

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9 Raymond Parenteau and Jolene Parenteau,  
10 husband and wife, and Raymond and  
11 Jolene Parenteau on behalf of their minor  
12 son, CP,

Plaintiffs,

vs.

14 Prescott Unified School District, an  
15 Arizona school district; Kevin J. Kapp,  
16 Superintendent, Prescott Unified School  
17 District; John Does I-V; Jane Does I-V;  
18 and Black and White Corporations I-X,

Defendants.

No. CV 07-8072-PCT-NVW

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW REGARDING  
PLAINTIFFS' IDEA CLAIM**

**and**

**ORDER**

19 Plaintiffs Raymond Parenteau and Jolene Parenteau bring this action under the  
20 Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. § 1400 *et*  
21 *seq.*, alleging that Defendants Prescott Unified School District ("the District") and  
22 Superintendent Kevin J. Kapp failed to provide a free appropriate public education to  
23 their son Cody as required by federal law during the 2003-04, 2004-05, and 2005-06  
24 school years. On November 18 and 19, 2008, upon the parties' request, a bench trial was  
25 held on the Parenteaus' IDEA claim before proceeding on their other claims, which  
26 Plaintiffs concede are dependent on their IDEA claim.

27 Having reviewed the administrative proceedings, the transcript of the  
28 administrative due process hearing, the evidence submitted by the parties in conjunction

1 with their trial briefs, the stipulated trial exhibits, and the testimony of trial witnesses, the  
2 Court makes the following findings of fact and conclusions of law.

3 **I. Standard of Review**

4 Under the IDEA, any party aggrieved by the findings and decision rendered in an  
5 administrative hearing conducted pursuant to 20 U.S.C. § 1415(f) has the right to bring a  
6 civil action for judicial review. 20 U.S.C. § 1415(i)(2)(A). The reviewing district court  
7 shall receive the records of the administrative proceedings, hear additional evidence at the  
8 request of a party, and grant appropriate relief based on the preponderance of the  
9 evidence. 20 U.S.C. § 1415(i)(2)(C). Under the IDEA, the party seeking relief bears the  
10 burden of proof. *Schaffer ex rel. Schaffer v. Weast*, 456 U.S. 49, 62 (2005).

11 In reviewing the decision of the Administrative Law Judge (“ALJ”), the district  
12 court applies a modified *de novo* standard—an “unusual mixture of discretion and  
13 deference.” *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1471-72 (9<sup>th</sup> Cir. 1993). The  
14 district court is not controlled by the ALJ’s recommendations and is not required to give a  
15 high level of deference to the ALJ’s decision, but must give due weight to the ALJ’s  
16 judgments regarding educational policy. *Id.* The district court has discretion to  
17 determine how much deference to give to administrative findings, but may not simply  
18 ignore administrative findings and must accord more deference to thorough and careful  
19 administrative findings. *L.M. ex rel. Sam M. v. Capistrano Unified Sch. Dist.*, 538 F.3d  
20 1261, 1267 (9<sup>th</sup> Cir. 2008).

21 **II. Procedural Background**

22 On November 27, 2006, the Parenteaus filed the Due Process Complaint that is at  
23 issue in this case. On March 21, 2007, an administrative hearing regarding the Due  
24 Process Complaint was held. In the due process proceeding, the ALJ determined that the  
25 two-year statutory limitation period for the Due Process Complaint applied and the  
26 District had not made any misrepresentations or withheld any information that would  
27 extend the limitation period. The ALJ, therefore, did not rule on any of the Parenteaus’  
28 allegations regarding the 2003-04 school year, but did permit the parties to present

1 background information regarding events before November 27, 2004, that were relevant  
2 to services provided to Cody after November 27, 2004. The ALJ determined that the  
3 District's provision of special education services to Cody under the District's 2004 and  
4 2005 individualized education programs ("IEPs") did not violate the IDEA. On May 14,  
5 2007, the ALJ made thorough and careful findings rendered in an eighteen-page decision  
6 to which the Court gives due weight. However, the Court would reach the conclusions it  
7 does even if it gave no weight to the ALJ's findings.

8 On August 10, 2007, the Parenteaus initiated this action alleging, among other  
9 things, that the District violated the IDEA and they "are entitled to compensation for all  
10 reasonable and necessary expenses including educational, medical and all other damages  
11 associated with the gross failures to comply" with the IDEA. In Plaintiffs' Opening Trial  
12 Brief, the Parenteaus summarize their claim as follows:

13 This case presents squarely the issue of whether a school district may  
14 successfully claim that it complied with the requirement of providing a free,  
15 appropriate, public education ("FAPE") to a child when it provides only  
16 procedural compliance with the law, does not provide experts on the  
17 particular disability the child possesses as part of the IEP team, does not  
construct, modify, and measure progress under the IEP in accordance with  
measurable goals and objectives, and does not convey or provide education  
consistent with the best practices for education of children with autism, and  
results in absolutely no educational progress.

18 The Parenteaus do not contend that they have incurred any out-of-pocket costs for  
19 educational services for which they should be reimbursed. They seek monetary damages  
20 to pay for educational services for Cody that will compensate for services that they  
21 contend he should have received, but did not receive, during the 2003-04, 2004-05, and  
22 2005-06 school years.

### 23 **III. Findings of Fact**

24 Ray and Jolene Parenteau adopted Cody at birth in June 1998. He was diagnosed  
25 with autism when he was approximately 2.75 years old and was enrolled in a full-day  
26 preschool autism program in California shortly before his third birthday. The Parenteaus  
27 enrolled Cody in the District on August 12, 2003. At the time, the Parenteaus did not  
28 know that they did not reside within District boundaries. There is no evidence that

1 Cody's enrollment in the District apparently as a boundary exception had any effect on  
2 the services the District provided.

3 At the beginning of the 2003-04 school year, the District provided services to  
4 Cody as prescribed by the IEP developed by his former school in California. Cody was  
5 placed in a self-contained, cross-categorical special education class, which included  
6 students classified as autistic and those classified as mildly or moderately mentally  
7 retarded.

8 When Cody began school in the District, at the age of five years old, he was  
9 significantly delayed in speech and language, social interaction, and general knowledge.  
10 He did not respond to his name although he did respond to familiar voices. He could  
11 name some objects and a few pictures. He could scribble, but he could not draw a  
12 recognizable picture. He did not play with other children and needed an adult to direct  
13 him through play activities. He could work well with an adult for a short time, but his  
14 attention span was short, and it was difficult for him to complete a task without an adult  
15 to redirect him. He could not drink from a cup and was not toilet trained. Cody ran from  
16 adults and showed no signs of fear in unsafe situations. Throughout the 2003-04, 2004-  
17 05, and 2005-06 school years, Cody was, at times, uncooperative with staff and his  
18 parents, "flopping" on the floor instead of following directions, refusing to sit at a table,  
19 and pinching, hitting, and spitting at staff. He was not toilet trained until 2008.

20 Mr. Parenteau testified that they did not maintain a consistent schedule for Cody at  
21 home, although some experts recommended it, because they did not want Cody to become  
22 dependent on a specific schedule. Mr. Parenteau testified that they treat Cody as if he  
23 were not autistic. Mrs. Parenteau testified in deposition that Cody did have a schedule  
24 for getting ready for school, eating dinner, and going to bed, but they did not require  
25 Cody to have a "tight" schedule. For a six-month period, September 2005 to March 2006,  
26 the Parenteaus were separated, and each week Cody slept at one parent's home for several  
27 consecutive nights and then switched to the other parent's home. Before, during, and  
28 following this period, Mrs. Parenteau had several surgeries and medication issues.

1           On October 8, 2003, Cody's IEP Team met and developed a new IEP for the  
2 school year 2003-04. The IEP Team meeting participants were Mr. Parenteau, Cody's  
3 special education teacher, a District representative, an occupational therapist, and a  
4 speech/language therapist. No regular education teacher participated in the IEP Team  
5 meeting because Cody was placed in a self-contained special education classroom and not  
6 expected to be in a regular education classroom except to visit a regular kindergarten  
7 class for story time, accompanied by a special education paraprofessional. Although Mrs.  
8 Parenteau did not attend the IEP Team meeting, she gave written consent for Cody's 2003  
9 IEP and educational placement.

10           In November 2003, the District hired a pediatric psychologist to observe and  
11 evaluate Cody to determine the appropriateness of his educational placement and assist  
12 with interventions. The psychologist administered thirteen formal assessments. In March  
13 2004, the psychologist provided his evaluation report, which recommended continued  
14 placement in special education under the classification of Autism, based on the diagnosis  
15 of Pervasive Developmental Disorder. Although the psychologist observed significantly  
16 delayed functioning in many areas, he found Cody's nonverbal skills to be much stronger  
17 than his verbal skills. He also found Cody's attention and responsiveness varied  
18 considerably. Therefore, the psychologist recommended using multiple teaching  
19 approaches and to vary instruction to take advantage of Cody's "teachable moments."  
20 The psychologist also recommended limited mainstreaming, *i.e.*, including Cody in some  
21 activities of a regular education class, to be monitored and adjusted depending on Cody's  
22 stress level.

23           The assessments conducted in November 2003 indicated that five-year-old Cody's  
24 cognitive development had an age equivalent of forty months, his overall communication  
25 skills had an age equivalent of fifteen months, and his developmental age was twenty-two  
26 months. Cody's behavioral functioning measured by the Vineland Adaptive Behavior  
27 Scales was below the first percentile and had an age equivalent of fifteen months.  
28

1           On October 4, 2004, Cody's IEP Team met and developed his IEP for the school  
2 year 2004-05. The IEP Team meeting participants were Mr. Parenteau, Cody's special  
3 education teacher, a District representative, an occupational therapist, a speech/language  
4 therapist, and a regular education teacher. Now six years old, Cody responded to his  
5 name, was able to say many words spontaneously, and said individual words and some  
6 phrases to express a complete thought. He had learned to respond appropriately to the  
7 word "no" and to work in a structured setting for 20-30 minutes. He still demonstrated  
8 preschool-level academic skills and a short attention span, but he was beginning to  
9 interact with other students to a small degree. He still would run from adults, but was  
10 beginning to listen to adults when asked to stop. However, he still showed no sign of fear  
11 in unsafe situations. Mr. Parenteau signed the 2004 IEP, which continued to place Cody  
12 in the cross-categorical special education program.

13           The Parenteaus enrolled Cody in the A.S.S.I.S.T. program for the summer of 2005,  
14 and the District paid for the summer program. The A.S.S.I.S.T. program was based on  
15 Applied Behavioral Analysis. After two weeks, the Parenteaus withdrew Cody from the  
16 program. Mr. Parenteau did so because he believed that the staff working with Cody  
17 were inadequately trained and because Cody disliked the program so much that he cried  
18 and refused to get out of the car.

19           On October 26, 2005, Cody's IEP Team met and developed his IEP for the school  
20 year 2005-06. The IEP Team meeting participants were Mr. Parenteau, Cody's special  
21 education teacher, a District representative, an occupational therapist, a speech/language  
22 therapist, and a regular education teacher. At this point, Cody, now seven years old,  
23 responded to his name, said many words and two or three word phrases spontaneously,  
24 and sought attention from adults through communication. His academic skills still were  
25 at the preschool level. His coloring skills had improved, but he still did not draw a  
26 recognizable picture. He still required assistance from an adult to keep him focused when  
27 working at a table with a group of other students, but his attention span had improved.  
28 He still was not toilet trained, and he still had a tendency to run from adults. Cody rarely

1 interacted with other students. He now was able to drink from a cup without assistance  
2 and was learning to take responsibility, such as for putting things away. He was  
3 improving his ability to wash his hands independently. Cody liked to put together  
4 puzzles and was becoming skilled at doing so.

5 The District offered to send Cody to the A.S.S.I.S.T. program during the summer  
6 of 2006, but the Parenteaus declined the offer. From August to October 2006, Cody did  
7 not attend school in the District.

8 In November 2006 the District reevaluated Cody. He continued to have difficulty  
9 focusing and sitting. The assessments conducted in November 2006 showed eight-year-  
10 old Cody continued to be significantly delayed in comparison to typical children his age.  
11 Cody's November 2006 score on the Vineland Adaptive Behavior test was below the first  
12 percentile as it was in the October 2003 evaluation.

13 The Parenteaus did not object to the nature and scope of either the 2003 or the  
14 2006 educational evaluations the District provided for Cody. The Parenteaus did not  
15 request an additional educational evaluation between the 2003 and the 2006 evaluations,  
16 and the District did not deny any request for an additional educational evaluation.

17 All of the District teachers assigned to teach Cody during the 2003-04, 2004-05,  
18 and 2005-06 school years held State of Arizona special education certification, and two of  
19 three of them also were certified in cross-categorical special education. The State of  
20 Arizona does not certify teachers specifically for autism, but the certification for cross-  
21 categorical special education includes autism.

22 The District used multiple instructional and behavioral methods and strategies to  
23 educate Cody, which included Discrete Trial Training, Applied Behavioral Analysis,  
24 visual supports, the TEACCH model, one-on-one instruction, and extended-school-year  
25 summer programs. These methods and strategies are generally accepted for the education  
26 of autistic children and derived from educational theory and research.

27 The Applied Behavioral Analysis method focuses on recording and shaping  
28 specific, observable, target behaviors by giving and withholding precisely identified

1 positive reinforcers. It requires one staff person to record and quantify observations  
2 regarding a student's behavior while another staff person interacts with the student. The  
3 Applied Behavioral Analysis method creates an individualized program for each student  
4 using a standard, structured approach. The Parenteaus believe that the Applied  
5 Behavioral Analysis method has been effective for decreasing Cody's negative behaviors  
6 and increasing Cody's use of language. During the school years 2003-04, 2004-05, and  
7 2005-06, the District incorporated behavior management strategies similar to those used  
8 in the Applied Behavioral Analysis method within Cody's educational program, but did  
9 not employ its rigorous, quantitative data collection and tightly structured reinforcement  
10 scheme. The District permitted its teachers to adapt and use multiple approaches that in  
11 the teachers' opinion were best suited to teach Cody specific behaviors and concepts  
12 based on his current individual needs and progress.

13 In addition to classroom instruction, the District provided Cody occupational  
14 therapy, speech/language therapy, and paraprofessional services during the 2003-04 and  
15 2004-05 school years. During the 2005-06 school year, the District provided Cody with  
16 occupational therapy, adaptive physical education, and paraprofessional services.

17 Cody's IEPs were reviewed and revised annually. The Parenteaus never objected  
18 to the 2003, 2004, or 2005 IEP Team membership. They never requested that an "autism  
19 expert" be made part of the 2003, 2004, or 2005 IEP Teams. They participated in the  
20 development of Cody's 2003, 2004, and 2005 IEPs, never objected to any of those IEPs,  
21 and formally consented to Cody's educational placement based on those IEPs. During the  
22 school years 2003-04, 2004-05, and 2005-06, the Parenteaus did not object to the  
23 instructional and behavioral methods used to implement Cody's IEPs.

24 Cody's 2003, 2004, and 2005 IEP goals and objectives were based upon  
25 assessment data, were individualized for Cody's needs, and were calculated to enable  
26 Cody to make educational progress. In addition to recording daily observations, the  
27 District staff who worked with Cody quarterly evaluated Cody's progress toward meeting  
28 his IEP goals and objectives using both qualitative and quantitative measures.

1 Cody made meaningful progress toward each of his annual goals and objectives  
2 identified in his 2003, 2004, and 2005 IEPs. Cody exceeded his expected progress, met  
3 expected progress, or approached expected progress for each of his IEP goals in each of  
4 the 2003-04, 2004-05, and 2005-06 school years. There were no IEP goals in which  
5 Cody made no progress or made less than expected progress. Cody, like many autistic  
6 children, did not achieve educational progress at a constant rate. Cody's IEP goals and  
7 objectives were revised annually based on his educational progress.

8 The Parenteaus incurred no out-of-pocket costs for education-related services for  
9 Cody from August 2003 through November 2006. The Parenteaus did not offer evidence  
10 of any compensatory education services that would benefit Cody.

#### 11 **IV. Conclusions of Law**

##### 12 **A. Applicable Law**

13 The IDEA establishes both procedural and substantive requirements. To  
14 determine compliance with the IDEA, courts engage in a two-step inquiry, first to  
15 examine procedural compliance, and second to examine “whether the individualized  
16 educational program developed through the [IDEA’s] procedures was reasonably  
17 calculated to enable the child to receive educational benefits.” *N.B. v. Hellgate Elem.*  
18 *Sch. Dist.*, 541 F.3d 1202, 1207 (9<sup>th</sup> Cir. 2008) (internal quotations and citations omitted).  
19 To satisfy the substantive requirements of the IDEA, a school must provide a  
20 “meaningful” educational benefit to a student with disabilities. *Id.* at 1212-13.

21 One of the purposes of the IDEA is “to ensure that all children with disabilities  
22 have available to them a free appropriate public education that emphasizes special  
23 education and related services designed to meet their unique needs and prepare them for  
24 further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A).  
25 The term “free appropriate public education” means:

- 26 ...special education and related services that—  
27 (A) have been provided at public expense, under public supervision  
28 and direction, and without charge;  
(B) meet the standards of the State educational agency;

1 (C) include an appropriate preschool, elementary school, or  
2 secondary school education in the State involved; and  
3 (D) are provided in conformity with the individualized education  
4 program required under section 1414(d) of this title.

5 20 U.S.C. § 1401(9). An “individualized education program” or “IEP” must include “a  
6 statement of the child’s present levels of academic achievement and functional  
7 performance”; “a statement of measurable annual goals, including academic and  
8 functional goals, designed to . . . enable the child to be involved in and make progress in  
9 the general education curriculum”; “a description of how the child’s progress . . . will be  
10 measured” and when it will be reported; “a statement of the special education and related  
11 services and supplementary aids and services, based on peer-reviewed research to the  
12 extent practicable, to be provided to the child”; “an explanation of the extent, if any, to  
13 which the child will not participate with nondisabled children in the regular class”; “a  
14 statement of any individual appropriate accommodations that are necessary to measure  
15 the academic achievement and functional performance of the child on State and  
16 districtwide assessments”; and “the projected date for the beginning of the services and  
17 modifications . . . and the anticipated frequency, location, and duration of those services  
18 and modifications.” 20 U.S.C. § 1414(d)(1)(A)(i).

19 The IEP Team must include the parents of a child with a disability; “not less than 1  
20 regular education teacher of such child (if the child is, or may be, participating in the  
21 regular education environment)”; “not less than 1 special education teacher, or where  
22 appropriate, not less than 1 special education provider of such child”; and a school district  
23 representative qualified to provide or supervise provision of “specially designed  
24 instruction to meet the unique needs of children with disabilities,” “knowledgeable about  
25 the general education curriculum,” and “knowledgeable about the availability of  
26 resources” of the district. 20 U.S.C. § 1414(d)(1)(B). The IEP Team must include “an  
27 individual who can interpret the instructional implications of evaluation results, who may  
28 be a member” of one of the other categories. *Id.* Whenever appropriate, the child with a  
disability should be included as a member of the IEP Team. *Id.*

1           After an initial evaluation determining that a child is a child with a disability, as  
2 defined in the IDEA, a reevaluation of each child with a disability must be conducted if  
3 the child’s parents or teacher requests a reevaluation or at least once every three years,  
4 unless the parent and the local educational agency agree that a reevaluation is  
5 unnecessary. 20 U.S.C. § 1414(2).

6           The IDEA provides procedures for parents and schools to resolve disputes  
7 regarding the provision of educational services to children with disabilities, including  
8 opportunity to serve a due process complaint and request an impartial due process  
9 hearing. 20 U.S.C. § 1415(f). A parent or agency must request the hearing within two  
10 years of the date the parent or agency knew or should have known about the alleged  
11 action that forms the basis of the complaint. 20 U.S.C. § 1415(f)(3)(C). The two-year  
12 limit does not apply if the parent was prevented from requesting the hearing by “specific  
13 misrepresentations by the local educational agency that it had resolved the problem  
14 forming the basis of the complaint” or by “the local educational agency’s withholding of  
15 information from the parent that was required ... to be provided to the parent.” 20 U.S.C.  
16 § 1415(f)(3)(D).

17           **B.     Analysis**

18           The Court has jurisdiction to review the ruling of the ALJ pursuant to 28 U.S.C.  
19 § 1331 and 20 U.S.C. § 1415(i)(3)(A).

20           **1.     A Two-Year Limitation Period Applies.**

21           The IDEA limits the time within which to file a due process complaint to two years  
22 with two exceptions. 20 U.S.C. § 1415(f)(3)(C), (D). The exceptions are (i) when the  
23 local educational agency made specific misrepresentations that it had resolved the  
24 problem forming the basis of the complaint and (ii) when the local educational agency  
25 withheld information from the parent that the IDEA requires the agency to provide to the  
26 parent. 20 U.S.C. § 1415(f)(3)(D).

27           The Parenteaus do not allege that the District misrepresented that it had resolved  
28 the problem forming the basis of the complaint or that the District withheld information

1 the IDEA expressly requires the District to provide to the parent. They contend only that  
2 the District did not inform them that, allegedly, the District did not have an autism expert,  
3 did not properly form Cody's IEP Team, did not have qualified and adequately trained  
4 personnel to teach autistic children, and paid for other autistic children to be served at  
5 private schools specializing in education for autistic children. The Parenteaus provide no  
6 authority that the IDEA would require such disclosures even if they were true. The IDEA  
7 does not extend the time to file a due process complaint where, as here, the parents have  
8 been fully informed of procedural requirements and rights under the IDEA and have  
9 participated in and have been fully informed about all IEP proceedings for their son.

10 Therefore, the ALJ correctly determined that the exceptions to the two-year  
11 limitation period as set forth in 20 U.S.C. § 1415(f)(3)(D) do not apply and properly  
12 limited the Parenteaus' claim to those events dating from November 27, 2004. Even if  
13 the two-year limitation period did apply, it would not affect the outcome of this case  
14 because, as described below, the Court finds no IDEA violation in 2003-04.

15 **2. Superintendent Kapp Does Not Have Individual Liability Under**  
16 **the IDEA.**

17 The IDEA authorizes parents to file a due process complaint and requires the local  
18 educational agency to respond to the due process complaint. 20 U.S.C. § 1415(c)(2). It  
19 refers only to parents and the local educational agency in the context of the administrative  
20 proceedings and provides that any aggrieved party "shall have the right to bring a civil  
21 action with respect to the complaint presented pursuant to this section." 20 U.S.C.  
22 § 1415(2)(A). The IDEA does not provide any procedure for adding individual school  
23 officials to the due process complaint that forms the basis for a civil action. *See also S.W.*  
24 *by J.W. v. Warren*, 528 F. Supp. 2d 282, 298 (S.D.N.Y. 2007) (because the IDEA  
25 abrogates state immunity under the Eleventh Amendment from claims for violations of  
26 the statute, there is no justification to permit IDEA claims against individual defendants).

27 Therefore, Superintendent Kapp has no individual liability for the Parenteaus'  
28 IDEA claim.

1                                   **3.     Cody’s IEPs Were Reasonably Calculated to Enable Cody to**  
2                                   **Receive a Meaningful Educational Benefit.**

3                                   The Parenteaus contend that the District provided “only procedural compliance  
4 with the law,” but failed to provide Cody with a free appropriate public education. Their  
5 challenge relies primarily on allegations that Cody’s IEP Team should have included an  
6 autism expert; Cody’s IEP goals and objectives should have been quantitatively  
7 measurable; Cody’s progress under the IEPs should have been measured quantitatively;  
8 the District should have provided Cody services based on the Applied Behavioral  
9 Analysis methodology with intensive, quantitative data collection and precisely structured  
10 reinforcement; and the District failed to provide Cody a meaningful educational benefit  
11 because, in the parents’ opinion, did not make any educational progress in the school  
12 years 2003-04, 2004-05, and 2005-06.

13                                   The IDEA does not require the District to include an “autism expert” on Cody’s  
14 IEP Team. The District included all of the people the IDEA requires to be included on an  
15 IEP Team. Moreover, because the State of Arizona does not certify special education  
16 autism experts, there would be no standard by which a school district could determine  
17 who would qualify as an “autism expert.”

18                                   The District provided Cody with qualified special education teachers. In addition,  
19 the District provided qualified paraprofessionals, a qualified speech/language therapist,  
20 and a qualified occupational therapist.

21                                   The District satisfied the IDEA’s requirements for an initial evaluation and  
22 reevaluation at least once every three years by providing educational evaluations in 2003  
23 and 2006.

24                                   The District satisfied the IDEA’s requirements for developing and revising Cody’s  
25 IEPs with measurable annual goals, including academic and functional goals. The  
26 District also satisfied the IDEA’s requirements for reviewing Cody’s IEPs periodically,  
27 but not less frequently than annually, to determine whether Cody was achieving his  
28

1 annual goals and for revising the IEPs to address any lack of expected progress, the  
2 results of any reevaluation, and Cody's anticipated needs.

3 Educational progress can be measured based on qualitative data as well as  
4 quantitative data. Cody's records demonstrate that he made slow, but significant,  
5 educational progress during the school years 2003-04, 2004-05, and 2005-06. The IDEA  
6 does not make the District a guarantor of each student's educational progress.

7 The IDEA does not require the District or its teacher to use specific teaching  
8 methods, strategies, or curricula. It requires the District to employ qualified educators  
9 who make professional judgments regarding the most appropriate teaching methods,  
10 strategies, and curricula to use based upon an individual student's needs to deliver an IEP  
11 calculated to provide meaningful educational benefit to that student. The District has  
12 done so.

13 **4. Even If the District Had Violated the IDEA, the Parenteaus**  
14 **Would Not Be Entitled to Any Remedy.**

15 The Parenteaus seek compensatory education for the District's alleged failure to  
16 provide Cody a free appropriate public education. The Parenteaus, understandably,  
17 would like to somehow make up for progress they believe Cody did not make during a  
18 period in which they allege he could have made more progress had he been provided  
19 different educational services. However, during the administrative proceedings, pretrial  
20 judicial proceedings, and even when asked by the Court during trial, the Parenteaus did  
21 not disclose what specific compensatory education they seek for Cody. Even if they had  
22 established by a preponderance of the evidence that the District failed to provide Cody a  
23 free appropriate public education as required by the IDEA, the Parenteaus concede that  
24 the District currently is providing Cody all of the services they have requested.

25 It would make no sense to order the District to provide additional staff for Cody  
26 because the District already provides two paraprofessionals to work with Cody, one to  
27 interact with Cody using Applied Behavioral Analysis methods and one to collect data  
28 regarding Cody's behavior. Similarly, it would make no sense to order the District to

1 provide additional training for those working with Cody because it appears the District  
2 has provided the autism consultants and training for paraprofessionals the Parenteaus  
3 have requested, and the Parenteaus claim to be “ecstatic” about Cody’s current progress.  
4 The District already provides Cody with summer programs, and the Parenteaus did not  
5 produce any evidence that Cody would benefit from school-year services added on to the  
6 full-day program the District currently provides him. The District already provides Cody  
7 more than the IDEA requires and additional compensatory education would serve no  
8 useful purpose.

9 Even if the District had failed to provide Cody a free appropriate public education  
10 in any of the school years 2003-04, 2004-05, and 2005-06, the Court would not order  
11 compensatory education for Cody where the Parenteaus did not request any specific  
12 compensatory education, did not properly disclose a claim for any specific compensatory  
13 education, and did not produce any evidence that such compensatory education likely  
14 would enable Cody to make up for “lost time.”

### 15 **C. Conclusions**

16 The Court finds, by a preponderance of the evidence, that Cody’s IEPs for the  
17 2003-04, 2004-05, and 2005-06 school years were reasonably calculated to provide  
18 meaningful educational benefit, and the District did not fail to provide Cody a free  
19 appropriate public education as required by the IDEA. The Court adopts all of the ALJ’s  
20 findings and affirms her decision.

21 The foregoing opinion constitutes findings of fact and conclusions of law in  
22 accordance with Fed.R.Civ.P. 52(a).

### 23 **V. Remaining Claims**

24 In addition to Count One (Violation of IDEA), Plaintiff’s Complaint includes  
25 Count Two (42 U.S.C. § 1983 – Violation of IDEA and Section 504 of the Rehabilitation  
26 Act of 1973, as amended), Count Three (Violation of Due Process and Denial of Property  
27 and Liberty Interests in a Free Public Education), and Count Seven [sic] (42 U.S.C.  
28 § 1983, Americans with Disabilities Act (ADA)). Although the IDEA does not restrict

1 rights and remedies independently available through other sources of law, “where the  
2 underlying claim is one of violation of the IDEA, plaintiffs may not use § 1983—or any  
3 other federal statute for that matter—in an attempt to evade the limited remedial structure  
4 of the IDEA.” *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 29 (1<sup>st</sup> Cir. 2006). During trial  
5 on Count One, Plaintiffs conceded they must withdraw at least one of their claims.

6 The Complaint does not allege facts beyond the bare minimum to support the  
7 IDEA claim, and the Court has determined that the District provided Cody with a free  
8 appropriate public education and has not violated the IDEA. The rest of the Complaint  
9 does not appear to state a claim upon which relief can be granted on any legal basis.  
10 Therefore, the Plaintiffs will be ordered to show cause why the rest of the Complaint  
11 should not be dismissed for failure to state a claim.

12 IT IS THEREFORE ORDERED that Plaintiffs’ appeal under the IDEA from the  
13 Administrative Law Judge Decision dated May 14, 2007, in No. 07C-DP-07019-ADE, is  
14 denied.

15 IT IS FURTHER ORDERED that Plaintiffs show cause by December 24, 2008,  
16 why the remainder of the Complaint beyond Count One (Violation of IDEA) should not  
17 be dismissed with prejudice for failure to state a claim upon which relief can be granted.  
18 Defendants may file a response by January 16, 2009, and Plaintiffs may file a reply by  
19 January 23, 2009.

20 DATED this 11<sup>th</sup> day of December, 2008.

21  
22   
23 \_\_\_\_\_  
24 Neil V. Wake  
25 United States District Judge  
26  
27  
28