

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL DISTRICT.

CASE NO. 2023070196

DECISION

NOVEMBER 13, 2023

On July 10, 2023, Parents on behalf of Student filed a complaint with the Office of Administrative Hearings, called OAH, naming Twin Rivers Unified School District. Administrative Law Judge Rommel P. Cruz heard this matter by videoconference on August 29, 30, and 31, and September 6, 7, 12, 13, 21, 22, and 28, 2023.

Attorneys Lynda Williams, Sheila Bayne, Robert Burgermeister, and Leroy Sumter represented Student. Mother and Father attended all hearing days on Student's behalf. OAH provided Parents a Ukrainian language interpreter each day of the hearing.

Attorneys Marcella Gutierrez and Tilman Heyer represented Twin Rivers Unified. Special Education Local Plan Area Director of Special Education Kathleen Walker attended all hearing days on behalf of Twin Rivers Unified.

At the parties' request, OAH continued the matter to October 30, 2023, for written closing briefs. OAH closed the record and submitted the matter on October 30, 2023.

ISSUES

The following are the issues heard and decided in this matter, as discussed by the parties and the Administrative Law Judge at the August 21, 2023 prehearing conference and at the hearing. The issues were reorganized for clarity and order. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.) A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did Twin Rivers Unified deny Student a FAPE during the 2022-2023 school year, by failing to assess Student in occupational therapy as part of the three-year reassessment review?
2. Did Twin Rivers Unified deny Student a FAPE by failing to offer adequate IEP goals at the November 9, 2022, IEP team meeting, in:
 - a. behavior;
 - b. career awareness;
 - c. college awareness; and
 - d. transition?

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3. Did Twin Rivers Unified deny Student a FAPE during the 2022-2023 school year, by failing to offer special education services at the November 9, 2022, IEP team meeting, to enable Student to receive an educational benefit, specifically:
 - a. behavior intervention services;
 - b. sufficient speech and language services;
 - c. college awareness transition services; and
 - d. individual aide services?
4. Did Twin Rivers Unified deny Student a FAPE during the 2022-2023 school year, by failing to address at the November 9, 2022, IEP team meeting, Student's regression that occurred at the start of the 2022-2023 school year, in:
 - a. speech and language;
 - b. mathematics; and
 - c. English language arts?
5. Did Twin Rivers Unified deny Student a FAPE during the 2022-2023 school year, by failing to offer parent training in behavior and speech and language at the November 9, 2022, IEP team meeting?
6. Did Twin Rivers Unified deny Student a FAPE during the 2022-2023 school year, by failing to offer:
 - a. in-home applied behavior analysis therapy services; and
 - b. clinic meetings?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, called the IDEA, are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student requested the

hearing and had the burden of proof as to each issue. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 16 years old and in 11th grade at the time of the hearing. He resided with Parents in Twin Rivers Unified's geographic boundaries at all relevant times. Student was eligible for special education services under the categories of autism and speech and language impairment.

Student was an English language learner who spoke English, Russian, and Ukrainian. At the time of the hearing, Student was not enrolled in Twin Rivers Unified.

ISSUE 1: DID TWIN RIVERS UNIFIED FAIL TO ASSESS STUDENT IN OCCUPATIONAL THERAPY AS PART OF THE THREE-YEAR REASSESSMENT REVIEW?

Student contends Twin Rivers Unified failed to conduct an occupational therapy assessment as part of the three-year reassessment review. Twin Rivers Unified contends an occupational therapy assessment was not necessary for Student's three-year reassessment review.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000].)

Prior to making a determination of whether a child qualifies for special education services, a school district must conduct an evaluation, called an assessment in California, of the child. (20 U.S.C. § 1414(a), (b); Ed. Code, §§ 56320, 56321.) Following the initial assessment, reassessments of students receiving special education services must not occur more frequently than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reassessment is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303; Ed. Code, § 56381, subd. (a)(2).) A reassessment must also be conducted when the school district determines the educational or related services needs, including improved academic achievement and functional performance, of the student warrants a reassessment, or if the parent or student's teacher requests a reassessment. (20 U.S.C. § 1414(a)(2)(A); 34 C.F.R. § 300.303(a); Ed. Code, § 56381, subd. (a).) The purposes of reassessments are to determine if the student continues to be eligible for special education services and to identify the student's educational needs. (34 C.F.R. §§ 300.301 and 300.303.)

As part of a reassessment, the student's IEP team must review existing assessment data of the student, including assessments and information provided by the parents, current classroom-based assessments and observations, and teacher and related services

providers' observations. (Ed. Code, § 56381, subd. (b)(1).) As part of the review, and considering the input of the parents, the IEP team must identify what additional data, if any, is needed, to determine whether the student continues to have a special education eligibility-related disability and to determine the student's present levels of performance and educational needs. (Ed. Code, § 56381, subds. (b)(2)(A), (B).) The IEP team must also determine whether the student continues to need special education and related services, and identify any necessary additions or modifications to the special education and related services to enable the student to meet the IEP goals and to participate, as appropriate, in the general curriculum. (Ed. Code, § 56381, subds. (b)(2)(C), (D).)

In assessing a student with a disability, the assessment must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified. (34 C.F.R. § 300.304(c)(6).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D.Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech and language testing where the concern prompting the assessment was reading skills deficit].)

Twin Rivers Unified first found Student eligible for special education services in 2016 under the category of other health impairment because of his attention deficit hyperactivity disorder. The evidence of Student's enrollment history was sparse, with no records of his enrollment in any school district for the 2015-2016, through 2018-2019 school years. Student disenrolled from Twin Rivers Unified following the 2014-2015 school year, and reenrolled in Twin Rivers Unified for the 2019-2020 school year.

Student attended 73 days of school at Twin Rivers Unified for the 2019-2020 school year, before disenrolling again from Twin Rivers Unified in March 2020. Student enrolled in an independent charter school in March 2020. The record was unclear as to how many days of school Student attended from March 2020, through the 2020-2021 school year while enrolled in the charter school.

Student reenrolled in Twin Rivers Unified in summer 2022, but did not attend extended school year at Twin Rivers Unified. Before reenrolling in Twin Rivers Unified, Student was home schooled for the 2021-2022 school year. No educational records for Student were available for the 2021-2022 school year.

Based on his last implemented IEP dated November 15, 2019, Student was eligible for special education services under the categories of intellectual development and speech and language impairment. The November 15, 2019, IEP was last amended on May 21, 2020.

Twin Rivers Unified's first day of instruction for the 2022-2023 school year was August 18, 2022. Student was in 10th grade. Twin Rivers Unified placed Student in its RISE program. The RISE program served students with moderate to severe disabilities. Twin Rivers Unified assigned Student five classes in the RISE program's special day class. The five class subjects were English language arts, math, health and recreation, living skills, job exploration, and a regular education class for physical education.

Twin Rivers Unified reassessed Student for special education in fall 2019. As such, Student's three-year reassessment review was due in fall 2022. In preparation for the three-year reassessment review, Twin Rivers Unified provided Parents an assessment plan on September 2, 2022.

School psychologist Alyssa Garcia prepared the September 2, 2022, assessment plan. The assessment plan offered to assess Student in

- academic achievement,
- health,
- intellectual development,
- language and speech communication development,
- motor development,
- social emotional functioning,
- behavior,
- adaptive behavior, and
- postsecondary transition.

A school nurse would assess his health. A speech language pathologist would assess his language and speech and communication development. A special education teacher would assess his academic achievement and postsecondary transition needs. A school psychologist would assess the remaining areas.

The evidence established that an occupational therapy assessment was not required as part of the September 2, 2022 assessment plan based on Student's prior educational records. Twin Rivers Unified selected Garcia to assess Student's continued special education eligibility and special education needs through the three-year reassessment review. Garcia was a qualified school psychologist with four years of

experience assessing students with special needs. Garcia reviewed Student's November 15, 2019, IEP, as amended on May 21, 2020, and prior assessments in developing the assessment plan for Student's three-year reassessments. On that basis, Garcia identified areas of need in

- math problem solving,
- math calculation,
- English language development foundational reading and reading comprehension,
- English language development writing,
- expressive language, and
- receptive language.

Student's IEPs did not offer occupational therapy services, and prior school assessments did not identify occupational therapy as an area of suspected need. During the hearing, Garcia persuasively opined that Student's prior IEP and assessments did not identify any concerns related to his fine and gross motor development, or any other area that would require an occupational therapy assessment. Student offered no evidence to contradict Garcia's testimony or that proved occupational therapy was an area of suspected disability.

Parent provided written consent to the assessment plan on September 20, 2022. Parents did not request an occupational therapy assessment of Student when consent was given. The results of Twin Rivers Unified's assessments were presented to Parent and other IEP team members on November 9, 2022.

The results of Twin Rivers Unified's assessments and Student's performance at school established that an occupational therapy assessment was not necessary. Mother completed a form regarding Student's health and development history, signed and dated by Mother on September 20, 2022. For Student's social behavioral history, Mother selected happy when asked how Student was most of the time. She also identified Student had autism, a learning disability, and an obsessive compulsive disorder. Mother did not report any other developmental or behavioral concerns on the form.

Garcia assessed Students

- intellectual development,
- motor development,
- social emotional functioning,
- behavior, and
- adaptive behavior.

Garcia relied on rating scales completed by Student's special education teacher Kristina Shea and Mother to assess Student's behavior and autism. The results of the ratings scales did not warrant additional data to be gathered through an occupational therapy assessment.

Garcia also interviewed Student in October 2022. Student shared that he enjoyed his friends, walking his dogs, playing Call of Duty, and riding his bike. Call of Duty was a video game he played on his mobile phone. He also shared that he did not like getting up early for school. Garcia observed Student to tire easily, and he spoke about being tired most of the day.

Student also shared he liked attending his current high school, and enjoyed his classes and teacher. He found half his classes to be difficult, and the other half easy.

Student also reported to Garcia that he worried about going to school when his brother did not, and he did not like using public restrooms. Garcia opined at hearing that Student did not report to Garcia any concerns that would necessitate an occupational therapy assessment.

Garcia assessed Student's visual motor integration. Visual motor integration is the ability to coordinate visual perception and fine motor control to perform tasks such as copying letters and numbers, forming shapes, and copying patterns. Student performed in the very low range on the assessment.

Shea testified that Student's handwriting was legible, and she had no concerns about Student's fine motor skills. Student's physical education teacher Krishun Kumar testified that Student had no difficulty performing physical activities in physical education class. Kumar observed Student perform activities using fine and gross motor skills with no difficulty. He assessed Student's gross motor skills and shared his findings with the IEP team on November 9, 2022. Based on assessments and observations, the IEP team found Student's gross and fine motor development to be age appropriate, and his handwriting neat and legible.

Student's expert Jandee Goodis testified that she had no concerns about Student's fine or gross motor skills. Goodis was an occupational therapist for more than 40 years, with experience assessing children for occupational therapy needs and delivering occupational therapy services.

Goodis interviewed and observed Student and Mother by video on August 28, 2023. The video call lasted about an hour. During the video call, Goodis asked Student to complete typical occupational therapy skills such as

- printing,
- coloring,
- cutting,
- touching his fingers together,
- jumping jacks, and
- catching an object.

Student successfully performed the occupational therapy skills she asked him to complete. Goodis did not observe any concerns regarding Student's fine and gross motor skills. Goodis concluded an occupational therapy assessment to further evaluate Student's fine or gross motor development was not needed as part of the three-year reassessment review. Although Student performed poorly on the visual motor integration assessment, Goodis offered no opinion that an occupational therapy assessment was necessary based on Student's classroom-based assessments and observations, or work samples.

Goodis's opinion that an occupational therapy assessment was required to determine whether Student had low muscle tone which could have contributed to fatigue was not persuasive. On August 28, 2023, Student reported to Goodis that he did not enjoy physical education class because he got tired, and it was hot during class. On video, Goodis observed him sitting and standing with a slumped posture, which she opined could possibly be attributed to low muscle tone. On this limited basis, Goodis

opined that low muscle tone possibly contributed to Student's fatigue. However, Goodis was unsure of this opinion during hearing. Goodis's suspicion was contradicted by Student's reporting to Garcia that he enjoyed walking his dogs and riding his bike. Goodis offered no testimony as to how these physical activities were consistent with low muscle tone and fatigue.

In addition, Student reported to Garcia that he did not like getting up early for school. Goodis did not ask, and therefore, could not rule out other reasons why Student could be tired during the school day. She did not ask Student about his sleeping habits, diet, medication, or evening activities such as playing video games in the late evening.

In addition, Goodis had no knowledge of Student's energy level in school at the start of the 2022-2023 school year, or to what extent, if any, his lack of energy impacted him educationally. There was no evidence Student was too tired during the first four periods in the RISE program to participate in class, nor too tired to participate in physical education activities or the job exploration class despite the classes occurring later in the school day for fifth and sixth periods, respectively. Goodis did not observe Student in school, or interview any of Student's teachers or service providers at Twin Rivers Unified. Consequently, Goodis's opinion that Twin Rivers Unified should have assessed Student's muscle tone was given no weight. As a result, Student failed to prove additional data about his energy level through an occupational therapy assessment was necessary to determine his present levels of performance, educational needs, or any necessary addition or modification to his special education and related services.

Student also failed to establish that an occupational therapy assessment was necessary to assess Student's sensory needs at school. While Student had a preoccupation with water bottles, there was no link between this peculiarity and sensory needs. On August 28, 2023, Student reported to Goodis that he did not know why he was preoccupied with water bottles. Goodis opined that a further occupational therapy assessment was needed to understand why Student needed to carry water bottles around. The evidence did not support that opinion.

Student developed a preoccupation with water bottles about the time the 2022-2023 school year began. He needed multiple water bottles with him at all times, which he carried in a backpack and lunch bag. He carried these water bottles with him in school, at home, and in the community. He counted the bottles regularly to assure himself he had enough.

Twin Rivers Unified accommodated Student's preoccupation with water bottles and his preoccupation with water bottles did not impede his learning or the learning of others. Student had one episode that occurred moments before a schoolwide pep rally in fall of the 2022-2023 school year. Student's high school did not permit students to bring backpacks into a rally. Student became anxious and stressed to learn he could not bring his backpack of water bottles to the rally. Shea and he agreed that she would carry the backpack into to the rally for him. Student participated in the rally without incident.

Twin Rivers Unified also allowed Student to keep water bottles with him in his RISE classes and in physical education class. It was common for each student in physical education to have a water bottle with them. Student's preoccupation with water bottles did not impede him from participating in physical education or any other class.

Student used a variety of sensory tools in his RISE classes. Shea's classroom offered different types of seating which Student enjoyed using, such as a swing, along with fidgets, and other sensory tools during class. Shea did not observe Student to be distressed or anxious in the classroom. Student's preoccupation with water bottles did not distract him from lessons, cause a distraction for other students, or draw unwanted attention to him.

The evidence also did not support Student's claim that an occupational therapy assessment was necessary to further understand Student's preoccupation with time and class schedule. The November 9, 2022, IEP team noted Student had an attachment and heavy anxiety to knowing every minute of the day, and would repeatedly ask how much time was left for the class period or when physical education class was going to start.

The evidence demonstrated that Student's lack of awareness of class times, routines, and schedules was attributed to his poor attendance and lack of consistency to school routines. At the start of the 2022-2023 school year, Shea worked with all students in her class to remember class schedule and routines. However, Student missed 25 of 58 school days from the start of the school year, through November 9, 2022.

Student could not remember his schedule, and had general questions about what came next when he returned to school from extended absences. Nevertheless, teachers and staff easily redirected him, and his preoccupation with time and his class schedule did not impede his learning or the learning of others. Student offered no evidence to establish why it was necessary for additional data to be collected through an occupational therapy assessment to further support Student's preoccupation with time and his class schedule.

The evidence established Twin Rivers Unified successfully supported Student's preoccupation with his class schedule and water bottles, and his preoccupations had no impact on his ability to access his education. Therefore, Student failed to prove additional data through an occupational therapy assessment was necessary as part of the three-year reassessment review to identify his educational needs because of these preoccupations.

Parent did not report to the IEP team on November 9, 2022, concerns about Student's energy level, sensory needs, or fine or gross motor development. Parent did not request additional assessments at the November 9, 2022, IEP team meeting. Accordingly, Student's performances on assessments and in the classroom, along with information provided by Parents, did not warrant additional data to be collected through an occupational therapy assessment to identify Student's present levels of performance and educational needs, or any necessary additions or modifications to the special education and related services to enable Student to meet his IEP goals and to participate, as appropriate, in the general curriculum.

The evidence did not establish an occupational therapy assessment was necessary as part of Student's three-year reassessment review. Twin Rivers Unified relied on existing assessment data of Student, including assessments and information provided by Parents, current classroom-based assessments and observations, and teacher and related services providers' observations to properly determine that an occupational therapy assessment, including an assessment to further evaluate Student's muscle tone and sensory needs, was not necessary to understand his special education

and related services needs. Accordingly, Student failed to meet his burden of proving by preponderance of the evidence that Twin Rivers Unified denied him a FAPE, by not assessing him in occupational therapy as part of the three-year reassessment review. Twin Rivers Unified prevailed on Issue 1.

ISSUES 2a, 2b, 2c, AND 2d: DID TWIN RIVERS UNIFIED FAIL TO OFFER ADEQUATE BEHAVIOR, CAREER AWARENESS, COLLEGE AWARENESS, AND TRANSITION IEP GOALS AT THE NOVEMBER 9, 2022, IEP TEAM MEETING?

Student contends the November 9, 2022, IEP failed to offer adequate measurable goals in behavior, career awareness, college awareness, and transition. Twin Rivers Unified contends Student did not require a behavior goal in his IEP. Twin Rivers Unified further contends the postsecondary transition goals in the November 9, 2022, IEP were legally sufficient, and any procedural defect in the goals did not deny Student a FAPE.

In his closing brief, Student claims his due process rights were violated because he was not permitted to present evidence at hearing to litigate claims involving other goals offered in the November 9, 2022, IEP. However, Student's claims involving the other IEP goals for algebra, functional reading and comprehension, and communication were not identified as issues to be heard and decided. Student's complaint alleged Twin Rivers Unified failed to accurately identify Student's academic and functional baselines in developing goals in the November 9, 2022, IEP. However, the parties and the Administrative Law Judge discussed and clarified the issues for hearing at the prehearing conference on August 21, 2023. Specifically, Student represented Student's challenge to IEP goals offered in the November 9, 2022, IEP team meeting involved only

behavior, career awareness, college awareness, and transition. At the prehearing conference, Student did not identify the goals in algebra, functional reading and comprehension, and communication as issues to be heard and decided.

OAH issued an Order Following Prehearing Conference for Hearing by Videoconference dated August 21, 2023. The Order specifically instructed a party to immediately file a written objection with OAH if the issues as described in the August 21, 2023 Order did not reflect the party's understanding of the issues for the due process hearing. Student did not file an objection to the issues for hearing as stated in the August 21, 2023 Order.

Furthermore, on the first day of hearing prior to opening statements, the Administrative Law Judge reviewed with the parties the issues to be heard as stated in the August 21, 2023 Order. Student did not object to the issues as stated at the start of the hearing. Twin Rivers Unified did not consent to litigating the appropriateness of the November 9, 2022, IEP's offer of goals for algebra, functional reading and comprehension, and communication, and those issues were not litigated at hearing. Accordingly, Student's due process rights were not violated when the issues regarding IEP goals were limited as described, and this Decision makes no determination as to Student's claims involving the November 9, 2022, IEP's goals in algebra, functional reading and comprehension, and communication.

The IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum, and meet each of the student's other educational

needs that result from the student's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. (Ed. Code, § 56345, subd. (a).)

Additionally, the IEP must contain statements of how the student's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the student's present levels of academic achievement and functional performance, and which the student has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (U.S. Department of Education, Office of Special Education and Rehabilitative Services [OSERS], March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) It must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Fuhrmann v. East Hanover Bd. Of Educ.* (3rd Cir. 1993) 993 F.2d 1031.) An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

Twin Rivers Unified held an IEP team meeting on November 9, 2022, to review the results of the reassessments, to determine if Student continued to be eligible for special education services, and if so, to develop a new IEP. Mother, Garcia, Shea, Kumar, speech language pathologist Elizabeth Bayer, and vice principal Kenny Kirrene attended the meeting.

Twin Rivers Unified presented the findings, results, and recommendations of its assessments to the IEP team. The IEP team reviewed Student's present levels of academic and functional performance and determined Student had areas of need in

- mathematics problem solving,
- calculation,
- reading,
- reading comprehension,
- writing,
- expressive language, and
- receptive language.

The November 9, 2022, IEP team offered goals in math, reading fluency and comprehension, and communication.

ISSUE 2a: BEHAVIOR GOAL

The November 9 2022, IEP team had no reason to identify Student's behavior as an area of need. Student had no episodes of aggression or disruption at school at the time of the November 9, 2022, IEP team meeting. As part of Garcia's psychoeducational

assessment of Student, Mother completed behavior rating scales on September 2, 2022. Mother indicated Student never hit other adolescents, never acts out of control, and never disrupts other adolescents' activities.

Shea and Kumar interacted with Student and observed his behaviors at school, and credibly testified that at the time of the November 9, 2022, IEP team meeting, Student was easily redirected, worked independently, was not disruptive, nor aggressive towards staff or his peers. Student offered no evidence to contradict Shea's and Kumar's testimony. Accordingly, Shea's and Kumar's testimony was persuasive, and given substantial weight.

Evidence did not support Student's claims that his anxiety and preoccupation with water bottles necessitated a behavior goal in the November 9, 2022, IEP. Mother and Father testified that Student reported being anxious at school because his teachers did not allow him to keep the amount of water bottles he needed. Mother also testified she discussed Student's water bottle concerns with one of his classroom instructional aides. Student claims he missed school due to his anxiety over water bottles. However, Mother did not report Student's alleged claims about his limited access to water bottles to any of Student's teachers. In addition, the classroom aide who Mother supposedly reported Student's water bottle problems to, did not testify, and no witness or documentary evidence corroborated Mother's account.

Student did not tell Garcia he had problems with water bottles at school, or that he experienced any anxiety at school. Furthermore, Mother did not report concerns about Student's water bottle problems to the IEP team on November 9, 2022. Accordingly, Parents' testimony of Student's problems with access to water bottles at school was not persuasive.

The evidence established Student's significant absences were unrelated to anxiety. Student did not like attending school when his brother did not attend. Parents preferred Student and his brother to be in school together for safety reasons, and allowed Student to remain home when his brother did not attend school. Student would also spend his time when absent playing video games, dining, or spending time at the mall. Student freely shared his activities with friends through social media and openly discussed them with Shea and his classmates when he returned to school.

Further, Parents on behalf of Student filed a complaint against Twin Rivers Unified on February 16, 2023, in OAH case number 2023020611. Student reported to Shea after the filing that his special education advocate instructed him to attend school regularly to improve their success in their litigation against Twin Rivers Unified. Student's attendance improved dramatically in the spring 2023 for three months, despite Twin Rivers Unified maintaining the same accommodations for Student's preoccupation with water bottles. From February 1, 2023, through April 28, 2023, Student missed only four days of school, three of those days because of illness. As discussed in Issue 1, the evidence established Twin Rivers Unified properly accommodated Student's preoccupation with water bottles, and his access to water bottles at school was not a source of anxiety for him at the time of the November 9, 2022, IEP team meeting.

The evidence established Student's preoccupation with water bottles did not interfere with his education. His preoccupation with water bottles did not distract him from lessons, did not impede his ability to complete assignments, and did not interfere with his ability to participate in the classroom or in other school activities. It also did not interfere with the learning of his peers.

The evidence also established Student's preoccupation with time and his class schedule did not warrant a behavior goal at the time of the November 9, 2022, IEP team meeting. Shea persuasively testified she and staff easily redirected him, and Student's preoccupation with time and his class schedule did not impede his learning or the learning of others. Student offered no evidence of the extent his preoccupation interfered, if at all, with his ability to participate in class or distracted him or others from lessons, to warrant a behavior goal at the time of the November 9, 2022, IEP team meeting. Accordingly, Student failed to establish he required a behavior goal for preoccupation over his class schedule at the time of the November 9, 2022, IEP team meeting.

In sum, Student's preoccupations with water bottles and his class schedule did not interfere with his learning or the learning of others. Student was not aggressive or disruptive, and did not have any other problem behaviors that impeded his learning or the learning of others at the time of the November 9, 2022, IEP team meeting. Therefore, he did not require a behavior goal in the November 9, 2022, IEP. Accordingly, Student did not meet his burden of proving by a preponderance of the evidence that Twin Rivers Unified denied him a FAPE by failing to offer a behavior goal at the November 9, 2022, IEP team meeting. Twin Rivers Unified prevailed on Issue 2a.

ISSUES 2b, 2c, AND 2d: CAREER AWARENESS, COLLEGE AWARENESS, AND TRANSITION GOALS

Beginning at age 16, or younger if determined to be appropriate by the IEP team, the IEP in effect when a student reaches 16 years of age must include as part of a transition plan, appropriate measurable postsecondary goals based upon

age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa); Ed. Code, §§ 56043, subd. (g)(1), 56345, subd. (a)(8).) The failure to properly formulate a transition plan may be a procedural violation of the IDEA. (*Board of Education v. Ross* (7th Cir. 2007) 486 F.3d 267, 276 [despite transition plans being a mandatory component of an IEP, notation in IEP that the transition plan would be deferred was a procedural violation] (*Ross*); *A.S. v. Madison Metro School Dist.* (D. Wis. 2007) 477 F.Supp.2d 969, 978 [allegation of inadequate transition plan treated as a procedural violation].) However, a procedural violation results in a denial of FAPE only if it impedes the student's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

Student failed to prove the career awareness, college awareness, and transition goals offered in the November 9, 2022, IEP denied him a FAPE. Though the postsecondary goals were not measurable, and thus a procedural IDEA violation, Student failed to prove how the procedural violation denied him an educational benefit, impeded his right to a FAPE, or significantly impeded Parents' ability to meaningfully participate in the decision-making process regarding his education.

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THE NOVEMBER 9, 2022 IEP POSTSECONDARY GOALS WERE ACHIEVABLE
AND RELEVANT TO STUDENT'S INTERESTS AND PREFERENCES

Student was 15 years old and 11 months at the time of the November 9, 2022, IEP team meeting. Parents provided written consent to the November 9, 2022, IEP on November 29, 2022. The November 9, 2022, IEP was in effect when Student turned 16 years old in December 2022.

In developing the November 9, 2022, IEP's individual transition plan, Shea used an assessment tool to gather Student's career preferences. Shea was a special education high school teacher for more than eight years, credentialed to teach students with moderate to severe disabilities. She was trained and experienced in assessing and developing postsecondary transition goals for students with special needs. Based on Student's responses as to what types of responsibilities and duties he was interested in, eight potential careers were identified. Social worker was one of those careers.

Shea explained to Student what a career in the social work field would involve. Shea persuasively testified Student showed the most interest in that career field. Student also reported to Shea an interest in possibly attending classes at a community college.

Student told Shea he was planning on living with his family after completing school. Shea and Student worked together to develop the postsecondary goals in the November 9, 2022, IEP's individual transition plan.

The November 9, 2022, IEP offered three postsecondary transition goals in Student's individual transition plan. The first goal involved postsecondary education and training. The goal stated that upon completion of school Student would possibly

attend classes at a community college. The activities listed to support the goal were to research local community colleges to verify course offerings of interest and to take courses as they become available. Attending college tours and fairs were community experiences listed to support the goal.

The second postsecondary goal involved employment. The second goal stated that upon completion of school Student was interested pursuing employment in the social work field. Activities listed to support the goal were practice mock interviews, and complete mock applications. Community experiences included visiting local job sites, applying for, and participating in, Twin Rivers Unified's workability program.

The third postsecondary goal involved independent living. The goal stated Student would live with his family when he completed school. Activities to support the goal included researching the cost of living, practicing memorizing his address, exposure to bills and online navigation and payment. Community experiences included grocery shopping and taking the city bus into the community.

The November 9, 2022, IEP's individual transition plan linked each of the postsecondary goals to an annual math goal listed in the IEP's annual goals and objectives section. That math goal required Student to solve 20 math problems involving rational numbers, fractions, positive and negative integers, and decimals using addition, subtraction, multiplication and division. To meet that goal, Student had to successfully answer 90 percent of the math problems in nine out of 10 opportunities.

The evidence did not support Student's claim the education, training, and career postsecondary transition goals were inappropriate because they were unrealistic and irrelevant to Student. Student relies on the testimony of Judith Imperatore, a transition specialist with specialized knowledge in the area of secondary transition services for

students with disabilities. Imperatore conducted a transition assessment of Student over the phone on September 5, 2023. During the hearing, Imperatore admitted this was not a comprehensive assessment. She also interviewed Mother and Student. Before her testimony, Imperatore reviewed the exhibits for this due process hearing.

Imperatore opined that a postsecondary goal for Student to attend a class in a community college was unrealistic because Student lacked the intellectual functioning, and academic and functional skills, to access college level courses. She also opined that Student required individualized support to access college level courses, which to her understanding, was not available in colleges.

Imperatore also testified that, based on her September 5, 2023, interview of Student, Student was not interested in attending classes at a community college or pursuing a career in the social work field. Imperatore therefore opined the goals to attend classes at a community college and to pursue a career in the social work field were not relevant to Student's interest and preferences.

However, Imperatore's testimony of Student's interview responses was not persuasive. Mother had to wake Student up for the interview when Imperatore called him on September 5, 2023. The evidence failed to demonstrate that Student was engaged in the interview and sincere in his responses to Imperatore's questions.

In addition, Father testified Student often changed his mind about careers. Imperatore did not interview Shea or any other staff member from Twin Rivers Unified regarding Student's postsecondary interests at the time of the November 9, 2022, IEP team meeting. Student failed to offer any persuasive testimony or documentary evidence to contradict Shea's testimony that Student expressed an interest in attending classes at a community college, and exploring a career in the social work field at the

time of the November 9, 2022, IEP team meeting. Accordingly, Shea's testimony regarding Student's postsecondary interests and preferences was persuasive, and given substantial weight.

Furthermore, Imperatore was not familiar with Twin Rivers Unified's adult transition program and the opportunities for the program's students, to attend a class in one of three local community colleges near Twin Rivers Unified. Imperatore was also not familiar with courses at the local community colleges available for students with disabilities, or the supports that were available at the local community colleges for individuals such as Student. Accordingly, Imperatore's opinion that postsecondary goals for Student to attend classes at a community college and work in the field of social work were irrelevant, unrealistic, and inappropriate for Student was not persuasive.

Special Education Local Plan Area Director of Special Education Walker and Shea persuasively testified Student could access classes at one of the local community colleges after receiving a certificate of completion and enrolling in Twin Rivers Unified's adult transition program. The adult transition program served Students with moderate to severe disabilities. The local community colleges offered remedial and basic skills classes for students in the adult transition program. The community colleges also offered courses to develop resumes, acquire job skills, and participate in job internships.

The local community colleges also offered supports to help students in the adult transition program. Supports such as tutoring from instructional assistants, and counseling services to identify students' needs were available. Assistive technology and breaking down of assignments for better understanding were other supports and accommodations available.

Shea was familiar with the local community college opportunities because former students from the RISE program attended classes at the community colleges. Shea persuasively opined at hearing that Student could realistically access classes at the local community colleges. Student failed to offer any persuasive evidence to challenge Walker's and Shea's testimony regarding Student's ability to access classes at the community college. Accordingly, Walker's and Shea's testimony was persuasive and given substantial weight.

Student was involved in developing the postsecondary transition goals, and Twin Rivers Unified considered Student's interests at the time of the November 9, 2022, IEP team meeting. The evidence established that November 9, 2022, IEP's postsecondary transition goals, as offered in the individual transition plan, were achievable and relevant to Student's interests and preferences.

THE NOVEMBER 9, 2022, IEP'S POSTSECONDARY GOALS WERE NOT MEASURABLE

A preponderance of the evidence established the November 9, 2022, IEP's postsecondary transition goals were not measurable. Walker testified in general that the postsecondary goals listed in the November 9, 2022, IEP were appropriate. However, Shea conceded at hearing that the November 9, 2022, IEP failed to include postsecondary objectives that could be measured.

The evidence established the November 9, 2022, IEP failed to offer measurable postsecondary goals to track Student's progress towards meeting his postsecondary goals for education and training, employment, or independent living. For example, the November 9, 2022, IEP did not have a goal to measure and track Student's progress in identifying community college courses, identifying the educational and training

requirements for careers in the social work field, or to learn to budget. Measurable annual postsecondary transition goals were required in the November 9, 2022, IEP because the November 9, 2022, IEP was in effect when Student turned 16 years old. The failure to offer measurable postsecondary transition goals was a procedural violation of the IDEA.

THE LACK OF MEASURABLE POSTSECONDARY GOALS DID NOT DENY STUDENT A FAPE

Despite the procedural defects, Student failed to prove the November 9, 2022, IEP postsecondary transition goals' lack of measurability deprived him of an educational benefit or impeded his ability to receive a FAPE. Twin Rivers Unified amended the IEP on February 1, 2023, to offer measurable annual goals for each of Student's individual transition plan postsecondary goals. Student did not challenge the appropriateness of the annual postsecondary goals offered in the IEP, as amended on February 1, 2023.

In *Ross*, the court found that despite the failure of the school district to offer a postsecondary transition plan, the error was procedural and not substantive. (486 F.3d 267, 276.) The question for the *Ross* court was whether that student was denied something the student was entitled to. (*Ibid.*) There, the student needed very basic skills that were already addressed in her IEP, and the school district determined there was no material difference between her transition needs and her current needs. (*Ibid.*) The court found the school district's decision to defer offering a transition plan acceptable because the student received special education services to meet her current needs and transition needs, and she was not in a position to benefit from an elaborate transition plan including

advanced vocational or educational skills. (*Ibid.*) The court concluded that though the school district erred by not including a more specific transition plan in the student's IEP, the procedural flaw did not result in the denial of a FAPE. (*Ibid.*)

Similar to the circumstances in *Ross*, there was no material difference between Student's transition needs and current needs that were not addressed in the November 9, 2022, IEP. The November 9, 2022, IEP offered 1,920 minutes a week of specialized academic instruction. The specialized academic instruction was delivered in the RISE program. The IEP also offered 60 minutes a year for college awareness services, 60 minutes a year for career awareness services, and 60 minutes a year for other transition services.

Student attended 20 days of school from the time he turned 16 years old, to the time the IEP was amended on February 1, 2023. In that brief period, Student received the benefit of specialized academic instruction and transition services for his postsecondary goals in education and training, career, and independent living. Student's postsecondary goals were implemented through the specialized academic instruction he received in his

- health and recreation,
- life skills,
- job exploration,
- English language arts and
- mathematics class in the RISE program.

In health and recreation class, Student received instruction on independent living and the benefits of social emotional health. Shea provided lessons on meditation and

mindfulness. The class would often go on 20-minute walks. During walks, the class discussed careers, different types of employment, and role play work scenarios. Student participated in these discussions and lessons.

In math, Student received lessons using real world scenarios such as calculating a restaurant bill. In addition, Student's living skills and job exploration classes heavily focused on postsecondary education and career. Student offered no testimony or documentary evidence to establish that the lack of measurable postsecondary goals in the November 9, 2022, IEP deprived him of an educational benefit or impeded him from receiving a FAPE during the period prior to the IEP amendment on February 1, 2023. In addition, neither Mother nor Father testified that the lack of measurable postsecondary goals significantly impeded their opportunity from making an informed decision regarding Student's education, or from meaningfully participating in the IEP process. Accordingly, Twin Rivers Unified's failure to offer more specific, measurable postsecondary goals in the November 9, 2022, IEP did not deny Student a FAPE.

In sum, the November 9, 2022, IEP's postsecondary goals did not deny Student a FAPE. The postsecondary transition goals were achievable and relevant to Student's interests and preferences at the time of the November 9, 2022, IEP team meeting. Furthermore, the lack of measurable postsecondary goals for the brief period prior to the February 1, 2023 IEP amendment, did not deprive Student of an educational benefit, impede his right to a FAPE, or significantly impede Parents' ability to meaningfully participate in the decision-making process for Student's education. Accordingly, Student failed to prove by a preponderance of the evidence Twin Rivers Unified denied him a FAPE by failing to offer adequate career awareness, college awareness, and transition goals at the November 9, 2022, IEP team meeting. Twin Rivers Unified prevailed on Issues 2b, 2c, and 2d.

ISSUES 3a, 3b, 3c, AND 3d: DID TWIN RIVERS UNIFIED FAIL TO OFFER BEHAVIOR INTERVENTION SERVICES, SUFFICIENT SPEECH AND LANGUAGE SERVICES, COLLEGE AWARENESS TRANSITION SERVICES, AND INDIVIDUAL AIDE SERVICES AT THE NOVEMBER 9, 2022, IEP TEAM MEETING?

Student contends he required behavior intervention services because of his preoccupation with time and class schedule, and his obsessive tendencies. Student also contends he required more than 30 minutes a week of speech and language services. In addition, Student argues he needed a one-to-one aide to support his behaviors and anxiety.

Student also contends Twin Rivers Unified failed to offer any appropriate transitions services, and that failure was not limited to college awareness transition services. Student argues his complaint identified claims regarding transition services beyond college awareness which should be decided. However, the issues to be heard and decided at the hearing are limited to the issues alleged in the complaint unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Here, Student's complaint limited his challenge to transition services to the subject of college awareness. The first two paragraphs on page 12 of Student's complaint specifically alleged that though the November 9, 2022, IEP offered some transition services and career awareness services, Twin Rivers Unified failed to offer college awareness services. The complaint contends the November 9, 2022, IEP team was aware Student needed college awareness services, however, the IEP team failed to offer college awareness services. The complaint references legal authority for transition services, but does not describe a problem regarding any other type of transition service besides transition services for college awareness.

Furthermore, as discussed in Issue 2, the parties and the Administrative Law Judge clarified Issue 3c at the August 21, 2023, prehearing conference, identifying Issue 3c to involve college awareness transition services only. Student did not object to Issue 3c as stated in the August 21, 2023 Order, and did not object to Issue 3c as stated in the August 21, 2023 Order at the start of the hearing when the parties and the Administrative Law Judge reviewed the issues.

Twin Rivers Unified only consented to litigating the November 9, 2022, IEP's offer of college awareness transition services and not any other transition services. Accordingly, this Decision is limited to a determination of whether Twin Rivers Unified failed to offer college awareness transition services at the November 9, 2022, IEP team meeting.

The IEP must contain statements of the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) Special education is instruction specially designed to meet the unique needs of a student with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the student in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [in California, related services are also called designated instruction and services].) A one-to-one aide is a type of supplementary aid and service. (D.R. v. Redondo Beach Unified School District (9th Cir. 2022) 56 F.4th 636, 646; 34 C.F.R. § 300.42.) The IEP must show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.)

ISSUE 3a: BEHAVIOR INTERVENTION SERVICES

The evidence established that Student did not require behavior intervention services at the time of the November 9, 2022, IEP team meeting. As discussed in Issue 2a, Student had no behaviors that impeded his learning or the learning of others to warrant a behavior goal, and therefore, behavior intervention services were not necessary when the IEP team met on November 9, 2022. Shea and Kumar testified persuasively that Student was easily redirected. Student failed to establish his preoccupations with water bottles, and with time and schedule impeded his learning or the learning of others. Furthermore, Student had no history of aggression and disruption at Twin Rivers Unified when the IEP team met on November 9, 2022. Student offered no testimony or documentary evidence of any problem behaviors in school from the start of the 2022-2023 school year, through November 9, 2022, that required behavior intervention services.

The evidence established Student's behavior did not impede his learning, did not interfere with the learning of his peers, and was not an area of need at the time of the November 9, 2022, IEP team meeting. Therefore, Student did not require behavior intervention services at that time. Accordingly, Student failed to prove by a preponderance of the evidence Twin Rivers Unified denied him a FAPE at the November 9, 2022, IEP team meeting by failing to offer behavior intervention services. Twin Rivers Unified prevailed on Issue 3a.

ISSUE 3b: SUFFICIENT SPEECH AND LANGUAGE SERVICES

The evidence established Twin Rivers Unified offered sufficient speech and language services in the November 9, 2022, IEP. Student's expressive and receptive language skills were among the areas of need identified by the November 9, 2022, IEP

team. The IEP offered two goals to address those needs. A speech and language pathologist was tasked with implementing those goals. The IEP offered 30 minutes a week of speech and language services in a group setting during the regular school year, and 15 minutes a week during extended school year, in an individual and group setting to support those goals.

None of the 12 witnesses at hearing opined, nor did any of the documentary evidence establish, that Student required more speech and language service minutes to make meaningful progress towards his communication goals. Student also failed to offer testimony or documentary evidence that Student required the speech and language services to be delivered in a manner other than what was offered in the November 9, 2022, IEP. Accordingly, Student failed to prove by a preponderance of the evidence Twin Rivers Unified denied him a FAPE by failing to offer sufficient speech and language services at the November 9, 2022, IEP team meeting. Twin Rivers Unified prevailed on Issue 3b.

ISSUE 3c: COLLEGE AWARENESS TRANSITION SERVICES

Twin Rivers Unified did not fail to offer Student college awareness transition services at the November 9, 2022, IEP team meeting. As discussed in Issue 2c, the November 9, 2022, IEP offered 1,920 minutes a week of specialized academic instruction and 60 minutes a year of college awareness services to help Student progress towards his postsecondary education and training goal.

Student's complaint contends Student needed college awareness services. Student's own expert contradicted that contention. Imperatore opined that college awareness transition services were not required, and attending college was not a

realistic objective for Student. Nevertheless, Student failed to offer any testimony or documentary evidence that Twin Rivers Unified failed to offer college awareness transition services, or that the college awareness transition services offered were insufficient to enable Student to meet his postsecondary transition goal for college and training. Accordingly, Student failed to prove by a preponderance of the evidence Twin Rivers Unified denied him a FAPE by failing to offer college awareness transition services at the November 9, 2022, IEP team meeting. Twin Rivers Unified prevailed on Issue 3c.

ISSUE 3d: INDIVIDUAL AIDE SERVICES

Student did not require individual aide services at the time of the November 9, 2022, IEP team meeting. Shea and Kumar persuasively testified Student participated and benefited from his classes in the RISE program and in his physical education class without the need for individual aide services. He was easily redirected, worked independently, and did not distract the teacher or his peers from lessons. Student had no anxiety or problem behaviors that required individual aide services. Student offered no testimony or documentary evidence that Student had behaviors or any other needs from the start of the 2022-2023 school year, through November 9, 2022, that required individual aide services in this IEP. Accordingly, Student failed to meet his burden of proving Twin Rivers Unified denied him a FAPE by failing to offer individual aide services at the November 9, 2022, IEP team meeting. Twin Rivers Unified prevailed on Issue 3d.

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ISSUES 4a, 4b, AND 4c: DID TWIN RIVERS UNIFIED FAIL TO ADDRESS AT THE NOVEMBER 19, 2022 IEP TEAM MEETING, STUDENT'S REGRESSION IN SPEECH AND LANGUAGE, MATHEMATICS, AND ENGLISH LANGUAGE ARTS THAT OCCURRED AT THE START OF THE 2022-2023 SCHOOL YEAR?

Student contends Twin Rivers Unified failed to address his regression when the 2022-2023 school year began. Twin Rivers Unified contends it properly addressed Student's propensity for regression in the November 9, 2022, IEP, based on the information available to Twin Rivers Unified at the time.

ISSUES 4a AND 4c: SPEECH AND LANGUAGE AND ENGLISH LANGUAGE ARTS

Student called Parents and nine other witnesses to testify at the hearing, three of which were experts. None of the witnesses testified, and Student offered no documentary evidence, that Student regressed in the areas of speech and language and English language arts at the start of the 2022-2023 school year, through November 9, 2022.

The November 9, 2022, IEP offered two academic goals, one in math as described in Issues 2b, 2c, and 2d, and one for reading fluency and comprehension. The reading goal required Student to demonstrate comprehension skills by making predictions, comparing and contrasting, and distinguishing between cause and effect, and fact versus opinion.

In addition, as discussed in Issue 3c, the November 9, 2022, IEP offered two goals in communication. Student failed to offer any evidence of how the two communication

goals failed to address any regression in Student's speech and language skills. The IEP also offered sufficient speech and language services to enable Student to make meaningful progress towards his communication goals.

Student relied on the testimony of Abbe Irshay, Ed.D., to criticize the IEP's academic goals. Dr. Irshay was a principal for 11 years at elementary and middle schools in another school district. She was experienced in facilitating IEP team meetings as an administrator, but did not hold a special education teaching credential, and had never taught students with disabilities. She never developed academic goals, nor implemented academic goals and services in an IEP. She was not a licensed or credentialed speech and language pathologist, and was not qualified to provide an expert opinion on the appropriateness of communication goals and services.

Dr. Irshay criticized the reading goal in the November 9, 2022, IEP. She opined the goal was inappropriate because it sought to measure too many skills, and the goal should have been separated into more than one goal. However, Dr. Irshay had no knowledge of whether Student's skills in English language arts regressed during the 2022-2023 school year. She offered no testimony as to how any aspect of the November 9, 2022, IEP failed to address any regression in English language arts or communication. Dr. Irshay did not observe or assess Student. Dr. Irshay did not interview Parents or any staff members from Twin Rivers Unified. Accordingly, Dr. Irshay's testimony was not persuasive, and given no weight.

Student failed to offer any evidence of how Twin Rivers Unified failed to assess Student's regression. Student's academic achievement was assessed by Shea as part of the three-year reassessment review that identified Student's present levels of academic performance. Twin Rivers Unified also reviewed available records of Student's past

academic performances as part of Student's reassessment. Therefore, Twin Rivers Unified had information about Student's prior academic skills to compare to his present academic skills to help identify areas of academic need, and areas of regression.

Student offered no explanation as to what other assessments were required to understand Student's academic or communication needs, or how Twin Rivers Unified should have addressed any regression other than offering IEP goals and specialized academic instruction and related services to improve his current academic and functional skills at the time of the November 9, 2022, IEP team meeting.

Student failed to offer evidence of regression during the 2022-2023 school year in speech and language, reading, writing, or any other skills related to English language arts, that Twin Rivers Unified had to account for at the November 9, 2022, IEP team meeting. As a result, Student failed to prove by a preponderance of the evidence, Twin Rivers Unified denied him a FAPE by failing to address his regression in speech and language, and English language arts at the November 9, 2022, IEP team meeting. Twin Rivers Unified prevailed on Issues 4a and 4c.

ISSUE 4b: MATHEMATICS

Twin Rivers Unified did not fail to address Student's regression in mathematics that occurred from the start of the 2022-2023 school year. As discussed in Issue 2a, Student was absent 25 of the first 58 school days, through November 9, 2022. Shea testified Student lost math skills during extended periods of absences. When he returned to school, Shea retaught Student math concepts that he forgot. Those math concepts involved understanding rational numbers and the ability to order rational

numbers from least to greatest, including negative numbers to positive numbers. He also forgot how to subtract decimals, to add money, and to use a multiplication table beyond multiples of six. Student relearned the math concepts Shea retaught.

In addition, the November 9, 2022, IEP offered a math goal as described in Issues 2b, 2c, and 2d. That goal appropriately targeted Student's deficits in various math calculations, including those that Student had to relearn during the early part of the 2022-2023 school year, though November 9, 2022. The IEP also offered 240 minutes a week of specialized academic instruction during the extended school year to address regression over the summer break.

Dr. Irshay similarly criticized the math goal for measuring too many skills. However, Dr. Irshay had no experience implementing and measuring mathematics IEP goals, or any other academic IEP goals. She also offered no opinion of how the math goal failed to address Student's regression in math during the 2022-2023 school year. Accordingly, this criticism by Dr. Irshay was given no weight.

Student regained the mathematic concepts he forgot during his absences, and the November 9, 2022, IEP offered a math goal targeted at those same math skills. Student offered no evidence of how Twin Rivers Unified failed to address Student's regression in mathematics at the November 9, 2022, IEP team meeting. Accordingly, Student failed to prove by a preponderance of the evidence, Twin Rivers Unified denied him a FAPE by failing to address at the November 9, 2022, IEP team meeting, his regression in mathematics that occurred from the start of the 2022-2023 school year. Twin Rivers Unified prevailed on Issue 4b.

ISSUE 5: DID TWIN RIVERS UNIFIED FAIL TO OFFER PARENT TRAINING IN BEHAVIOR AND SPEECH AND LANGUAGE AT THE NOVEMBER 9, 2022, IEP TEAM MEETING?

Student contends Parents required training at home to support Student's behavioral and speech and language needs. Twin Rivers Unified contends Parents did not require training in behavior or speech and language for Student to receive a FAPE.

Related services required to assist a student with exceptional needs to benefit from special education may include parent counseling and training. (Ed. Code, § 56363, subd. (b)(11).) Parent training means assisting a parent in understanding the special needs of the student, providing the parent with information about child development, and helping the parent acquire necessary skills to facilitate the implementation of the student's IEP. (34 C.F.R. § 300.34(c)(8)(i)-(iii).)

Student failed to prove Twin Rivers Unified denied him a FAPE by failing to offer Parents training in behavior or speech and language. Parents did not request training from Twin Rivers Unified at the November 9, 2022, IEP team meeting, or any time in the 2022-2023 school year. In addition, neither Mother nor Father, nor any of the other 10 witnesses, testified that it was necessary for either parent to receive training in behavior or speech and language to understand Student's needs, development, or to acquire necessary skills to facilitate the implementation of Student's IEP. Furthermore, Student offered no documentary evidence to support his contention that Parents required training in behavior and speech and language for Student to receive a FAPE. Accordingly, Student failed to prove by a preponderance of the evidence that

Twin Rivers Unified denied him a FAPE by failing to offer Parents training in behavior and speech and language at the November 9, 2022, IEP team meeting. Twin Rivers Unified prevailed on Issue 5.

ISSUE 6a AND 6b: DID TWIN RIVERS UNIFIED FAIL TO OFFER IN-HOME APPLIED BEHAVIOR ANALYSIS THERAPY SERVICES; AND CLINIC MEETINGS DURING THE 2022-2023 SCHOOL YEAR?

Student contends he required in-home applied behavior analysis therapy services and clinical meetings for the 2022-2023 school year. Twin Rivers Unified contends Student did not require in-home applied behavior analysis therapy services and clinic meetings to receive a FAPE.

In the case of a student whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, strategies, including positive behavioral interventions, and supports to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) Applied behavior analysis is an intensive behavior modification therapy sometimes used for children with autism who have significant behavioral challenges.

Student failed to meet his burden in Issues 6a and 6b. Student failed to offer any evidence by way of testimony or documentation, to support his claim that he required at-home behavior modification services or related clinic meetings in his IEP.

No member of Student's IEP team, including Parents, recommended Twin Rivers Unified provide Student applied behavior analysis therapy or clinical meetings during

the 2022-2023 school year. Furthermore, not one of the 11 witnesses at hearing opined Student required applied behavior analysis therapy, either at home or at school, or clinical meetings, to receive a FAPE.

The evidence failed to establish that Student required in-home applied behavior analysis therapy or clinic meetings to receive a FAPE. Accordingly, Student failed to prove by a preponderance of the evidence that Twin Rivers Unified denied him a FAPE during the 2022-2023 school year, by failing to offer him in-home applied behavior analysis therapy services and clinic meetings. Twin Rivers Unified prevailed on Issues 6a and 6b.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

ISSUE 1:

Twin Rivers Unified did not deny Student a FAPE during the 2022-2023 school year, by failing to assess Student in occupational therapy as part of the three-year reassessment review.

Twin Rivers Unified prevailed on Issue 1.

ISSUES 2a, 2b, 2c, AND 2d:

Twin Rivers Unified did not deny Student a FAPE, by failing to offer adequate IEP goals at the November 9, 2022, IEP team meeting in behavior, career awareness, college awareness, and transition.

Twin Rivers Unified prevailed on Issues 2a, 2b, 2c, and 2d.

ISSUES 3a, 3b, 3c, AND 3d:

Twin Rivers Unified did not deny Student a FAPE during the 2022-2023 school year, by failing to offer special education services at the November 9, 2022, IEP team meeting, to enable Student to receive an educational benefit, specifically behavior intervention services, sufficient speech and language services, college awareness transition services, and individual aide services.

Twin Rivers Unified prevailed on Issues 3a, 3b, 3c, and 3d.

ISSUES 4a, 4b, AND 4c:

Twin Rivers Unified did not deny Student a FAPE during the 2022-2023 school year, by failing to address at the November 9, 2022, IEP team meeting, Student's regression that occurred at the start of the 2022-2023 school year, in speech and language, mathematics, and English language arts.

Twin Rivers Unified prevailed on Issues 4a, 4b, and 4c.

ISSUE 5:

Twin Rivers Unified did not deny Student a FAPE during the 2022-2023 school year, by failing to offer parent training in behavior and speech and language at the November 9, 2022, IEP team meeting.

Twin Rivers Unified prevailed on Issue 5.

ISSUES 6a AND 6b:

Twin Rivers Unified did not deny Student a FAPE during the 2022-2023 school year, by failing to offer in-home applied behavior analysis therapy services and clinic meetings.

Twin Rivers Unified prevailed on Issues 6a and 6b.

ORDER

All of Student's requested relief is denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings