BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020110250
CASE NO. 2020120137

THE CONSOLIDATED MATTERS INVOLVING

PARENTS ON BEHALF OF STUDENT, AND

ROCKLIN UNIFIED SCHOOL DISTRICT.

DECISION

March 24, 2021

On November 9, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Rocklin Unified School District, called Rocklin. On December 2, 2020, Rocklin filed a due process hearing request, naming Parents on behalf of Student. On December 10, 2020, OAH issued an order consolidating the cases. On December 22, 2020, OAH granted Student's request for a continuance. Administrative Law Judge Cynthia Fritz, called ALJ, heard this matter by videoconference on February 3, 4, 5, 8, 9, and 10, 2021.

Attorneys Rick Ruderman and Lindsay Whyte represented Student. One of Student's parents, called Parent, attended all hearing days on Student's behalf.

Attorneys Marcy Gutierrez and Tilman Heyer represented Rocklin. Stacy Barsdale, Rocklin's Special Education Director, attended all hearing days on Rocklin's behalf.

At the parties' request, OAH continued the matter to March 1, 2021, for written closing briefs. The parties filed their closing briefs, the record was closed, and the matter was submitted on March 1, 2021.

PRELIMINARY MATTERS

On January 28, 2021, Student filed a motion to withdraw Student's issue two, subsection (d), and amend the proposed resolutions. The same day, Rocklin opposed amending Student's proposed resolutions. On February 2, 2021, the parties filed a stipulated motion to: (1) withdraw Student's issue one; (2) change the case presentation order; and (3) clarify Student's remaining issues.

The first hearing day began with preliminary matters, including the ALJ hearing motions and clarifying the issues as stated in the Order Following Prehearing Conference, dated January 22, 2021. Student's request to withdraw Student's issue two, subsection (d), was unopposed by Rocklin and granted. The parties' requests to withdraw Student's issue one and allow Rocklin to present it's case-in-chief first followed by Student's case-in-chief, were also granted. Additionally, Student made new requests to withdraw Student's issue two, subsections (b) and (c), which were unopposed by Rocklin and granted.

The ALJ clarified Student's remaining issues. Student's issue two, subsections (e), (f), and (i), remained as stated in the Order Following Prehearing Conference. The ALJ revised Student's issue two, subsections (g) and (h), with two revisions without

objection. Rocklin, however, opposed the clarification to issue two, subsection (a). In the Order Following Prehearing Conference, Student's issue two, subsection (a), stated: "Did Rocklin deny Student a FAPE for the 2020-2021 school year through the date of thehearing, by: failing to convene an IEP meeting to discuss [Student's] placement and services during school closures." The parties requested in their stipulated motion that issue two, subsection (a), be clarified to state [Did Rocklin deny Student a FAPE for the 2020-2021 school year through the date of the hearing] "by failing to develop an appropriate IEP for remote learning." Rocklin denied that it agreed to this clarification and opposed it as an amendment to Student's complaint. The undersigned ALJ denied the request to clarify Student's issue two, subsection (a), and deemed the request as an amendment without proper notice to Rocklin.

Student then requested to continue the hearing for 10 days to allow the change to Student's issue two, subsection (a), and to give Rocklin notice of it. Rocklin opposed the motion and it was denied for lack of good cause. Student proceeded to request a withdrawal of Student's remaining issues without prejudice. Rocklin opposed Student's motion to withdraw the remaining issues and argued that it should be with prejudice but did not cite any statute or authority in support of its position. The ALJ tentatively granted Student's motion; however, Rocklin was given the opportunity to brief the matter. On February 4, 2021, Rocklin filed a written opposition to Student's motion to withdraw its remaining issues without prejudice. Student filed a written reply on February 5, 2021.

Rocklin cited California Code of Civil Procedure section 581, an unpublished district court case, and two OAH decisions, in support of its position that Student's case should be dismissed with prejudice. Rocklin's arguments fail. Neither state or federal

special education statutes or regulations, nor the California Administrative Procedures Act, address requests to withdraw complaints, be it before, during, or after the commencement of a due process hearing. However, Code of Civil Procedure, section 581, et seq., addresses such motions in the context of state civil proceedings.

Code of Civil Procedure, section 581, subdivision (b)(1), states that an action may be dismissed "with or without prejudice, upon written request of the plaintiff to the clerk, filed with papers in this case, or by oral or written request to the court at any time before the actual commencement of trial, upon payment of costs, if any." (Code Civ. Proc., § 581, subd. (b)(1).) Section 581, subdivision (c), declares that, "A plaintiff may dismiss his or her complaint, or any cause of actions asserted in it, in its entirety, or as to any defendant or defendants, with or without prejudice prior to the actual commencement of trial." (Code Civ. Proc., § 581, subd. (c).) Section 581, subdivision (e), reads "After the actual commencement of a trial, the court shall dismiss a complaint, or causes of action asserted in it, in its entirety, or as to any defendants, with prejudice, if the plaintiff requests a dismissal, unless all affected parties to the trial consent to dismissal without prejudice or by court order dismissing the same without prejudice on a showing of good cause." (Code Civ. Proc., § 581, subd. (e).) Rocklin argued that Student failed to show good cause, and made the request after the trial commencement, thus, the request should be granted with prejudice.

Here, the facts do not meet the legal criteria for dismissing the matter with prejudice. First, Student established good cause for this request because Student thought Rocklin stipulated to the clarified issues and was first given notice of Rocklin's opposition during preliminary matters on February 3, 2021. Thus, good cause was found. Second, Student requested the withdrawal before opening statements had

commenced. While special education cases commence with the prehearing conference, for most purposes, the Code of Civil Procedure provides a narrower definition of commencement when determining if matters should be dismissed with or without prejudice. Code of Civil Procedure section 581, subdivision (a)(6) states,

> "A trial shall be deemed to actually commence at the beginning of opening statement or argument of any party or his or her counsel, or if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence."

(Code Civ. Proc., § 581, subd. (a)(6).) Rocklin argued that the hearing hadcommenced when the parties went on the record on February 3, 2021. Rocklin's argument was unpersuasive in the context of whether a case can be dismissed with or without prejudice, because neither party began opening statements nor called a witnessor introduced any evidence before Student requested the withdrawal of Student's remaining issues.

Rocklin cited the unpublished decision *Levina v. San Luis Coast Unified School District* (C.D. Cal., January 5, 2006, No. CV05-6586-JFW), [2006 WL 8448829] [nonpub. opn.] to support the proposition that Student's case should be dismissed with prejudice. In that case, the administrative law judge granted Student's request to dismiss the matter without prejudice because the request was made during issue clarification and before commencement of opening statements. Thus, the court reasoned that the request was made prior to the actual hearing commencement. (*Id.* at p. 3.) Here, Student requested the withdrawal during issue clarification and before opening statements. Thus, Rocklin's cited case supports granting a dismissal without prejudice in this matter.

Additionally, Rocklin cites two OAH cases in support of its contention that Student's request to withdraw its case should be with prejudice. OAH decisions, however, are not binding authority. (Cal. Code Regs., titl. 5 § 3085.) Even if they were, the decisions cited by Rocklin are distinguishable. In *Parent on Behalf of Student v. Los Angeles Unified School District*, (2015) OAH Case No. 2015060909 [referring to *Los Angeles Unified School District v. Parent on Behalf of Student* (2015) OAH Case No. 2015040570], the school district requested to withdraw its due process hearing requestafter hearing completion but before final briefs were submitted. The administrative law judge in that matter granted the request with prejudice because the hearing had commenced, and the testimonial evidence was concluded before the district's withdrawal request. In the second case, *Parent on Behalf of Student v. San Diego Unified School District/ San Diego Unified School District v. Parent on Behalf of Student*(2020), OAH Case Nos. 2020030412/2020030928, Student withdrew an issue in the closing brief, and the administrative law judge dismissed it with prejudice because the request was made after the hearing commenced. This case is distinguishable from Rocklin's cited OAH cases because the request was made during preliminary matters and before opening statement, submission of evidence, and any witnesses being swornor taking the oath. Thus, Student was entitled to withdraw the case without prejudice.

Student established good cause and made the request to withdraw before opening statements. Accordingly, Student's request to withdraw its remaining issues was granted without prejudice. The cases, however, remained consolidated and proceeded on Student's timeline, as stated in the December 10, 2020 consolidation order, for the purpose of the statutory decision timeline.

ROCKLIN'S ISSUE

Did Rocklin's September 2, 2020 individualized education program, called IEP, as amended on October 2, 2020, offer Student a free appropriate public education, called FAPE, such that Rocklin may implement it without parental consent?

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, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education 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 child's identification, assessment, or educational placement, or the provision of a FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); 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, Rocklin bore the burden of proof on the sole issue in this matter. 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).)

At the time of hearing, Student was a 10-year-old third grader, eligible for special education under the disability categories of speech and language and specific learning disability. Student lived with Parents within Rocklin's geographic boundaries at all relevant times.

Student is medically fragile and immunocompromised. Student requires immunosuppressant medication.

ISSUE: DID ROCKLIN'S SEPTEMBER 2, 2020 IEP, AS CONTINUED ON OCTOBER 2, 2020, OFFER STUDENT A FAPE SUCH THAT ROCKLIN MAY IMPLEMENT IT WITHOUT PARENTAL CONSENT?

Rocklin asserted that Student's September 2 and October 2, 2020 IEPs, complied with all procedural and substantive IDEA requirements and offered Student a FAPE. Student maintained that Rocklin failed to (1) make a clear written offer; (2) offer an appropriate placement, health care plan, and nursing services; and (3) develop appropriate measurable goals in all areas of need.

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 (2006.) 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); *see* Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363 subd. (a); 34 C.F.R. §§ 300.320 (2007), 300.321 (2006), and 300.501 (2006).)

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 Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas Coty Sch. Dist. RE-1* (2017) 580 U.S.____[137 S.Ct. 988, 1000] (*Endrew F.*).)

Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39 (2006); Ed. Code, § 56031.) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34 (2006); Ed. Code, § 56363, subd. (a).)

In general, an IEP is a written statement for each child with a disability that is developed with the participation of parents and school personnel that describes the child's needs, and academic and functional goals related to those needs. (20 U.S.C.

§§ 1401(14), 1414(d)(1)(A)(I); Ed. Code, §§ 56032, 56345, subd. (a).) It also includes a statement of special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress on the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).) An IEP is developed, reviewed, and revised based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); 34 C.F.R. § 300.320 (2007); Ed. Code, § 56032.)

There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must decide whether the school district has complied with IDEA procedures. (*Rowley*, *supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs and was reasonably calculated to enable the child to receive educational benefit appropriate in light of the child's circumstances. (*Ibid; Endrew F.*, *supra*, 137 S.Ct.at p. 1000.)

The parties' principal dispute in this matter was placement, and most of the hearing testimony addressed this issue. This Decision, however, does not reach a placement determination. Here, Rocklin failed to meet its burden of proving that it procedurally complied with the IDEA. Thus, Rocklin did not establish that Student's IEP constituted an offer of FAPE. Therefore, a substantive analysis under the two-part FAPE inquiry is not required. (*W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485 (*Target Range*).)

PROCEDURAL COMPLIANCE

ROCKLIN FAILED TO MEET ITS BURDEN OF PROVING THAT IT MADE A CLEAR WRITTEN PLACEMENT OFFER.

Rocklin maintained that it offered Student an in-person learning program at the October 2, 2020 IEP team meeting, and Parent understood it. Thus, Rocklin asserts that the offer was clear. Student argued that the October 2, 2020 IEP document described two different offers in separate sections, specifically, a program of in-person learning and the Rocklin Virtual Campus, making the placement offer ambiguous and confusing.

All IEP's must set forth a formal, specific written offer of placement. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526, (*Union*).) This requirement "should be enforced rigorously" as it creates a clear record to help eliminate factual disputes. (*Ibid.*) It also assists parents in presenting complaints with respect to any matter relating to the educational placement of the child and whether to reject or accept the placement and related services. (*Ibid.*; *J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 459-460.) The district must offer a single, specific program, in the form of a clear, coherent offer which parent could reasonably evaluate and decide whether to accept or reject. (*Glendale Unified Sch. Dist. v. Almasi* (C.D. Cal. 2000) 122 F.Supp.2d 1093, 1107-1108.)

Rocklin convened Student's annual IEP team meeting on September 2, 2020, and continued it to October 2, 2020, to give Rocklin staff the opportunity to collect data to complete Student's progress on goals, present levels of performance, and baseline information. Thus, Rocklin did not offer Student special education placement or services at the September 2, 2020 IEP team meeting.

At that time, Student participated in Rocklin's distance learning program. On March 13, 2020, Rocklin's schools closed due to COVID-19, and students subsequently began distance learning instruction. On June 29, 2020, Rocklin announced a second distance learning model, the Rocklin Virtual Campus, for the 2020-2021 school year. This virtual model continued throughout the 2020-2021 school year, regardless of Rocklin's school sites reopening, while the original distance learning model closed once in-person instruction resumed. On September 4, 2020, Rocklin announced in-person school would begin on September 14, 2020. Parent subsequently signed Student up forthe Rocklin Virtual Campus because Parent did not want Student returning to in-personschool due to Student's medical fragility and immunocompromised condition. Rocklin placed Student on the Rocklin Virtual Campus waiting list.

On October 2, 2020, the continued IEP team meeting convened by videoconference. Rocklin offered special education placement and related services to Student, but the offer was unclear, and Parent and Rocklin did not understand it because the IEP document offered two different placements in separate IEP sections. In the section titled, "OFFER OF FAPE – EDUCATIONAL SETTING," it offered Student a "Regular Classroom/Public Day School." Rocklin IEP team members asserted that this was the placement offered to Student, an in-person learning special day class. Some Rocklin IEP team members conceded, however, that the IEP also offered the Rocklin Virtual Campus to Student in the section titled, "IEP TEAM MEETING NOTES."

The October 2020 IEP team meeting notes described the Rocklin Virtual Campus as an option for families that needed long-term distance learning during COVID-19. Further, the notes stated that during COVID 19, students with medical or at-risk status

may receive education through the Rocklin Virtual Campus. It was undisputed that Student was medically fragile and immunocompromised. Parent voiced concerns about Student returning to in-person school at the IEP team meeting, and Jessica Gilmore, Rocklin's vice principal and program specialist, offered Student the Rocklin Virtual Campus placement starting October 7, 2020. The Rocklin Virtual Campus placement offer was memorialized in the IEP notes. Accordingly, the evidence established that Rocklin offered two contradictory placements to Student.

Parent reasonably believed that the IEP offered placement at the Rocklin Virtual Campus. Although Rocklin discussed both in-person placement and the Rocklin Virtual Campus at the IEP team meeting, the evidence demonstrated that Rocklin offered the Rocklin Virtual Campus with a date certain to begin after Parent expressed concerns over in-person learning due to Student's health. After Rocklin orally offered the Rocklin Virtual Campus, the evidence established that Parent agreed to it, and Rocklin offered to contact Parent later to discuss the program. This is consistent with the IEP team meeting notes.

Conversely, the IEP notes failed to document any discussion about the in-person placement offer contained in an earlier section of the IEP, and Rocklin failed to take the final step in clarifying what was the formal placement offer between the in-person learning offer and the subsequent Rocklin Virtual Campus offer. Consequently, Parent's belief that Student would be provided IEP placement through the Rocklin VirtualCampus was reasonably under these facts.

Further, Parent attended the meeting by phone while other IEP team meeting members participated via a web-based application. At the October 2, 2020 IEP team meeting, the documents were projected on the computer screen such that the Rocklin

team members could see and read the documents, while Parent could listen only. Further Rocklin team members could access the IEP documents through the Rocklin Special Education Information System program, which was not available to Parent Thus,Parent relied solely on the oral discussion during the IEP team meeting, and did not have the benefit of seeing what was actually written into the IEP, and at which section. Had Parent been able to see the documents at the time of the October 2, 2020 IEP, it ispossible that Parent would have been alerted to the contradictory placements offers.

Additionally, Rocklin staff did not have a clear understanding of the placement offer and how the October 2020 IEP would be implemented. At hearing, Gilmore expressed that the IEP could be implemented in the Rocklin Virtual Campus. Melanie Patterson, Rocklin's principal and IEP team member, did not know if the IEP required Student to attend in-person school but stated that all of Rocklin's IEP offers are written like the student is attending school in-person. Jill Hartman believed Student's placement offer was in-person but that the Rocklin Virtual Campus placement was discussed due to Student's health concerns. Stacy Barsdale, Rocklin's special education director, who did not attend the IEP team meetings, stated that Student would be required to attend school in-person if Parent had consented to the IEP. The varying Rocklin staff opinions demonstrated that it did not have a clear understanding of Student's formal placement offer following the October 2020 IEP meeting, despite their contrary assertions, and supported Parent's contention that the placement offer was unclear.

The October 2020 IEP document was unclear on its face as it offered two contradictory placements. As established, both Parent and Rocklin staff did not

understand the placement offer and how it would be implemented. Rocklin had the burden of proving that it offered Student a single, specific program, in the form of a clear, coherent offer for placement. It failed to carry that burden due to the ambiguity of the IEP document itself as well as Parent's and Rocklin's lack of understanding of the formal placement offer. This constituted a procedural violation.

> "The hearing officer shall not base a decision solely on nonsubstantive proceduralerrors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian of the pupil to participate in the formulation process of the individualized education program."

(Ed. Code, § 56505, subd. (j).) Here, the October 2020 IEP document was unclear on its face when it offered two different placements creating confusion for Parent. Under these circumstances, Parent was unable to fully evaluate the ambiguous offer and accept or reject it. Thus, it interfered with Parent's opportunity to participate in the IEP formulation process.

ROCKLIN FAILED TO MEET ITS BURDEN OF PROVING THAT IT MADE A CLEAR WRITTEN OCCUPATIONAL THERAPY SERVICE OFFER.

Rocklin maintained that its occupational therapy services offer was clear, and Parent understood it. Student asserted that the offer was ambiguous because it did not specify how the occupational therapy services would be provided to Student. The IDEA requires an IEP to include a statement of special education and related services. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345(a)(4).) It also requires that the IEP set the

anticipated frequency, location, and duration of services. (20 U.S.C. § 1414(d)(1)(A)(VII); 34 C.F.R. § 300.320 (a)(7) (2007); Ed. Code, § 56345(a)(7).) An IEP provides notice to both parties as to what services will be provided to the Student during the period covered by the IEP. (*M.C. v. Antelope Valley Union High Sch. Dist.*(2017) 858 F.3d 1189, 1197.) Insufficiently specific drafting renders the IEP a uselessblueprint for enforcement. (*I.d.* at p. 1199.)

The failure to specify the delivery model of the services is a procedural violation of the IDEA, because it does not commit to a means for providing the services, such as individual or small group services. (*Tamalpais Union High Sch. Dist. v. D.W.* (N.D.Cal 2017) 271 F.Supp.3d. 1152, 1160-1161.) Such a violation would result in a denial of FAPE if it impeded the child's right to a FAPE or parents' opportunity to participate in the IEP decision-making process or deprived the child of educational benefit. (20 U.S.C. § 1415(f)(1)(E)(ii); Ed. Code, § 56505, subd. (f)(2), see *Target Range*, *supra*, 960 F.2d at p. 1483; see S.*H. v. Mount Diablo Unified Sch. Dist.* (N.D. Cal. 2017) 263 F.Supp.3d 746, 769[denial of FAPE by failing to specify whether services were group or individual].)

Here, Rocklin offered 60 minutes monthly of group occupational therapy services and stated that it should be delivered "in a consultative, collaborative, or direct manner." Danielle Covell, Rocklin's occupational therapist, established that the occupational therapist would make the decision as to how much direct, consult, or collaborative services to provide once the therapist began to work with Student. Parent would then need to contact Rocklin to determine what type of occupational therapy services Student would receive. Thus, the occupational therapy services offer allowed Rocklin to decide how it would provide it outside of the IEP team meeting process.

Rocklin, however, argued in its closing brief that the occupational therapy service offer was clear for a variety of reasons, all of which fail. Rocklin claimed because it used the same wording in Student's 2019 and 2020 IEPs, Parent could understand how services would be provided by virtue of the provisions over the past year. Yet, this argument presupposes that Student is static, and Rocklin would continue to provide the identical occupational therapy services. This idea directly defies the IDEA's proposition that related services are individually designed to provide educational benefit reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Rowley*, *supra,* 458 U.S. at pp. 201-204; *Endrew F.*, *supra*, 137 S.Ct. at p. 1000.). Thus, Rocklin's argument is unconvincing.

Rocklin asserted Parent understood the current offer of services because Student has filed two OAH cases against Rocklin and entered into a settlement in one case agreeing to modify the occupational therapy services provision. Thus, Rocklin maintained if Parent contested it, Parent understood it. Yet, the fact that the parties are currently in litigation and have been in past litigation points to Rocklin's flawed reasoning. One of the reasons the IDEA requires a clear written offer is to avoid these precise situations. The requirement of a formal, written offer creates a clear record so that the parties may eliminate troublesome factual disputes many years later about what was offered. (*Union, supra* 15 F.3d at p. 1525.) Here, the prior settlement agreement between the parties involved Student's 2019 IEP offer with the identical occupational therapy language. The settlement agreement specified that Student would receive direct occupational therapy services, thus clearing up the IEP ambiguity. Therefore, the evidence does not support Rocklin's conclusion that the occupational therapy services offer was clear.

Finally, Rocklin cites OAH case, *Student v. Travis Unified School District* (2017) OAH Case No. Case No. 2016071059, supporting its argument that exact specificity is not required, because OAH found a similarly worded offer to be sufficiently clear. However, in that matter, the administrative law judge did not find the language to be sufficiently clear. Instead, it was determined that there was no denial of FAPE because the procedural violation did not impede the parent's ability to decide whether to acceptthe school district's offer of FAPE. Thus, this argument is equally ineffective.

Here, the language "delivered in a consultative, collaborative, or direct manner" gives the ultimate decision-making authority to the therapist alone, outside of the IEP process. Under these circumstances, the therapist had complete control regarding whether Student would receive all collaborative, consultation, or direct occupational therapy services, none of the other two, or a combination of some or all three, with no ability for Parent to weigh in before deciding to accept or reject the offer.

The language also does not give specific notice of the services Rocklin is committed to provide Student since the offer allows for three different delivery mechanisms. Additionally, the language precludes Parent from enforcing Student's services because there is no way to know what Student is specifically being offered. Thus, the language is too vague to permit Parent to understand the nature of the services. Accordingly, Rocklin failed to meet its burden of proving that the occupational therapy services offer was clear. This constituted a procedural violation.

Further, the procedural violation interfered with Parent's ability to participate in the formulation of the IEP. Rocklin admitted that the delivery service method would be determined outside of the IEP process. Thus, Rocklin's strategy interfered with Parent's

ability to ask questions, express concerns, accept or reject the offer, and enforce it. For these reasons, the unclear occupational therapy services offer interfered with Parent's ability to participate in the IEP formulation process.

Rocklin failed to demonstrate that it procedurally complied with the IDEA regarding clear written placement and occupational therapy services offers to Student, each which separately interfered with Parent's opportunity to participate in the IEP formulation process. Accordingly, Rocklin failed to meet its burden of proving that it offered Student a FAPE, and no further analysis is required concerning substantive IDEA compliance. (*Target Range*, *supra*, 960 F.2d at p. 1485.)

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.

Rocklin failed to meet its burden in proving that the September 2 and October 2, 2020 IEPs provided Student a FAPE. Student prevailed on the sole issue in this case.

ORDER

Rocklin Unified School District may not implement the September 2, 2020 and October 2, 2020 IEPs without parental consent.

RIGHT TO APPEAL THIS DECISION

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

/s/

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings