when it received the Student's records from his previous school, only an individualized education program (IEP) from 2006 was provided. The School's position is that he is no longer eligible to receive special education instruction and services. He is currently in the fourth grade at Peoria Horizons.

Student I is a 13-year-old male who is new to the School in the current school year. The School reports that the enrollment form that identifies him as eligible to receive special education instruction must be in error, because the records it received from his previous school do not identify him as a student eligible to receive special education instruction and services. He is in the seventh grade at the School.

Student J is a 13-year-old male who is eligible to receive special education and related services under the category of traumatic brain injury (TBI). He is in the eighth grade at Peoria Horizons.

Student K is a nine-year-old female who is eligible to receive special education and related services under the category of SLD (for basic reading). She is in the fourth grade at Peoria Horizons.

Student L is a seven-year-old male who is eligible to receive special education and related services under the category of SLI. He is in the second grade at Peoria Horizons.

Student M is an 11-year-old male who is eligible to receive special education and related services under the categories of emotional disability (ED) and SLD (for basic reading and reading comprehension). He is in the sixth grade at Peoria Horizons.

Issues and Findings

1. Whether the School implemented the Students' individualized education programs (IEP) in the current school year.

The Complainant alleges that the School has failed to provide special education instruction or related services that are identified in the 13 Students' IEPs. Specifically, he alleges that the School failed to provide any of the 13 eligible Students with special education instruction and related services from the first day of the school year on August 11, 2010 until this state administrative complaint was filed on September 24, 2010. Further, he believes that the School continues to be in noncompliance because he surmises that the School has not yet begun to provide special education instruction.² Finally, he alleges that the School could not have provided the related services identified on the Students' IEPs because the School does not have on staff, or under contract, any of the related service providers that are necessary to fully implement the Students' IEPs.

² The Complainant was employed at the School until September 24, 2010 when he resigned. He therefore has no direct knowledge of the Students or the services they received after this date.

The School does not deny the allegations and admits that it did not provide special education instruction and related services to any eligible student at any of the three campuses early in the current school year. The School reports that its usual practice in the fall of each school year is to wait until enrollment stabilizes in the first two weeks of the year, and that during this time it examines the IEPs for all students identified eligible to receive special education and related services. Then, when it knows the extent of the services, it is obligated by law to provide, it contracts with professionals who have the required skills, and certifications to provide the various services that are needed. Then, according to the School, it provides the forward-facing services in accordance with the Students'³ IEPs while at the same time providing backward-facing compensatory educational services to make-up for any lapse in providing services while all the arrangements for service providers were being made. The School reports that it was slow in getting special education services started in the current school year due to the incompetence of some of its staff. The School reports that because of errors in reports that outlined the mandated services, it had to begin anew, which caused additional delay in providing services.⁴

The Individuals with Disabilities Education Act (IDEA) and its implementing regulations obligate schools to make a free appropriate public education (FAPE) available to students with disabilities, which means that the eligible student is entitled to special education and related services that are provided **in conformity with an IEP**. [20 U.S.C. § 1401(9); 34 C.F.R. § 300.17(d)] (Emphasis added) The regulations state that an IEP must be **in effect** at the beginning of each school year. [34 C.F.R. § 300.323(a)] The IDEA regulations do not impose specific time limits for the implementation of a student's IEP; however, the regulations do state that "[a]s soon as possible following development of the IEP, special education and related service [must be] made available to a student in accordance with the child's IEP." [34 C.F.R. § 300.323(c)(2)] The federal regulations that implement the IDEA further state that there can be ". . . no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined." [34 C.F.R. §300.103(c)]

To determine whether or not the School is providing special education instruction in alignment with the 13 Students' IEPs, this investigator totaled the number of minutes per week that are specified in their IEPs.⁵ The total amount of special education instruction that the School is obligated to provide each week is 2,637.5 minutes/week, or 43.958 hours/week.⁶ If the four withdrawn students named in this complaint are removed from the equation, then the School is obligated to provide 1,917.5 minutes/week, or 31.958 hours/week. At the start of the school year, the School was obligated to provide the higher amount, because the Students withdrew near the end of September. Even using the lower amount, it is not possible that the School is providing the mandated forward-facing services in accordance with the Students' IEPs because the one special education teacher who provides direct services is only at the Peoria campus for an hour each morning, and it does not appear that she provides any services at the Montage Academy.⁷

³ When the term "Students" is used in this Letter of Findings, this generally refers to Students A through M, unless the context specifically refers to all the students (Students A through Q) eligible for special education at all three of the schools referenced in this letter of findings.

⁴ Ms. Marcia Lee, the charter holder, claims that the incompetence of the Complainant led to the delay in services. She also claims that because he is no longer employed at the School, he is a disgruntled employee whose allegations are false.

⁵ Reviewing the IEPs of Students A-Q and adding up the minutes of services mandated by their IEPs took an hour to accomplish. It is perplexing to this investigator that this same task conducted by school personnel took many weeks. Further, the separate efforts by different School personnel to show the amount of services resulted in three reports that are different.

⁶ See Appendix A, which shows the individual data that lead to these totals and includes information on the provision of special education services at all three schools.

⁷ Although the School has two certified and highly qualified special education teachers, only one of them provides direct services to the Students as a major responsibility. The other attends primarily to administrative tasks and only provides a minimal amount of special education instruction to a few of the Students. In an interview with this investigator on October 14, 2010, the special education teacher who provides the majority of direct services reported that she had not yet been to Montage to provide services. In a subsequent conversation, the special education consultant reported that she had been assigned to provide instructional services to Student A at Montage, but that she had not yet done so on a regular basis.

Given her part-time schedule, travel time, and her other duties, it is not possible that this teacher can also provide the backward-facing compensatory educational services necessary to make-up for the School's lapse in providing the mandated special education instruction from the start of school until the last week of September when she began to provide direct services.⁸

To determine whether or not the School is providing related services in alignment with the 13 Students' IEPs, this investigator totaled the number of minutes each week that are specified in their IEPs. A review of the IEPs shows that the School needs to provide the following: 60 minutes/week of visual impairment (VI) services; 22.5 minutes/week of direct occupational therapy (OT) services; 30 minutes/quarter of consult OT services; 52.5 minutes/week of direct counseling services; 60 minutes/week of assistive technology (AT) services; and 5.625 hours of direct speech-language services. (At the start of the current school year, the School needed to provide 9.625 hours/week of speech services, because at that time the four students who later withdrew needed to receive weekly speech-language services.)

There is no dispute that special education instruction and related services were not provided at the start of the school year. Although the special education teacher who now provides the bulk of direct special education instruction was available to provide these services at the start of the school year, she actually did not provide services until the week of September 27, 2010, and then not to all of the Students who are eligible to receive them.⁹ Before they withdrew in September 2010, the four students were provided no special education instruction or related services.

The evidence reveals that the School, at the end of the 2009-2010 school year, fully anticipated that the special education students then on its roster would be returning in the fall of the current school year. To be in compliance with the regulations that implement the IDEA, the School needed to have staff on board to provide services when school began. The School's position that it can delay services, even for a two-week period while it studies the situation in order to assemble its staff, is incorrect.¹⁰ Further, the School's position that it cannot begin to provide any services at all until the totality of the services is known, quantified, and verified is also incorrect.¹¹

A lack of resources, or the lack of qualified staff, does not absolve a school of its obligation to provide services in alignment with a student's IEP. This is true even in times when a school is experiencing budgetary constraints or when a school experiences difficulty in recruiting and retaining qualified staff. The regulations are clear that a school is obligated to put into effect at the start of each school year the services that are identified on IEPs. The evidence in this case is abundant and clear: the School failed to provide any special education instruction from August 11 until the week of September 27, 2010 - a time period of more than six weeks. Further evidence shows that when it did begin to provide special education instruction, it failed to provide all the services to all of the Students who were legally entitled to receive them.

⁸ Several staff members report that they have repeatedly advocated for additional staff, including special education teachers, and related service providers, but that the charter holder has denied each request. These staff members report that the charter holder has said it would be too expensive, and that the staff would have to find other ways to address the needs of the Students.

⁹ This teacher met the Students and reviewed records on September 24, 2010, but did not begin direct service delivery until the following week. The School reports, erroneously, that the time the special education teacher spends reviewing records and preparing can be counted toward the amount of direct service that is owed to an eligible student; the amount of time specified in an IEP for special education and related services refers to the amount of direct instruction to be received by the eligible student.

¹⁰ Although the School reports that there is usually a two-week delay in providing special education services, the reality is that the delay is much longer, because it takes time, usually many weeks, to locate and contract with the providers of those services.

¹¹ Federal regulations state that when a child with a disability who has an IEP transfers to a new school, the new school (in consultation with the parents) must provide a FAPE to the child (including services comparable to those described in the child's IEP from the previous school) until the new school either (1) adopts the child's IEP from the previous school; or (2) develops, adopts, and implements a new IEP. [34 C.F.R. §300.323(e)(1)(2)] There is nothing in the regulations that allows a school to delay for many weeks the provision of mandated services until all records arrive or until the new school hires additional staff.

In regard to related services, the evidence shows that the School has not provided any OT, counseling, or VI services in the current school year. In regard to speech-language services, the evidence shows that not until the week of October 11, 2010, did the School begin to provide any speech services, and the School's record keeping system is such that it is difficult to determine whether or not the Students are *now* receiving all of the speech-language services they are entitled to.¹² Finally, there is evidence that the School has not begun to provide compensatory educational services to make-up for its lapse in providing the services that it is obligated as a matter of law to provide.¹³ The School is not providing the forward-facing special education instruction and related services in accordance with the Students' IEPs, and it does not have adequate staff to provide the backward-facing compensatory educational services needed to make the Students whole. Therefore, the School is in noncompliance.¹⁴

Other Areas of Concern

The Complainant also alleges that staff members at the School were instructed by the charter holder not to discuss special education services among themselves, and that Ms. Lee routinely ignored staff when they made requests for additional staff, materials, or services. The ADE/ESS lacks the authority to investigate these matters.

The ADE/ESS is only authorized to investigate those allegations pertinent to special education as referenced in the IDEA, its implementing regulations, the Arizona Revised Statutes (A.R.S.), and Title 7 of the Arizona Administrative Code (A.A.C.). Personnel matters, teacher conduct, school policy matters, and specific incidents that do not relate to special education should be resolved through the School's administrative channels. Matters alleging unprofessional or immoral conduct by certificated teachers or administrators should be addressed to the Arizona State Board of Education, Investigative Unit, 1535 W. Jefferson St.; Phoenix, AZ 85007. Matters alleging financial fraud should be addressed to the Arizona Attorney General's Office. Matters alleging a violation of a charter school's charter should be addressed to the Arizona State Board of Charter Schools.

Corrective Action Required

The School must make available the compensatory educational services outlined below. The initiation of all compensatory services provided by School personnel must begin as soon as possible and must be completed by the deadlines listed below, but in no case later than April 22, 2011. All compensatory services that the School will pay outside agencies to provide must be paid for in full by April 22, 2011, even if the particular service will be provided after this date (a summer program, for example). Compensatory services must be provided outside of the regular school schedule and cannot be provided in lieu of on-going services. If the parents decline the School's offer to provide or pay for compensatory services, the School must send written proof that the parents declined the services. All required documentation for the corrective action below must be submitted to the ADE/ESS by the deadlines listed below, but in no case later than April 29, 2011.

¹²The only SLP providing speech services does not have a regular schedule; she reports that she works approximately two hours weekly at each of the three schools. Such an irregular schedule obligates the School to make-up services when a Student is absent, something it would not be obligated to do if she had a fixed schedule. Her billing records include her travel time; so it is not possible to determine the total amount of direct services she has provided by examining these records. She reports that she keeps a log of services provided, but she makes no indication in the log about whether or not the service on any particular day is forward facing or compensatory. She reports that she makes this calculation twice yearly; so it is not possible until the end of the school year to determine whether or not any compensatory services are even necessary, and by then it is too late to provide any compensatory services that may be owed.

¹³Because the School lacks the staff to implement the IEPs, it is simply not possible for it to also provide the necessary compensatory services to make each student whole.

¹⁴There is but one special education teacher who provides the majority of special education instruction, yet the School was obligated at the start of the current school year to provide over 91 hours/week of services between the three campuses. Even after four students withdrew in September, the School was still obligated to provide over 79 hours/week of services. At the start of the current school year the School was obligated to provide over nine hours/week of speech services, and it is currently obligated to provide over five hours of speech services, yet the speech-language pathologist who provides services only works about six hours/week. Because this includes her travel time, it is unclear that she can provide even the forward-facing services, much less the backward-facing compensatory services that are needed.

The amount of compensatory services was determined with the assumption that all forward-facing services in accordance with all of the Students' IEPs would be completely in place by December 1, 2010. If circumstances are such that the provision of forward-facing services in any particular area outlined below does not occur by the December 1 date, then the amount of compensatory services outlined below will be automatically increased proportionately according to the formulas outlined below. Because the School's records are not in all cases clear, complete, or reliable, this investigator made assumptions about the dates when instructional services and related services actually began. If the School has clear and reliable documentation that it provided services to some/all of the Students earlier than indicated below, it can, no later than November 29, 2010, petition this office in writing to reduce the amount of compensatory services owed for a particular student or students. In this case, it must submit clear and reliable documentation that the service was provided, along with a signed statement from the service provider that attests to the accuracy of the School's documentation.

The School and the parents can agree to a greater or lesser amount of compensatory services if, for example, there is a specific program that the parties agree will meet the needs of the student. For example, it may be that the School owes 60 hours of compensatory services, and there is a summer program of 50 hours or 70 hours that the parties agree will suffice. In such an instance, the School can pay for the lesser or greater amount of services. In this way, the ADE/ESS provides some degree of flexibility to allow the parties to reach agreement so that the Students receive the services to which they are entitled.

Finally, the corrective action that follows deals only with Students A-M, and deals primarily with compensatory services that are owed them for the School's failure in the current school year to provide services in accordance with their IEPs. The corrective actions for the other complaint referenced earlier (#2173) includes global corrective actions that apply to all three schools (hiring an educational consultant, hiring an additional speech-language pathologist, creating an action plan, providing prior written notice to the parents of Students A-Q, and providing a letter of assurance that special education instruction and services will be provided in accordance with the IEPs of Students A-Q. These global corrective actions are not referenced below, but are included in the Letter of Findings for complaint #2173. This is because listing them in both Letters of Findings could lead to unnecessary confusion for School personnel. Below are the individual corrective actions for Students A-M that are designed to make these Students whole. (See Appendices B and C for a schedule of corrective action due dates.)

Student A:

1. The School must provide (or pay an outside OT to provide) one hour of consultative OT services for Student A by December 10, 2010. Proof that these services were provided (including a signed statement by the OT who provided the services, his/her contact information, a written summary/schedule of the dates/times of all sessions, a list of School personnel with whom the OT consulted, and a written summary of what was accomplished) must be sent to the Corrective Action Compliance Monitor at the Arizona Department of Education/Exceptional Student Services, 400 W. Congress Street, #241, Tucson, Arizona 85701, by **December 17, 2010**.
2. The School must make available 16 hours of compensatory AT services to Student A (which might include instruction on specific computer software, keyboarding skills, augmentative communication devices, or other AT as determined by her IEP team). (If the School provided any AT services between August 11 and December 1, 2010 [a 16-week period], it can request in writing that the 16 hours be reduced. In this instance it must, by November 29, 2010, send proof [including a signed statement by the provider(s) with a list of the dates/times that services were provided and a description of the AT services that were provided] that a specific amount of AT service was actually provided in the current school year prior to December 1, 2010.) Proof that these services were provided (including a signed statement by the provider(s) that the service was provided and a written schedule that shows the dates/times when the compensatory AT services were provided) must be sent to the Corrective Action Compliance Monitor at the above referenced address by **December 17, 2010**.

3. The School must make available 16 hours of speech-language services to Student A to be provided by a licensed SLP (1 hour/wk x 16 weeks = 16 hours.) Proof that these services were provided (including a signed statement by the SLP that the service was provided and a written schedule that shows the dates/times of all compensatory sessions) must be sent to the Corrective Action Compliance Monitor at the above referenced address by **February 4, 2011**.
4. The School must make available 180 hours of compensatory services to Student A for its failure to provide special education instruction in accordance with her IEP. (675 min/wk = 11.25 hr/wk x 16 weeks = 180 hours) Proof that the compensatory hours were completed (including a schedule of dates/times of all sessions and the name of the provider), or proof that the School has paid in full for a program that the parties agree will meet the needs of the Student must be sent to the Corrective Action Compliance Monitor at the above referenced address by **April 29, 2011**.
5. The School must immediately assign a staff person to be a full-time 1:1 attendant for Student A or hire an attendant as soon as possible, but no later than November 24, 2010. Further, the School must develop a back-up plan that identifies the name of the substitute(s) if the attendant it assigns/hires leaves employment at the School, has his/her hours reduced, is absent, or is reassigned to different duties. The School must send a letter of assurance that includes the above information, the name of the attendant, and the work hours of the attendant. The letter must explain that the attendant will be with the Student at all times during the school day, and that the attendant will have no other duties. (A classroom teacher whose primary assignment at the time is teaching Student A's class cannot also be the attendant, the attendant cannot simply escort/drop off the Student in her classroom and then leave, and the attendant cannot work on other assignments when he/she is supposed to be attending to the needs of the Student.) The letter must be sent to the Corrective Action Compliance Monitor at the above referenced address by **November 29, 2010**.

Student B:

6. The School must make available 58.5 hours of compensatory services to Student B for its failure to provide special education instruction in accordance with his IEP (220 min/wk = 3.666 hr/wk x 16 weeks = 58.5 hours [rounded].) Proof that the compensatory hours were completed (including a schedule of dates/times of all sessions and the name of the provider), or proof that the School has paid in full for a program that the parties agree will meet the needs of the Student must be sent to the Corrective Action Compliance Monitor at the above referenced address by **April 29, 2011**.
7. The School must make available eight hours of speech-language services to be provided by a licensed SLP. (30 min/wk x 16 weeks = 8 hours) Proof that these services were provided (including a signed statement by the SLP that the service was provided and a written schedule that shows the dates/times of all compensatory sessions) must be sent to the Corrective Action Compliance Monitor at the above referenced address by **January 21, 2011**.
8. The School must make available 7.5 hours of direct OT services to Student B (90 min/month x 5 months [August - December] = 450 minutes = 7.5 hours.) Proof that these services were provided (including a signed statement by the OT who provides the services, his/her contact information, and a written summary/schedule of the dates/times of all sessions) must be sent to the Corrective Action Compliance Monitor at the above referenced address by **January 21, 2011**.
9. The School must make available 16 hours of VI services. (60 min/wk x 16 weeks = 16 hours) Proof that these services were provided (including a signed statement by the provider and a written schedule that shows the dates/times of all compensatory sessions) must be sent to the Corrective Action Compliance Monitor at the above referenced address by **February 4, 2010**.

Student C:

10. The School must make available 35 hours of compensatory services to Student C for its failure to provide special education instruction in accordance with her IEP. (300 min/wk = 5 hr/wk x 7 weeks [8/11/10 - 9/27/10] = 35 hours) Proof that the compensatory hours were completed (including a schedule of dates/times of all sessions and the name of the provider), or proof that the School has paid in full for a particular program that the parties agree will meet the needs of the Student must be sent to the Corrective Action Compliance Monitor at the above referenced address by **April 29, 2011**.
11. The School must make available 10 hours of speech-language services to be provided to Student C by a licensed SLP. (60 min/wk x 10 weeks [8/11/10 - 10/20/10] = 10 hours) Proof that these services were provided (including a signed statement by the SLP that the service was provided and a written schedule that shows the dates/times of all compensatory sessions) must be sent to the Corrective Action Compliance Monitor at the above referenced address by **February 4, 2011**.

Note: Even though Students D, E, F, and G have withdrawn from the School, the School still retains the obligation to provide compensatory services for its lapse in providing these Students with services in accordance with their IEPs when they were enrolled in the School. The School can pay these Students' new schools to provide the compensatory services, it can pay a private company to provide tutoring to the Students, or it can agree to pay for a particular program that the parents and School agree will meet the Students' needs. In either case, the School must pay the full cost of any such program as soon as possible, but no later than April 22, 2011.

Student D:

12. The School must pay for 12 hours of compensatory services to Student D for its failure to provide special education instruction in accordance with his IEP (6 hours/wk for two weeks. School attendance records are sloppy, illegible, and not always clear, but it appears that Student D was only in attendance in the current school year for 10 school days.) Proof that the School has paid another school, business, or agency the full cost of providing the compensatory services must be sent to the Corrective Action Compliance Monitor at the above referenced address by **February 4, 2011**.
13. The School must pay for two hours of compensatory services to Student D for its failure to provide speech-language services in accordance with his IEP (60 min/wk x 2 weeks = 2 hours.) Proof that the School has paid another school, business, or agency the full cost of providing the compensatory services must be sent to the Corrective Action Compliance Monitor at the above referenced address by **January 7, 2011**.

Student E:

14. The School must pay for six hours of compensatory services to Student E for its failure to provide special education instruction in accordance with his IEP (180 min/wk = 3 hrs/wk for two weeks. School attendance records are sloppy, illegible, and not always clear, but it appears that Student D was only in attendance in the current school year for 10 school days.) Proof that the School has paid another school, business, or agency the full cost of providing the compensatory services must be sent to the Corrective Action Compliance Monitor at the above referenced address by **January 21, 2011**.
15. The School must pay for two hours of compensatory services to Student E for its failure to provide speech-language services in accordance with his IEP (60 min/wk x 2 weeks = 2 hours.) Proof that the School has paid another school, business, or agency the full cost of providing the compensatory services must be sent to the Corrective Action Compliance Monitor at the above referenced address by **January 7, 2011**.

Student F:

16. The School must pay for 18 hours of compensatory services to Student F for its failure to provide special education instruction in accordance with his IEP (3 hrs/wk for 6 weeks.) Proof that the School has paid another school, business, or agency the full cost of providing the compensatory services must be sent to the Corrective Action Compliance Monitor at the above referenced address by **March 4, 2011**.
17. The School must pay for one hour of compensatory services to Student F for its failure to provide speech-language services in accordance with his IEP from 8/11/10 - 10/11/10 (30 min/month x 2 months = one hour.) Proof that the School has paid another school, business, or agency the full cost of providing the compensatory services must be sent to the Corrective Action Compliance Monitor at the above referenced address by **January 7, 2011**.

Student G:

18. The School must pay for 4.5 hours of compensatory services to Student G for its failure to provide speech-language services in accordance with his IEP from 8/11/10 - 10/11/10 (30 min/wk x 9 weeks = 270 minutes = 4.5 hours.) Proof that the School has paid another school, business, or agency the full cost of providing the compensatory services must be sent to the Corrective Action Compliance Monitor at the above referenced address by **January 7, 2011**.

Student H:

No compensatory services need to be provided, as the Student is not eligible for special education services.

Student I:

No compensatory services need to be provided, as the Student is not eligible for special education services.

Student J:

19. The School must make available six hours of compensatory services to Student J for its failure to provide special education instruction in accordance with his IEP (60 min/wk for 6 weeks, from 8/11/10 to 9/27/10.) Proof that the compensatory hours were completed (including a schedule of dates/times of all sessions and the name of the provider), or proof that the School has paid in full for a particular program that the parties agree will meet the needs of the Student must be sent to the Corrective Action Compliance Monitor at the above referenced address by **January 21, 2011**.

Student K:

20. The School must make available 15 hours of compensatory services to Student K for its failure to provide special education instruction in accordance with his IEP from 8/11/10 - 10/11/10 (100 min/wk for 9 weeks = 900 minutes = 15 hours.) Proof that the compensatory hours were completed (including a schedule of dates/times of all sessions and the name of the provider), or proof that the School has paid in full for a particular program that the parties agree will meet the needs of the Student must be sent to the Corrective Action Compliance Monitor at the above referenced address by **February 4, 2011**.

Student L:

21. The School must make available 4.5 hours of compensatory services to Student L for its failure, from 8/11/10 - 10/11/10, to provide speech-language services in accordance with his IEP (30 min/wk x 9 weeks = 270 minutes = 4.5 hours.) Proof that the compensatory hours were completed (including a schedule of dates/times of all sessions and a signed statement by the SLP that the service was provided), or proof that the School has paid in full for a particular program that the parties agree will meet the needs of the Student must be sent to the Corrective Action Compliance Monitor at the above referenced address by **January 7, 2011.**

Student M:

22. The School must make available 56 hours of compensatory services to Student M for its failure to provide special education instruction in accordance with his IEP for the first six weeks of the school year (562.5 min/wk = 9.375 hrs/wk x 6 weeks = 56.25 hours [rounded to 56 hours].) Proof that the compensatory hours were completed (including a schedule of dates/times of all sessions and the name of the provider), or proof that the School has paid in full for a particular program that the parties agree will meet the needs of the Student must be sent to the Corrective Action Compliance Monitor at the above referenced address by **April 29, 2011.**
23. The School must make available an additional 64.5 hours of compensatory services to Student M because it only provided 240 minutes/wk of special education instruction beginning the week of September 27, 2010 instead of the 562.5 minutes/wk it was obligated by the Student's IEP to provide (9.375 hrs/wk - 4 hrs/wk = 5.375 hours x 12 weeks [9/27/10 - 12/17/10] = 64.5 hours.) Proof that the compensatory hours were completed (including a schedule of dates/times of all sessions and the name of the provider), or proof that the School has paid in full for a particular program that the parties agree will meet the needs of the Student must be sent to the Corrective Action Compliance Monitor at the above referenced address by **April 29, 2011.**
24. The School must make available one hour of compensatory services to Student M for its failure to provide speech-language services in accordance with his IEP (30 min/month x 9 weeks [8/11/10 - 10/11/10].) Proof that the compensatory hours were completed (including a schedule of dates/times of all sessions and a signed statement by the SLP that the service was provided), or proof that the School has paid in full for a particular program that the parties agree will meet the needs of the Student must be sent to the Corrective Action Compliance Monitor at the above referenced address by **January 7, 2011.**
25. The School must pay for 14 hours of direct counseling services to Student M (provided by a licensed counselor or psychologist) to Student M for the School's lapse in providing any counseling services in the current school year [8/11/10 - 12/1/10]. (210 minutes/month x 4 months = 840 minutes = 14 hours) Proof that the School has paid the full cost of providing the counseling services must be sent to the Corrective Action Compliance Monitor at the above referenced address by **February 4, 2011.**

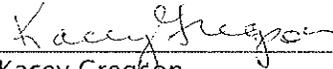
As stated in the federal regulations, the State Educational Agency (SEA) has the responsibility to "Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (i) Findings of fact and conclusions; and (ii) The reasons for the SEA's final decision." [34 C.F.R. § 300.152(a)(5)] Therefore, this Letter of Findings is final and is not subject to appeal.

If the Complainant and/or Student have not received any corrective action(s) due by the date(s) noted above, please inform the Arizona Department of Education/Exceptional Student Services (ADE/ESS) office immediately.

Done this 16th day of November 2010.



Bob Fitzsimmons
ADE/ESS Complaint Investigator



Kacey Gregson
Director of Dispute Resolution