

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020100158

PARENTS ON BEHALF OF STUDENT,

v.

COMMUNITY ROOTS ACADEMY CHARTER SCHOOL

DECISION

MAY 26, 2021

On September 1, 2020, Community Roots Academy filed a Due Process Hearing Request with the Office of Administrative Hearings, called OAH, naming Parents on behalf of Student. On October 2, 2020, Parents on Behalf of Student filed a Due Process Hearing Request with OAH, naming Community Roots Academy. On October 9, 2020, OAH consolidated Community Roots Academy's Case and Student's Case. On February 18, 2021, OAH granted Student's request to amend his complaint. On March 23, 2021, Community Roots Academy withdrew its complaint.

Administrative Law Judge Paul H. Kamoroff heard the remaining matter, Student's Case, by videoconference in California on April 13, 14, 15, 20, 21, 22, 27, 28, and 29, 2021.

Attorneys Meldie M. Moore and Christina Maranhao represented Student. Student's Mother attended the hearing. Student did not attend the hearing. Attorneys Cynthia A. Yount and Maryela Martinez represented Community Roots Academy. Jeremy Cavallaro, Community Roots Academy's Executive Director, and Michelle Smallwood, Community Roots Academy's Middle School Director, attended the hearing at alternating times.

At the parties' request, OAH continued the matter to May 13, 2021, for written closing briefs. The record was closed and the matter was submitted on May 13, 2021.

ISSUES

During the hearing, Student withdrew with prejudice an issue alleging that Community Roots Academy failed to assess Student in the area of educationally related mental health services. The remaining issues have been reorganized for clarity. The ALJ has authority to renumber and redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

1. Did Community Roots Academy deny Student a free appropriate public education, called FAPE, by offering placement in another school district?
2. Did Community Roots Academy deny Student a FAPE by requiring Student to disenroll and seek FAPE from another school district?

3. Did Community Roots Academy deny Student a FAPE by failing to offer appropriate behavior intervention services and placement in the least restrictive environments, in the individualized education programs, called IEPs, dated May 1, 2020, November 20, 2020, December 9, 2020, and January 15, 2021?
4. Did Community Roots Academy deny Student a FAPE by failing to appropriately assess Student in the area of assistive technology?
5. Did Community Roots Academy deny Student a FAPE by failing provide Student's records?
6. Did Community Roots Academy deny Student a FAPE by failing to provide supports, services, and accommodations included in Student's IEPs during the statutory timeframe?
7. Did Community Roots Academy deny Student a FAPE during the 2019-2020 school year by enrolling him in independent study?
8. Did Community Roots Academy deny Student a FAPE by prohibiting Student's expert to observe Student and interview Student's teachers?

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 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 (2006); Ed. Code, §§ 56501, 56502, 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).) As the petitioner, Student had the burden of proof for the issues heard for 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).)

CHARTER SCHOOLS

Children with disabilities who attend public charter schools and their parents retain all rights under the IDEA and its regulations. (34 C.F.R. § 300.209(a).) A charter school that is a local educational agency must serve children with disabilities in the same manner that a local educational agency serves children with disabilities in other public schools. (*Id.*, subd. (b)(1)(i); Ed. Code, § 47604.)

Placement decisions must be made on an individual basis. If a charter school is its own local educational agency and retains responsibility under State law for ensuring that the requirements of Part B of the IDEA are met, it is required to make available the range of placement options needed by the children with disabilities enrolled in the charter school. (34 C.F.R. §300.115; Ed. Code, §§ 56026.3 and 47604.)

Although charter schools have been granted independence to develop unique educational models, the California Legislature did not intend that the charter school statutes override or conflict with special education law. Education Code section 47646, subdivision (a), imposes on the chartering local educational agency the duty to ensure that “all children with disabilities enrolled in the charter school receive special education ... in a manner that is consistent with their individualized education program” and is in compliance with the IDEA and its regulations. (*Ibid.*)

COMMUNITY ROOTS ACADEMY

Community Roots Academy is a kindergarten through eighth grade charter school located in Orange County, California. Community Roots Academy is an independent charter school. On this basis, Community Roots Academy is a nonprofit public benefit corporation and therefore is designated as a local educational agency, responsible for providing special education and related services to its students. (Ed. Code, § 56026.3; Ed. Code, § 47604.)

Community Roots Academy had a single campus, where it served 800 students, including numerous students with IEPs. Each class at Community Roots Academy had approximately 30 pupils. Community Roots Academy used a unique educational model, called projects-based Learning. Projects-based Learning required cooperative learning

groups in a regular education setting. Consequently, Community Roots Academy did not have special day classes or offer any classes smaller and more structured than its projects-based learning regular education classes.

Community Roots Academy was part of the El Dorado Charter Special Education Local Plan Area, called SELPA. The SELPA was not the responsible local educational agency for Student and did not operate special education programs. Community Roots Academy did not contract with other local educational agencies to provide special education services or placements to its students.

THE STUDENT

Student was 12 years old and in seventh grade at the time of the hearing. Student was enrolled in Community Roots Academy Charter School at all relevant times. Until December 2019, Student was eligible for special education and related services under the eligibility categories emotional disturbance and autism. Beginning December 17, 2019, Student was eligible for special education and related services under the eligibility categories other health impairment – due to attention deficit hyperactivity disorder, and specific learning disorder, due to delays in writing.

Attention deficit hyperactivity disorder is a neurodevelopmental disorder characterized by difficulties with executive functions that cause attention deficits, hyperactivity, or impulsiveness. Specific learning disability is a learning disorder characterized by a severe discrepancy between ability and achievement to a degree that the pupil cannot be adequately served in regular classes without special education or related services. As a result of his disabilities, Student had difficulty with writing, attention, and social interactions.

Student was bright with average to superior cognitive abilities. He normally received high grades in each class. However, Student was delayed in writing and demonstrated behavior problems during his English Language Arts class, including non-compliance and eloping from class. Student did not demonstrate behavior problems during other classes.

During the 2018-2019 regular school year, the school year prior to the time frame in dispute, Community Roots Academy placed Student in a regular education, fifth-grade class, with specialized academic instruction, speech and language services, and behavior intervention services. Student had frequent absences and demonstrated behavior problems in his English class during fifth grade.

As a result of Student's absences and behavior problems, Community Roots Academy reduced by half Student's school day for the 2019-2020 school year, Student's sixth grade. Community Roots Academy also eliminated Student's speech and language and behavior intervention services, and reduced his specialized academic instruction during sixth grade. Each morning, Student attended English, Math, and Physical Education at school. Community Roots Academy denied Student access to the campus for the remainder of the school day, including lunch and lunch-recess. Following the morning classes, Community Roots Academy placed Student on independent study for Science and History classes and eliminated Advisory and Elective classes offered to other pupils.

Beginning in May 2020, Community Roots Academy offered Student placement in the Therapeutic Behavior Intervention Classroom, a highly structured and self-contained special day class, called behavior classroom, in the Capistrano Unified School District, a separate local educational agency. Community Roots Academy offered this

placement in IEPs dated May 1, 2020, November 20, 2020, December 9, 2020, and January 15, 2021. Parents declined this placement offer and, on September 1, 2020, Community Roots Academy filed a complaint with OAH to place Student in the behavior classroom in Capistrano Unified School District without Parents' consent.

In a March 19, 2021 IEP, Community Roots Academy re-offered Student placement in regular education at Community Roots Academy. Parents consented to the IEP, and Community Roots Academy withdrew its OAH complaint.

ISSUES 1 AND 2: DID COMMUNITY ROOTS ACADEMY DENY STUDENT A FAPE BY OFFERING PLACEMENT IN ANOTHER SCHOOL DISTRICT, AND REQUIRING THAT STUDENT DISENROLL FROM COMMUNITY ROOTS ACADEMY?

Student complains that Community Roots Academy denied him a FAPE by offering placement in another school district. Student complains this offer denied him a FAPE because it required that he disenroll from Community Roots Academy and enroll in another local educational agency, Capistrano Unified School District, to obtain a FAPE. Community Roots Academy contends that, as a charter school, it may offer placements in adjacent school districts.

A charter school shall not encourage a pupil currently attending the charter school to disenroll from the charter school or transfer to another school for any reason. (Ed. Code, § 47605, subd. (e)(4)(C).) A charter school that is a local educational agency is responsible under State law for ensuring that the requirements of Part B of the IDEA are met, and is required to make available the range of placement options needed by the children with disabilities enrolled in the charter school. (34 C.F.R. § 300.115.)

In instances where the charter school that is a local educational agency does not currently offer an appropriate setting (e.g., an out-of-regular-education setting), the charter school that is a local educational agency must arrange to provide the services directly or, consistent with the applicable State charter school law, may choose to contract with another local educational agency to provide the necessary services and placement, at no cost to the parents. (34 C.F.R. §§ 300.114-300.116.)

By the above authorities, Community Roots Academy was prohibited from offering placement in another local educational agency if it required a student to disenroll from Community Roots Academy. If Community Roots Academy did not have an appropriate setting or service, it could contract with another local educational agency, nonpublic school, or nonpublic agency to provide an appropriate setting or service required to provide that student a FAPE.

On May 1, 2020, Community Roots Academy held an IEP team meeting for Student. As part of the IEP offer, Community Roots Academy offered Student placement in the behavior classroom located in Capistrano Unified School District. The placement was to begin June 11, 2020, following the last day of the 2019-2020 regular school year, for the 2020-2021 school year. During the IEP team meeting, Community Roots Academy co-founder and Executive Director of Education Jeremy Cavallaro described to Parent that it was necessary for Student to disenroll from Community Roots Academy and to enroll in Capistrano Unified School District to effectuate the placement. There were no representatives from Capistrano Unified School District at the IEP team meeting.

Following the May 1, 2020 IEP offer, Community Roots Academy repeated this offer of placement in IEPs dated November 20, 2020, December 9, 2020, and

January 15, 2021. There were no representatives from Capistrano Unified School District at any of these IEP team meetings, or during any meeting held for Student.

Parents declined the IEP offer for placement in Capistrano Unified School District. On September 1, 2020, Community Roots Academy filed a complaint with OAH in Case Number 2020090033, to place Student in the behavior classroom in Capistrano Unified School District without Parents' consent.

Jeremy Cavallaro testified in support of the IEP offers. Cavallaro co-founded Community Roots Academy in 2009 and closely managed the school as its Executive Director of Education. Prior to founding Community Roots Academy, he was a principal and teacher at private, sectarian schools. Cavallaro did not have experience or credentialing in special education or prior experience in publicly funded schools. Cavallaro was not familiar with El Dorado Charter SELPA's special education rules and policies that would normally direct local educational agencies within the SELPA. Cavallaro's testimony was inconsistent. He was sometimes forthright and sometimes misleading. At times, he demonstrated a serious lack of understanding of special education laws and processes. For these reasons, diminished weight was given to his testimony.

Cavallaro attended the May 1, 2020 IEP team meeting when Community Roots Academy first offered Student placement in the behavior classroom in Capistrano Unified School District. During the meeting he described to Parent that Community Roots Academy did not have a contractual relationship with Capistrano Unified School District. Because there was no contractual relationship, Cavallaro correctly described that, because the behavior classroom was a program in the Capistrano Unified School District, it was not possible for Student to remain enrolled at Community Roots

Academy. It was therefore necessary for Student to disenroll from Community Roots Academy and to enroll at Capistrano Unified School District, where he would have a new IEP team. Cavallaro opined that, if Student performed well in Capistrano's behavior classroom, he would consider allowing Student to re-enroll at Community Roots Academy in the future.

Following the May 2020 IEP team meeting, Community Roots Academy's Special Education Programs Coordinator Elizabeth Burke, Ed.D., told Parent that Student could not continue attending Community Roots Academy following the summer break because Cavallaro was adamant that Student no longer attend the charter school.

During hearing, Cavallaro confirmed there was no contractual relationship between Community Roots Academy and Capistrano Unified School District, or any local educational agency, regarding the provision of special education programs. Community Roots Academy did not pay for seats in other school districts or have memorandums of understanding with any other local educational agency regarding special education.

Prior to August 2018, Community Roots Academy was part of the Capistrano Unified School District SELPA and its students received special education and related services through Capistrano Unified School District. Cavallaro felt restricted by Capistrano Unified School District's provision of special education and related services. He was not familiar with the provision of special education in public schools and believed that Capistrano Unified School District's services did not mesh well with the projects-based learning teaching modality used at Community Roots Academy. Cavallaro elected to remove Community Roots Academy from the Capistrano Unified School District SELPA and join the El Dorado Charter School SELPA, where he believed he had more freedom to select special education programs. Cavallaro erroneously

believed that each charter school could determine their own manner of providing special education and related services. For example, Community Roots Academy did not offer special day classes, resource classes, home-hospital instruction, or individual aides during class, regardless of a child's individual needs.

Cavallaro inconsistently testified that Community Roots Academy did not require Student to disenroll from Community Roots Academy. Yet, he later admitted that Student was required to disenroll from Community Roots Academy and enroll in Capistrano Unified School District to attend Capistrano's behavior classroom. Student could not be concurrently enrolled in two local educational agencies.

Cavallaro mistakenly believed that if Student enrolled at Capistrano Unified School District, Capistrano would immediately place Student into the behavior classroom, despite Student having only attended regular education classes at Community Roots Academy. Cavallaro also mistakenly believed that Capistrano Unified School District would forego the 30-day IEP team meeting required for transferring special education students because of a special relationship he had cultivated with Capistrano Unified School District.

Cavallaro testified that, based upon his special relationship with Capistrano Unified School District, Community Roots Academy had placed three of its students directly into Capistrano's behavior classroom within the past two years, one as recently as two weeks prior to the hearing. He initially referred to Heidi Harvey, the Executive Director of Special Education at Capistrano Unified School District, as his contact within Capistrano Unified School District. Following rebuttal testimony by Harvey, Cavallaro instead referred to Capistrano Unified School District school principals as his personal contacts but could not recall the names of the principals or how those relationships had

transpired. Cavallaro's testimony regarding his special relationship with principals or administrators at Capistrano Unified School District was implausible and impeached by more persuasive evidence, including Harvey's testimony.

Dr. Burke also testified in support of Community Roots Academy's May 1, 2020, November 20, 2020, December 9, 2020, and January 15, 2021 IEP offers, specifically, placement at Capistrano's behavior classroom. Dr. Burke began working at Community Roots Academy in August 2018 as an instructional aide, referred to at Community Roots Academy as an educational specialist. She obtained her Educational Doctorate degree in May 2020. Since the beginning of the 2020-2021 school year, Dr. Burke was responsible for overseeing all special education programs at Community Roots Academy. Dr. Burke was not trained or credentialed as a special education administrator and was overwhelmed by the position. Dr. Burke's testimony was disjointed and inconsistent with a preponderance of evidence submitted for this matter, including IEP documents and IEP team meeting transcripts. Like Cavallaro, Dr. Burke demonstrated a serious lack of understanding of fundamental special education laws and processes. For these reasons, little weight was given to Dr. Burke's testimony.

Dr. Burke attended the May 1, 2020 IEP team meeting when Community Roots Academy initially offered Student placement in Capistrano's behavior classroom. During this meeting, it was clear that Student had to disenroll from Community Roots Academy to attend Capistrano's behavior classroom, as described by Cavallaro during the meeting. Dr. Burke also attended the November 20, 2020, December 9, 2020, and January 15, 2021 IEP team meetings, when Community Roots Academy again offered the Capistrano Unified School District's behavior classroom to Student as his placement. Nonetheless, Dr. Burke erroneously testified that Student was not required to disenroll from Community Roots Academy. Dr. Burke was not familiar with the IEP documents

and did not understand that the IEPs offered placement in the behavior classroom at Capistrano Unified School District. Rather, Dr. Burke mistakenly believed the IEPs “consider[ed] a continuum of placements.” Dr. Burke repeatedly referred to the May 1, 2020 IEP, as the IEP where the IEP team first considered or offered a continuum of placements. Dr. Burke did not know that the IEPs offered a specific placement, the behavior classroom in Capistrano Unified School District. Dr. Burke did not understand the meaning of “a continuum of placements,” which described the requirement that an IEP team consider a range of placement options based on the child’s unique needs, at each IEP team meeting. A charter school that is a local educational agency is required to make available a continuum of alternative placements if necessary to implement the child’s IEP. (34 C.F.R. § 300.115(b)(1).)

Community Roots Academy did not normally consider a continuum of placements during IEP team meetings because regular education was required for projects-based learning. According to Dr. Burke, Student’s May 1, 2020 IEP was unique because the IEP team considered a placement outside of regular education, which she mistakenly referred to as the charter school’s consideration of a continuum of placements.

Dr. Burke was frustrated because Parent would not sign a release of information authorization for Community Roots Academy to send Student’s school records to Capistrano Unified School District for review. Similarly, Community Roots Academy witnesses Michelle Smallwood, a middle school principal, and Suzy D’Souza, a school psychologist, were frustrated by Parent’s refusal to sign a release of information authorization for Community Roots Academy to send Student’s records for Capistrano Unified School District to review. Each witness mistakenly believed that Parent had to sign the release for disclosure of information to Capistrano Unified School District so

that Community Roots Academy could consider a continuum of placements for Student. These witnesses believed that such consideration was delayed by Parent's refusal to sign a release of information authorization form. These witnesses overlooked that the IEPs offered a specific placement, the behavior classroom, and did not consider alternative placements, such as at a nonpublic school, which may require a parental release to share school records. However, unlike a nonpublic school, Capistrano Unified School District would not review school records of a student enrolled in a different local educational agency, regardless of a parent's release of information authorization.

Dr. Burke mistakenly testified that, as a charter school, Community Roots Academy could offer placement in any adjacent public-school districts. Dr. Burke was not aware of any contracts between Community Roots Academy and any other local educational agency, including Capistrano Unified School District. However, Dr. Burke mistakenly believed that Cavallaro had a private relationship with Capistrano Unified School District that permitted Community Roots Academy to place its students directly into the behavior classroom. Dr. Burke could not personally confirm this relationship.

Dr. Burke was not familiar with the process for Students who have IEPs to transfer between local educational agencies. Dr. Burke mistakenly believed that Capistrano Unified School District would immediately place a transferring Community Roots Academy student into the behavior classroom, even when the student's last placement was regular education. Dr. Burke was not familiar with a receiving local educational agency's obligation to provide the last agreed upon and implemented IEP, until holding a 30-day IEP team meeting, where the local educational agency would then determine and make a FAPE offer or propose assessments to obtain additional information. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1).)

Dr. Burke was flustered and incoherent when questioned what steps Community Roots Academy would have taken to implement the IEPs if Parent had consented to placement in the behavior classroom in Capistrano Unified School District. Dr. Burke could not answer the question and demonstrated that Community Roots Academy would not have been able to implement the May, November, and December 2020, or January 2021 IEP, had Parent consented to placement in the behavior classroom in Capistrano Unified School District. Community Roots Academy did not have the ability to offer or implement a placement in Capistrano Unified School District.

Heidi Harvey testified during the hearing. Harvey was the Executive Director of Special Education for Capistrano Unified School District and had extensive experience in special education administration. Harvey had experience and knowledge regarding special education programs, laws, and processes, and Capistrano's behavior classroom. She was a persuasive and credible witness.

Harvey confirmed there was no formal or informal relationship between Capistrano Unified School District and Community Roots Academy. They were different local educational agencies in different SELPAs, with no contracts, memorandums of understanding, or special relationships of any kind. Contrary to Cavallaro's testimony, Capistrano Unified School District had never placed a transfer student from Community Roots Academy into Capistrano's behavior classroom. Capistrano Unified School District's behavior classroom was a highly restrictive special day class for students with significant emotional and behavioral problems, including suicidal and homicidal ideation. Placement in the behavior classroom required an extensive process, including months of testing and observation by Capistrano Unified School District IEP team members. Because Community Roots Academy offered only regular education classes, any student transferring from Community Roots Academy would be placed into a

regular education classroom at Capistrano Unified School District for the first 30 days, consistent with that student's last implemented IEP. Had Student enrolled in Capistrano Unified School District, he would have been placed in regular education, consistent with his last agreed upon and implemented IEP.

Contrary to Cavallaro and Dr. Burke's testimony, Capistrano Unified School District did not waive the 30-day IEP team meeting for students transferring from Community Roots Academy. During the first 30 days in regular education, Capistrano Unified School District would convene an IEP team meeting to offer a FAPE. If the Capistrano Unified School District IEP team believed that a student required a more restrictive placement, such as the behavior classroom, it would offer to reassess the student, and then convene again to review the assessments to determine an appropriate placement. Consequently, had Parent consented to the IEP offers from Community Roots Academy, it would not have resulted in Student's immediate placement in the behavior classroom in Capistrano Unified School District.

Finally, contrary to numerous misrepresentations by Cavallaro, Dr. Burke, Smallwood, and D'Souza, Capistrano Unified School District did not request or require a release of information authorization from Parent. Harvey confirmed that Capistrano Unified School District only reviewed a student's school records after the student enrolled in the school district. Capistrano Unified School District did not review records of students who were enrolled in a different local educational agency, regardless if the child's parent signed a release of information authorization. Consequently, Parent did not prevent Community Roots Academy from considering alternative placements, as alleged by its witnesses.

Harvey had several telephone conversations with Cavallaro where she “explicitly” described the foregoing processes to him. Harvey confirmed that no person from Capistrano Unified School District had a formal, informal, or special relationship with Cavallaro or Community Roots Academy. Community Roots Academy failed to impugn Harvey and her testimony was given significant weight.

Evidence overwhelmingly established there was no contractual, formal, or informal relationship between Community Roots Academy and Capistrano Unified School District regarding the provision of special education to Community Roots Academy’s students.

Evidence also overwhelmingly established that Community Roots Academy’s IEP offers of May 1, 2020, November 20, 2020, December 9, 2020, and January 15, 2021, required Student to disenroll from Community Roots Academy and enroll in Capistrano Unified School District, in violation of Education Code section 47605, subdivision (e)(4)(C).

Overwhelming evidence also established that Community Roots Academy would not have been able to implement any of the IEPs, had Parent consented to placement in the behavior classroom operated by Capistrano Unified School District. In sum, the IEPs called for a placement that Community Roots Academy was not lawfully permitted to offer or implement.

In its closing brief, Community Roots Academy did not argue that it had a contractual relationship with Capistrano Unified School District. Rather, Community Roots Academy acknowledged that, pursuant to 34 Code of Federal Regulations part 300.115, as a public agency it must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related

services. The continuum must include alternative placements including but not limited to instruction in regular classes, special classes, special schools, home instruction, nonpublic schools, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with regular class placement.

However, Community Roots Academy misinterprets the foregoing authority to argue that a local educational agency may offer placements in any other public school, including other local educational agencies or SELPAs, without a contract. By this logic, any local educational agency could offer IEP placement and services for any child with a disability in any public school in the state. Community Roots Academy failed to provide any authority to support that argument. Contrary to Community Roots Academy's unfounded argument, educational placement and services for students with disabilities are provided by the responsible local educational agency. The responsible local educational agency may not shirk its responsibility to provide a child with disability a FAPE by offering placement in another local educational agency. (Ed. Code, §§ 56026.3, 56300.) Here, Community Roots Academy was a publicly funded local educational agency with the same obligations held by other public-school districts with respect to the provision of special education and related services. While Capistrano Unified School District was Student's school district of residence, it was not the local educational agency responsible for Student because Student was enrolled in Community Roots Academy independent charter school, a local educational agency. Community Roots Academy was obligated to provide student a FAPE, including contracting with another local educational agency, nonpublic school, and/or nonpublic agency, if necessary to meet Student's unique needs.

In its closing brief, Community Roots Academy repeated its debunked assertions that the process for placement in the behavior classroom in Capistrano Unified School District required Parent to sign a release of information authorization and that Community Roots Academy had previously placed three students into Capistrano's behavior classroom using this same process. As conclusively described by the Executive Director of Special Education at Capistrano Unified School District, Community Roots Academy did not have a contractual or special relationship with Capistrano Unified School District. Therefore, Capistrano Unified School District would not have reviewed Student's school records while Student was enrolled at Community Roots Academy, even if Parent signed a release of information authorization, as that was not part of the process for placement in the behavior classroom. And Community Roots Academy had never placed a student at Capistrano's behavior classroom. Community Roots Academy's written closing argument, which adhered to falsehoods and re-emphasized its educators' and administrators' ignorance of State and federal law regarding special education, greatly undermined Community Roots Academy's overall credibility.

Likewise, Community Roots Academy's argument that placing Student in the behavior classroom at Capistrano Unified School District was analogous to placement at a nonpublic school is without factual or legal merit. As noted above, educational services for students with disabilities are provided by the responsible local educational agency. Local educational agencies may provide these services directly, or in limited circumstances, they may contract with nonpublic schools or nonpublic agencies to provide services. (Ed., Code §§ 56361, subds. (c) & (e), 56363.) A nonpublic school is a private, nonsectarian school that enrolls students with disabilities pursuant to an IEP and is certified by the California Department of Education. (Ed. Code, §§ 56034, 56366.1; Cal. Code Regs, tit. 5, § 3060.) Services provided by a nonpublic school or nonpublic agency

are defined pursuant to Education Code sections 56034 and 56035. These services shall be provided pursuant to Education Code section 56366 and, in accordance with 34 of the Code of Federal Regulations part 300.146, under contract with the local educational agency to provide the appropriate special educational facilities, special education, or designated instruction and services required by the individual with exceptional needs if no appropriate public education program is available. (Ed. Code, § 56365, subd. (a).) Contrary to Community Roots Academy's argument, because there was no contractual relationship between the local educational agencies, a public-school placement, like the behavior classroom in Capistrano Unified School District, is not similar factually or legally to placement in a nonpublic school. The argument is also disingenuous. During the May 1, 2020 IEP team meeting and during the hearing, Cavallaro understood the difference between placing Student at Capistrano Unified School District and a nonpublic school. Cavallaro correctly described that, unlike a nonpublic school, Student had to disenroll from Community Roots Academy and enroll in Capistrano Unified School District, because Student could not be enrolled in two local educational agencies at the same time.

Community Roots Academy's written argument that it was necessary to place Student in Capistrano Unified School District's behavior classroom because it could not replicate a therapeutic program, including "highly trained professionals, working in collaboration to provide the therapeutic setting and programming required by Student" is contrary to Community Roots Academy's obligation, as a publicly funded charter school operating as a local educational agency, to do just that, or to contract with another local educational agency or nonpublic agency if necessary to provide Student a FAPE. (34 C.F.R. § 300.115 (2006); Ed. Code, § 56026.3) Community Roots Academy's

closing brief implicates that it is not able to meet the requirements necessary to operate as an independent charter school. (Ed. Code, § 56026.3.)

Finally, in its closing brief, Community Roots Academy erroneously argued that Student was not required to disenroll from Community Roots Academy and to enroll in Capistrano Unified School District, a different local educational agency. This argument was contrary to overwhelming evidence submitted for this matter and belies a lack of candor to this tribunal.

For the foregoing reasons, a preponderance of evidence showed that Student was denied a FAPE by Community Roots Academy's illusory and illegal offer of placement in a different local educational agency, and by requiring Student to disenroll from Community Roots Academy to attend the placement. Community Roots Academy was not lawfully permitted to offer placement in another local educational agency and was unable to implement the placement, thereby denying Student a FAPE and depriving him of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505(f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23, Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1484 (Target Range School).)

ISSUE 3: DID COMMUNITY ROOTS ACADEMY DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE BEHAVIOR INTERVENTION SERVICES AND PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT, IN THE IEPS DATED MAY 1, 2020, NOVEMBER 20, 2020, DECEMBER 9, 2020, AND JANUARY 15, 2021?

Student asserts that Community Roots Academy denied him a FAPE by failing to provide adequate behavior interventions services and placement in the least restrictive

environment pursuant to IEPs offered for the 2020-2021 school year. Community Roots Academy responds that it offered Student adequate behavior intervention services and placement in the least restrictive environment.

In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, “strategies, including positive behavioral interventions, strategies, and supports to address that behavior.” (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) (2006); Ed. Code, § 56341.1, subd. (b)(1).)

The least restrictive environment, also known as mainstreaming, is an IDEA provision indicating a strong preference for educating disabled children with non-disabled children as much as possible. (Board of Education v. Rowley (1982) 458 U.S. 176, 181, fn. 4 (Rowley) (“The Act requires participating States to educate handicapped children with nonhandicapped children whenever possible.”).) To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate:

1. that children with disabilities are educated with non-disabled peers; and
2. that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a) (2006); Ed Code, § 56031.)

Based upon the foregoing authorities, Community Roots Academy was required to provide behavior strategies, supports, and services in regular education before offering Student a more restrictive environment because of behaviors.

As found herein in Issues 1 and 2, Community Roots Academy's IEP offers of May 1, 2020, November 20, 2020, December 9, 2020, and January 15, 2021, denied Student a FAPE because they offered illusory and illegal placement in a different local educational agency and required Student to disenroll from Community Roots Academy. These IEPs also denied Student a FAPE because they did not offer appropriate behavior interventions and placement in the least restrictive environment.

Student had a history of behavior problems that required behavior intervention services. During the 2018-2019 school year, fifth grade, Student demonstrated elopement, noncompliance, and disruptive behavior. He suffered suspensions and was sometimes sent home early from school as the result of maladaptive behaviors. In significant part, Student's behaviors were triggered by writing and manifested during his English class. Student eloped from English several times weekly but did not leave the school campus and was responsive to redirection. Student also manifested somatic symptoms of pain as the result of anxiety and emotional difficulty, which resulted in frequent absences.

Community Roots Academy assessed Student in the area of behavior in fall 2019. The school selected its behavior supervisor Jeanna Roemisch to conduct the assessment. Roemisch was a Board Certified Behavior Analyst and served as Community Roots Academy behavior supervisor from March 2019 until May 12, 2020. At the time of the hearing, Ms. Roemisch was a behavior specialist for Irvine Unified School District. Roemisch was familiar with Student. She reviewed Student's school records, assessed Student, and observed him inside and outside of classes at Community Roots Academy. During the hearing, Roemisch persuasively testified that Student had moderate behavior problems that could be appropriately addressed with behavior intervention services in regular education classes.

Roemisch conducted a functional behavior assessment of Student over thirty days in October and November 2019. As part of the assessment, Roemisch observed Student during Math and English classes and during unstructured time. In addition, Roemisch reviewed Student's records and interviewed Student's teachers and Parents. Her functional behavior assessment targeted behaviors including non-compliance, elopement, aggression, and blurting out/talking out-of-turn.

Student did not demonstrate any targeted behavior outside of his English class. During English class, Student demonstrated minor elopement, between 0 and 1 time per hour, and moderate non-compliance, between 0-5 time per class. The rates of elopement and non-compliance steadily decreased during the time of Roemisch's observations. Student did not demonstrate aggression or blurting out/talking out-of-turn.

Based upon her functional behavior assessment, Ms. Roemisch developed a behavior intervention plan, dated December 6, 2019. The behavior intervention plan identified writing as a trigger for Student's behavior problems and included positive replacement behaviors, including requesting breaks. The behavior intervention plan called for the on-going collection of behavior data by teachers and staff.

Community Roots Academy convened IEP team meetings for Student on December 6, and 17, 2019. The team reviewed Roemisch's functional behavior assessment and behavior intervention plan, along with academic testing and a psychoeducational reevaluation by school psychologist Mary Zergman. IEP team attendees included Mother, Dr. Burke, Smallwood, Cavallaro, Zergman, Roemisch, Student's English teacher Michelle Voccola, educational specialist Allison Todd, Student's math teacher, and an El Dorado Charter School SELPA representative.

Based upon the psychoeducational reevaluation, Student no longer qualified for special education and related services under the eligibility categories emotional disturbance and autism. Instead, recent testing identified other health impairment due to attention deficit hyperactivity disorder and specific learning disability as areas of eligibility for Student.

Based on cognitive testing, Student had average to superior abilities in verbal comprehension, visual processing, fluid reasoning, and phonological processing. Student was at or above grade level in every academic area but writing. Student met seven annual goals and had progressed towards the remaining four goals. Student enjoyed reading, playing sports, and technology. He coded as a hobby. Student enjoyed group work in areas of strength, such as math, but preferred to work individually in writing, an area of weakness. Student made progress in every area, including social-emotional, behavior, and academics, with the exception of writing, where he had "tremendous difficulty." Writing was a non-preferred task that Student resisted due to difficulty and negative experiences. Student was highly motivated and was embarrassed by having his peers see that he was delayed in writing during projects-based learning group activities. Nonetheless, the IEP did not offer assistive technology to reduce writing demands, and an assistive technology assessment agreed to in September 2019 had not begun.

The team developed nine new goals, including two behavior, six writing, and one social-emotional goal. To meet the goals, the IEP team offered Student accommodations, a writing modification, 495 minutes weekly of specialized academic instruction, 120 minutes monthly of individual counseling, and 30 minutes weekly of Parent counseling. The specialized academic instruction included a group push-in service during Student's English class, daily, and math class, one time per week. The

school's education specialist Todd provided this service by teaching ten students with IEPs, including Student, in collaboration with the regular education teachers during regular education classes. Specialized Academic instruction also included two, 30-minute writing sessions each week.

Contrary to Roemisch's belief that Student required behavior intervention services, Community Roots Academy eliminated Student's behavior intervention services, 160 minutes weekly, that had been agreed to and implemented in past IEPs.

During a March 4, 2020 IEP team meeting, Community Roots Academy first proposed transitioning Student from regular education to Capistrano's behavior classroom, a restrictive special day class. At the time, Student was 11 years old and attended sixth grade, regular education classes at Community Roots Academy.

During the March 4, 2020 IEP team meeting, administrators from Community Roots Academy stated they wanted to explore the continuum for program placements because of Student's behavior problems. However, Student's behavior problems had steadily decreased over the 2019-2020 school year. By the December 2019 IEP team meeting, Student was demonstrating only mild behaviors that were contained to his English class. There were no recorded behavior incidences at school following the December 2019 IEP. Yet, Cavallaro and Dr. Burke desired to place Student into a restrictive behavior program outside of Community Roots Academy. As of March 2020, Student had a behavior intervention plan but received no behavior intervention services.

During the March 4, 2020 IEP team meeting, Dr. Burke referred to unspecified meetings she had with staff regarding an increase in Student's behaviors. This was inconsistent with teacher and therapist input and when Parent asked for information about the meetings, Dr. Burke inconsistently said there had not been staff meetings

regarding Student's behaviors. Mother requested behavioral data to support placing Student in a special day class focused on addressing maladaptive behaviors, but none existed. Teachers and staff had not recorded Student's behavior as called for by the behavior intervention plan. Community Roots Academy had no behavioral data at the time of the March 4, 2020 IEP team meeting, or submitted during the hearing, that showed an increase in maladaptive behaviors.

Dr. Burke next referred to behaviors that Student demonstrated during a field trip to show that Student's behaviors had increased to the point of requiring placement in Capistrano's behavior classroom. Dr. Burke referenced this field trip during later IEP team meetings and during the hearing to support Community Roots Academy's offer for Capistrano's behavior classroom. Similarly, during the hearing, Cavallaro, Smallwood, and D'Souza referred to the field trip to show that Student had behavior problems that warranted placement in Capistrano's behavior classroom.

The field trip occurred in January 2020, during which Student attended a four-day, three-night school field trip to Lake Arrowhead, a southern California campsite. No one from Community Roots Academy was present during this field trip, and it did not provide special education supports or services while Student was on the field trip. Community Roots Academy left all school administration, services, and supports to the camp staff. Community Roots Academy also failed to provide camp staff a copy of Student's IEP or behavior intervention plan. During the field trip, Student had a minor behavior incident, where he raised a trash can over his head after losing a group competition. Student did not threaten or harm children or staff. As punishment, camp staff required that Student write in a journal, not knowing that his behavior intervention plan identified writing as a trigger for behavior problems, which upset

Student. The camp called Parents, who picked up Student before the end of the field trip.

Following the Arrowhead field trip, Community Roots Academy barred Student from subsequent class field trips, including a class tour of the County Water District, despite Mother's pleas for Student to attend the field trip.

Witness testimony regarding the Arrowhead field trip was not persuasive because the witnesses did not personally observe the behaviors. Moreover, there was no written record of the behaviors, and the behaviors, even as described by the school witnesses, appeared minor. Finally, Community Roots Academy failed to implement Student's IEP and behavior intervention plan during the field trip. Public schools like Community Roots Academy are required to provide supplementary aids, services, and support in regular education classes or other education-related settings to enable children with disabilities to be educated with their typically developing peers to the maximum extent appropriate. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a) (2006); Ed. Code, § 56031.) Children with disabilities have equal access to programs, including field trips, as their nondisabled peers. (*Ibid.*)

Mother was opposed to placing Student in Capistrano's behavior classroom. Accommodations and services, including student and parent counseling, that had been agreed to in the December 2019 IEP, had not been implemented. Additionally, the school did not have adequate time to implement and track the behavior intervention plan, also agreed to in December 2019. Mother was also concerned that the assistive technology assessment had not been completed. Each IEP reported that Student struggled in writing, which was a nonpreferred activity and a trigger for maladaptive behaviors like non-compliance and elopement. Yet, the assistive technology

assessment, which could reduce writing demands and thereby decrease maladaptive behaviors, was long overdue. Finally, Student's December 2019 IEP eliminated behavior intervention services, which was normally increased to see if a student could remain in a regular education setting before considering transitioning to a more restrictive placement.

Consequently, at the time Community Roots Academy first proposed placing Student in a more restrictive setting, Student's behaviors were moderate and had decreased since the previous year, and there was no behavior data that supported a more restrictive placement. Further, remediation services such as counseling had not been provided, behavior intervention services had been eliminated, Student's behavior intervention plan had not been implemented with fidelity, and Community Roots Academy still had not started the assistive technology assessment, which Parents agreed to six months earlier. These facts did not bode well with placing Student in a more restrictive setting.

Finally, during the IEP team meeting, Dr. Burke and Cavallaro referred to Student's absences as the basis for placing him in Capistrano's behavior classroom. Dr. Burke misrepresented that Student had 23 absences by the March 4, 2020 IEP team meeting. Student had 18 absences for the entire school year.

Cavallaro was adamant for Student to disenroll and attend another school district because of the absences. Cavallaro believed that charter schools were held to a higher standard than non-charter school local educational agencies and had less resources to enforce attendance. He believed that, unlike other local educational agencies, charter schools did not have access to "ancillary services as well as the Department of Justice" to support attendance. He also mistakenly believed charter schools could not provide

home-hospital instruction if a student became ill and therefore was unable to attend school. Cavallaro believed the only recourse Community Roots Academy had to address Student's absences was to send him to his district of residence, which required disenrolling from Community Roots Academy. Cavallaro believed this solution was non-negotiable, and that Community Roots Academy could require Student to disenroll so another local educational agency would bear any loss of daily attendance revenue for Student's absences.

Dr. Burke ruled out nonpublic schools as an alternative placement, conclusively stating they were too restrictive for Student. She requested that Mother sign a release of information form for Capistrano Unified School District that she mistakenly believed was part of the process to transition Student to another local educational agency. Dr. Burke referred to this as exploring the continuum of placements. Mother did not sign the release form and Community Roots Academy did not make any formal placement offer at the March 4, 2020 IEP team meeting.

Community Roots Academy reconvened the IEP team meeting on May 1, 2020, to formally offer Student placement in Capistrano Unified School District's behavior classroom. Parent attended the IEP team meeting, along with Dr. Burke, Cavallaro, Smallwood, Voccola, an El Dorado Charter SELPA program specialist, and Community Roots Academy's attorney. No one from Capistrano Unified School District attended the IEP team meeting.

Student had progressed appropriately towards 10 of 11 annual goals. The 11th goal, in writing, had not been worked on. The IEP team reported they were pleased by the progress Student had made on his goals. The IEP team agreed that Student was bright and progressing behaviorally. Whatever behavior challenges Student still had

were triggered in response to writing demands. Mother again requested for Community Roots academy to conduct the assistive technology assessment.

The IEP team did not discuss a continuum of placement options for Student. Rather, Community Roots Academy predetermined the IEP placement offer of the behavior classroom in Capistrano Unified School District. The IEP team did not discuss placement in regular education with increased supplemental services. Student received no behavior intervention services at the time, yet there was no discussion regarding adding behavior intervention services to his IEP or supplementary services in regular education. The IEP team did not consider alternative placements, such as a resource or directed studies class, special day class for English Language Arts, or nonpublic schools or agencies, as required to consider a continuum of placements. (34 C.F.R. § 300.115 (2006).)

During hearing, Dr. Burke testified that she had not seen or observed the Capistrano Unified School District program, nor had she communicated with anyone from Capistrano Unified School District regarding the program. Yet, during the May 2020 IEP team meeting, Dr. Burke misrepresented that she was familiar with the program, had communicated with Capistrano Unified School District about the behavior classroom, and attempted to describe the program to Mother. She explained that Capistrano's behavior classroom had resources Community Roots Academy could not offer, such as a dedicated school psychologist, dedicated behavior specialist, and a special education teacher with behavior training. Dr. Burke again requested for Mother to sign a release of information authorization for Capistrano Unified School District, erroneously stating that Capistrano Unified School District required the release.

Cavallaro similarly attempted to describe Capistrano's behavior classroom and misrepresented that Community Roots Academy had placed other students in the program. He described many communications with Capistrano's behavior classroom staff and how passionate they were about their program. However, when Mother requested the name of a person at Capistrano Unified School District that she could contact to further discuss the program, Cavallaro was unable to name anyone Mother could contact.

During the May 2020 IEP team meeting, there was no discussion regarding any placement or service options other than the behavior classroom in Capistrano Unified School District.

Beginning June 11, 2020, Community Roots Academy's May 2020 IEP offered placement in the behavior classroom in Capistrano Unified School District. The offer included a special day class 110 minutes daily, for English Language Arts and Social Studies, and 110 minutes daily of specialized academic instruction in a collaborative Science and Math classes. The IEP continued to offer Student individual counseling and parent counseling. All services and placement were offered at Capistrano Unified School District. The IEP did not offer behavior intervention services. There was no description of how the IEP would be implemented, had Parent agreed to the offer. Parent did not sign the release of information authorization and did not consent to the IEP.

Following the meeting, Dr. Burke stated to Mother that Cavallaro had determined that it was not possible for Student to return to Community Roots Academy following the summer recess.

Pursuant to stay put, a provision of the IDEA that provides a special education student must remain in his or her current educational placement pending the

completion of due process hearing procedures, Student stayed at Community Roots Academy. (20 U.S.C. § 1415(j); Ed. Code, § 56505, subd. (d).) Student's behaviors continued to improve during the remainder of the 2019-2020 school year. He met or appropriately progressed toward each IEP goal and earned high grades in each class.

For the 2020-2021 school year, Community Roots Academy offered remote learning due to school closures related to the COVID-19 pandemic. Parents elected to place Student in remote learning for the entire school year even if schools reopened, an option provided by Community Roots Academy.

Student continued to progress behaviorally and academically during the 2020-2021 school year. By email on October 28, 2020, Student's collaborative English teacher Todd informed Mother that Student was beloved by her and other teachers. Student completed work, participated appropriately, was always ready to work, and demonstrated "absolutely no push-back." Student benefited academically from his regular education classes and did not exhibit behaviors that were disruptive to his learning or the learning of others.

By email on November 2, 2020, Student's Math teacher told Mother that Student was doing "awesome" in his class. Student was able to self-advocate and asked for more work when he finished an assignment.

Community Roots Academy held an annual IEP team meeting for Student on November 20, 2020. Student was 12 years old and attending seventh grade remotely at Community Roots Academy. Parent attended with her attorney and an independent educational psychologist, Crystal Bejarano, Psy.D. Todd, Smallwood, D'Souza, Dr. Burke, the school's behavior specialist Dr. Rebecca Belmont, Cavallaro, an El Dorado Charter

SELPA program specialist, Student's physical education teacher Brandon LoMonaco, and Community Roots Academy's attorney also attended the meeting.

LoMonaco shared that Student was "thriving" in general education. He performed well during group participation and individually during break-out sessions. He required an occasional teacher prompt, but was responsive, capable, and performed well overall. Todd agreed that Student was performing well in each regular education class. Student had shown behavioral and academic growth, including in writing. Todd had begun individual writing sessions with Student as part of his specialized academic instruction. Student required prompts and redirection for writing but was responsive to both.

Dr. Belmont reported that Student enjoyed school, followed instructions, and was receptive to adult prompts and redirection. Student initially had problems keeping his camera on for remote learning, similar to other students, but had overcome that problem.

The IEP team identified social-emotional functioning, behavior, and writing as areas of need. Under special factors, the IEP identified that Student required assistive technology to access his curriculum. However, the assistive technology assessment, agreed to over a year earlier, had not begun.

The IEP team did not discuss educational placements or changes to Student's services. Community Roots Academy did not schedule enough time to complete the annual IEP and no changes were made to the May 1, 2020 IEP offer.

The IEP team reconvened on December 9, 2020, with similar participants. At that point of the 2020-2021 school year, Student had not demonstrated any serious behavior

problems, or any behaviors targeted by the behavior intervention plan. Dr. Burke misrepresented that Student had 27 absences in the prior school year, rather than the 18 absences Student had during the 2019-2020 school year. By the December 2020 IEP, Student had no absences for the 2020-2021 school year.

Student met or appropriately progressed towards each annual goal. The IEP team developed 10 new goals, comprised of four social-emotional and six writing goals.

Dr. Burke gave the pretense of discussing placement options for Student, but immediately ruled out small group instruction, directed studies, or a therapeutic behavior program at Community Roots Academy, because those services were not available at the charter school's middle school. She pointed out that Capistrano Unified School District offered those supports and classes. Dr. Burke ruled out nonpublic schools as being too restrictive for Student. Community Roots Academy also failed to consider increasing supports or services in regular education, as required for a discussion regarding a pupil's continuum of placements. (34 C.F.R. § 300.115 (2006).)

Dr. Burke misrepresented that Community Roots Academy partnered with neighboring school districts to explore a continuum of placements for students. There were no representatives from Capistrano Unified School District, or any other local educational agency, except for El Dorado Charter SELPA representatives, at the IEP team meeting, or any meetings, for Student.

Dr. Burke believed that Student could be served in a directed studies class for English Language Arts. However, since Community Roots Academy did not offer directed studies classes, she described that Capistrano's behavior classroom, a restrictive, self-contained special day class, was the least restrictive environment. Dr. Burke's support for this program for Student was unsupported by Student's present

levels of performance or unique needs as a child with superior intellect and moderate maladaptive behaviors displayed in only one class, English Language Arts.

Dr. Bejarano was an experienced psychologist who previously worked at Capistrano Unified School District. She formerly directed Capistrano's behavior classroom. During hearing, Dr. Bejarano persuasively testified that Capistrano's behavior classroom was a far-too-restrictive placement for Student, who had a high intellect and performed well in regular education with supports. During the December 2020 IEP team meeting, Dr. Bejarano questioned what current data Community Roots Academy had to support a transition from regular education to a restrictive therapeutic behavior program. Dr. Burke admitted the school had no current data to support the placement.

Student's recent behavior intervention plan had been only briefly implemented and various intervention strategies had not yet been attempted. And the school had eliminated Students behavior intervention services in December 2019. Finally, Student's IEP goals identified only moderate behaviors that were far less significant than behavior goals Dr. Bejarano was accustomed to seeing for students in Capistrano's behavior classroom. Given these concerns, it was unreasonable to transition Student from regular education to a restrictive behavior classroom.

Nonetheless, Dr. Burke was steadfast in offering placement in Capistrano Unified School District, even opining that Capistrano Unified School District could determine what was best for Student. She mistakenly reported that deferring to Capistrano Unified School District was necessary for the charter school to examine a continuum of placements. In fact, the charter school did the opposite. Rather than considering a continuum that included supplemental services in regular education, or any placement operated by or contracted with Community Roots Academy, the charter school shunned

its responsibility as Student's local educational agency and only considered offloading Student to Capistrano Unified School District.

The December 9, 2020 IEP continued to offer placement in the behavior classroom in Capistrano Unified School District. Community Roots Academy offered specialized academic instruction, individual student counseling, and parent counseling, at Capistrano Unified School District. The December 2020 IEP added behavior services, 150 minutes weekly, also at Capistrano Unified School District. Community Roots Academy did not have a contract with Capistrano Unified School District and was therefore unable to offer or implement the December 9, 2020 IEP, including the behavior services. Parents did not consent to the IEP.

Student's 2020 fall semester report card and teacher comments showed that Student earned high grades and understood complex and challenging subjects and materials. Student appropriately adjusted to routines and structures, participated during class, and respectfully interacted with peers. Teachers did not report any academic or behavioral problems.

Community Roots Academy composed an IEP document for Student, dated January 15, 2021. Student was 12 years old and starting his second semester of seventh grade at Community Roots Academy. The document was similar to the December 9, 2020 IEP, with the addition of a behavior goal.

Teacher and Parent comments revealed that Student exceeded academic expectations and flourished during the 2020-2021 school year. He earned As in English, Math, and History, and had zero absences. Student was social, had friends at school and outside of school, and participated in boy scouts and little league baseball. Student had matured, was self-reflective, and emotionally insightful. He was confident and strove to

achieve in each class. Student was “extremely respectful” to his teachers and demonstrated “outstanding behavior.” Teacher comments lauded Student’s academic, behavioral, and social-emotional progress.

Notwithstanding Student’s progress in regular education, there was no change to Community Roots Academy’s offer of placement. The January 15, 2021 IEP continued to offer Student placement in the behavior classroom in Capistrano Unified School District.

The forgoing facts and the evidence submitted during hearing did not support offering placement in a more restrictive environment while failing to provide any behavior intervention services.

For example, Community Roots Academy’s school psychologist Mary Zergman testified that she did not agree with placing Student in a more restrictive environment, including Capistrano’s behavior classroom. Zergman was Community Roots Academy’s school psychologist from fall 2018 to spring 2020. At the time of the hearing, Zergman was a school psychologist for California Virtual Academy, an online charter school.

Zergman had experience assessing students in the areas of psychoeducation, educationally related mental health services, and behavior. Zergman assessed Student in December 2019, in the area of psychoeducation, educationally related mental health services, and behavior. Zergman administered standardized assessments to Student, attended his IEPs, observed him inside and outside of classes, and interviewed his teachers and Parents. She was familiar with Student and his unique needs and presented credible testimony during the hearing.

Community Roots Academy’s administrators did not consult Zergman regarding the offer of placement in Capistrano’s behavior classroom. The placement offer was

predetermined by Cavallaro, Dr. Burke, and Smallwood, and they did not seek or rely upon educational data or input from teachers, therapists, or Parents when making that determination.

Student was smart and charismatic but had behavior problems that were triggered by writing demands. In English class, Student sometimes was non-compliant and sometimes eloped from the class. These behaviors were triggered by writing and Student required an assistive technology assessment to consider assistive technology that might help reduce writing demands. With assistive technology and behavior intervention services, Student could benefit from his English class. Zergman did not observe Student exhibit any behavioral challenges outside of his English class. Consequently, the least restrictive environment for Student was regular education with supplemental supports and behavior intervention services.

Student's English teacher Voccola similarly testified that Student could benefit from a regular education English class with supplemental supports and behavior interventions or services. Specifically, she believed Student would benefit from an individual behavior aide during English Language Arts. However, Voccola testified that an individual aide was not discussed at the IEP team meetings for Student because an in-class individual behavior aide was not permitted by Community Roots Academy's charter. While erroneous, this belief was held by Community Roots Academy's teachers and functionally predetermined IEP offers.

Student's collaborative English and collaborative Math teacher Todd similarly testified that she did not observe Student exhibit any behavioral challenges outside of English class.

Similar to Zergman, Roemisch persuasively testified that it was not appropriate to eliminate Student's behavioral intervention services in December 2019, and to offer placement in Capistrano's behavior classroom. Those decisions were made by Community Roots Academy's administrators without the advice of the school's behaviorist or psychologist.

In December 2019, Student had a new behavior intervention plan and goals to remediate moderate behavior challenges including non-compliance and elopement, and he required the benefit of behavior intervention services. It did not make sense to eliminate his behavior intervention services at that time or to continue denying behavior intervention service in May 2020, when Community Roots Academy offered a more restrictive placement, ostensibly due to behaviors. There were no behavior logs, incident reports, or data to support a more restrictive placement when offered in May, November and December 2020, and January 2021.

Rebecca Belmont, Ed.D., was Community Roots Academy's behavior specialist from August 2020 to March 2021. She obtained her Educational Doctorate degree in 2017 and had experience working with children with behavioral and emotional difficulties. Dr. Belmont was critical of Community Roots Academy's special education department, which she described as inexperienced, hostile, and dishonest. Dr. Belmont resigned from Community Roots Academy, in part, because Dr. Burke asked her to fabricate data regarding one of Student's behavior goals.

Dr. Belmont was familiar with Student. She worked directly with Student weekly and observed that Student was able to access his education in regular education classes with supplemental services. Student did not require a more restrictive placement but would have benefited from behavior intervention and social skills services, including an

individual aide. However, an individual aide was never offered or discussed for Student during any IEP team meeting.

Dr. Belmont attended the November 2020 IEP team meeting when Community Roots Academy again offered Student placement in Capistrano's behavior classroom. Dr. Belmont did not agree with the placement offer and was not consulted by Cavallaro or Dr. Burke, who she believed predetermined the offer. There was no current data to support removing Student from regular education and placing him in a restrictive behavior classroom at that time.

Dr. Bejarano also testified in support of providing Student behavior intervention services and against a more restrictive placement. Dr. Bejarano received her Doctor of Psychology degree in 2007 and had vast experience in assessing children with disabilities in the areas of psychoeducational, neuropsychological, mental health and functional behavior. Dr. Bejarano was a private Psychologist since 2017, and previously worked as a psychologist and administrator for various school districts. Between 2006 and 2012, she worked as a school psychologist, program specialist, and special education dispute resolution director for Capistrano Unified School District. Dr. Bejarano assessed Student in February 2021, reviewed his school records, interviewed Parent, observed him at school, and attempted to interview his teachers. She presented thoughtful and credible testimony during the hearing.

Dr. Bejarano was concerned by the lack of coherency regarding Student's IEPs. For example, Community Roots Academy shortened Student's school day during the 2019-2020 school year, because of behavior challenges and absences that Student demonstrated during the 2018-2019 school year. However, shortening a student's school day did not remediate behaviors. Behavior intervention required a trained

therapist to work with Student at school in a structured or unstructured setting. Behavior remediation was not done at home by Parents. Moreover, there were no goals, supports, or services available to remediate Student's absences, which resulted from anxiety and emotional difficulty. There was no intelligible or research-based approach to Community Roots Academy's purported behavior management.

Dr. Bejarano was also concerned by Community Roots Academy's proposal to send Student to Capistrano's behavior classroom during a time that it was not providing Student any behavior intervention services. Behavior intervention required a tiered approach, which started with providing supplemental services in regular education, prior to considering a more restrictive placement. Yet, Community Roots Academy was not providing Student any behavior intervention services when it sought to remove Student from regular education and place him in Capistrano's more restrictive behavior classroom.

Dr. Bejarano was the only witness who had personal knowledge of Capistrano's behavior classroom. She persuasively described Capistrano's behavior classroom as too restrictive for Student. The behavior classroom was a special day class that consisted of a self-contained, therapeutic behavior program for children who had serious behavior or emotional challenges and who could not be educated in regular education, even with supplemental supports and services. Student's behaviors had steadily improved each year and, by the May 2020 IEP team meeting, there was no current data that showed Student required a more restrictive placement. To the contrary, Student performed well in regular education classes, earned high grades, met or progressed appropriately towards goals, and was responsive to redirection.

Dr. Bejarano credibly opined that Student would continue performing well in regular education if he was provided adequate behavior intervention supports and services. She recommended that Student receive 30 minutes weekly of behavior intervention services by a qualified provider.

In contrast, Community Roots Academy witnesses who supported placing Student in Capistrano's behavior classroom were unpersuasive. They offered no testimony that supported Community Roots Academy's decision not to provide Student behavior intervention services before placing him in a more restrictive setting.

Michelle Smallwood was Community Roots Academy's middle school principal. She had no experience or training in special education programs or special education administration, and little experience working for public schools. She had informally observed Capistrano's behavior classroom while volunteering in an adjacent regular education classroom. Smallwood was impressed with the organization and expertise of the behavior classroom staff and program, believing it be superior to the behavior support offered at Community Roots Academy. She did not believe Community Roots Academy had the ability to replicate similar behavior supports and services. Based upon anecdotal reports of behavior problems during the 2018-2019 school year, the Arrowhead field trip, and Student's absences, Smallwood recommended Capistrano's behavior classroom. Smallwood had not assessed Student, provided him related services, or reviewed his behavior data, and was not qualified to do so. Smallwood's testimony regarding Student's behavioral needs exceeded the scope of her expertise and her testimony was given little weight.

Suzy D'Souza also testified in support of placing Student in Capistrano's behavior classroom. However, her testimony failed to support that placement. D'Souza began

working at Community Roots Academy as a school psychologist in August 2020. She did not review Student's educational records or consult with the school's behavior specialists Roemisch or Dr. Belmont, or the school's prior psychologist Zergman, regarding Student. She did not assess Student or observe him in class. D'Souza began providing Student individual counseling in fall 2020. She erroneously testified that Student was not owed any compensatory counseling sessions, contrary to his IEP documentation. D'Souza was not familiar with Student's IEPs and had not consulted with his regular education teachers. D' Souza had no current information regarding Student's behavior needs and had not observed any behavior problems.

D'Souza described Student as internally motivated to complete work and goals, and thought he engaged well with teachers. Student was articulate and thoughtful during his counseling sessions with her. D'Souza struggled to explain why Student should be placed in Capistrano's behavior classroom, and erroneously referred to the May, November, December 2020, and January 2021 IEP offers as merely the charter school's attempt to consider a continuum of placements for Student. In sum, D'Souza's testimony did not support placing Student in a more restrictive placement.

Cavallaro and Dr. Burke also testified in support of placing Student at Capistrano's behavior classroom. As described herein, their testimony was inconsistent and unreliable. In significant part, their testimony revealed that Community Roots Academy's placement offer in Capistrano's behavior classroom for the 2020-2021 school year, and the reduced school day for 2019-2020 school year, was based upon Student's absences.

Cavallaro was very concerned about school absences because he believed Community Roots Academy did not receive public funding for days a student was

absent. Cavallaro erroneously testified that absences were particularly troublesome for charter schools because they did not have access to the same resources available to other LEAs, such as a Student Attendance Review Board, called SARB, and the Department of Justice, to enforce compulsory school attendance. Contrary to Cavallaro's testimony, charter school local educational agencies are not exempt or prevented from participating in SARBs. Rather, the California Department of Education has directed charter school administrators to develop their own local SARB or to participate in State SARB programs. (*Model School Attendance Review Board Letter*, California Department of Education, Dec. 3, 2020.)

More importantly, Student's absences resulted from somatic symptoms related to his disability. Yet, none of Student's IEPs offered goals, supports, or services to address Student's attendance. Reducing Student's school day and forcing him to disenroll from Community Roots Academy was based on Community Roots Academy's perception that it was losing money because of Student's poor attendance, not a coherent or research-based method to address the educational impact of Student's disability.

For the foregoing reasons, a preponderance of evidence showed that Student required behavior intervention services to receive educational benefit appropriate in light of his circumstances. Therefore, Community Roots Academy's failure to offer appropriate behavior intervention services denied Student a FAPE. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) (2006); Ed. Code, § 56341.1, subd. (b)(1); *Endrew F. v. Douglas County School District* (2017) 580 U.S. __ [137 S.Ct. 988] (*Endrew*).; *E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535 (*E.F.*))

A preponderance of evidence showed that with supports and behavior services, Student was able to access regular classes with non-disabled peers, the least restrictive

environment. Therefore, the May 1, 2020, November 20, 2020, December 9, 2020, and January 15, 2021 IEPs, which offered placement in the behavior classroom in Capistrano Unified School District, denied Student a FAPE by failing to offer the least restrictive environment. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a) (2006); Ed. Code, § 56031; *Ms. S. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, 1136-1137; *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.)

ISSUE 4: DID COMMUNITY ROOTS ACADEMY DENY STUDENT A FAPE BY FAILING TO APPROPRIATELY ASSESS STUDENT IN THE AREA OF ASSISSTIVE TECHNOLOGY?

Student complains that Community Roots Academy denied him a FAPE by failing to assess him in the area of assistive technology. Community Roots Academy responds that its failure to timely assess did not deny Student a FAPE because it offered assistive technology to all of its students.

Prior to making a determination of whether a child qualifies for a special education services, a school district must assess the child. (20 U.S.C. § 1414(a) & (b); Ed. Code, §§ 56320, 56321.)

An assistive technology device is any piece of equipment that is used to increase, maintain, or improve the functional capabilities of individuals with disabilities. An assistive technology service is any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. (20 U.S.C. § 1401(1); Ed. Code, § 56020.5.)

A school district is required to provide any assistive technology device that is necessary to provide a FAPE to a child with a disability. (20 U.S.C. § 1412(a)(12)(B)(i);

34 C.F.R. § 300.105 (2006); Ed. Code, § 56341.1, subd. (b)(5).) An IEP team must consider whether a child requires assistive technology devices or services. (20 U.S.C.

§ 1414(d)(3)(B)(v); 34 C.F.R. § 300.324 (a)(2)(v) (2006); Ed. Code, § 56341.1, subd. (b)(5).)

A school district is required to assess in all areas of suspected deficit, including assistive technology, prior to offering related services or devices. (20 U.S.C. § 1414(b)(2) & (3); 34 C.F.R. § 300.304(b)(2), (c)(4) (2006); Ed. Code, § 56320, subds. (e) & (f).)

Assessment is required to formulate the type, duration, and frequency of a related service. (20 U.S.C. § 1414(b)(2), (3); 34 C.F.R. § 300.304(b)(2), (c)(4) (2006); Ed. Code, § 56320, subds. (e) & (f).)

An IEP team meeting to review the results of an assessment must be held within 60 days, not counting days between a pupil's regular school sessions, terms, or days of vacation in excess of five school days, from the receipt of the parent's written consent to the assessment, unless the parent agrees in writing to an extension. (Ed. Code, §§ 56043, subd. (f)(1).)

Student had a documented history of writing delays that warranted an assistive technology assessment. Accordingly, on September 26, 2019, Community Roots Academy offered Parent an assessment plan that included an assessment in the area of assistive technology, amongst other assessments. Parent signed and returned the assessment plan the same day.

Community Roots Academy was required to complete the assistive technology assessment and have an IEP team meeting to review the results of the assessment within 60 days. At the time the hearing concluded on April 29, 2021, Community Roots Academy had not convened an IEP team meeting to review the assessment.

On April 28, 2021, Dr. Burke testified that the assistive technology assessment was completed on April 27, 2021, but had not been reviewed at an IEP team meeting. Dr. Burke inconsistently testified that the assessment did not recommend services for Student, then testified the assessment did recommend services and that she was receiving training that afternoon to help implement the recommended services for Student. This testimony was especially confusing given that an IEP team had not reviewed the assessment, offered services or device(s), or received consent by Parent for the school to implement any service or device. The assistive technology assessment was not submitted as evidence during the hearing.

Consequently, there is no dispute that Community Roots Academy failed to timely assess Student for assistive technology.

During hearing and in its closing brief, Community Roots Academy mistakenly argued that, unlike a larger local educational agency, it was not necessary for Community Roots Academy to assess Student in the area of assistive technology to provide assistive technology. Community Roots Academy contends that all of its student had access to a speech-to-text device called Co-Writer Universal and therefore Student received all necessary assistive technology by virtue of being a student at the charter school. However, Mother persuasively testified Student was unable to access Co-Writer Universal and had not been trained to use this system, which Community Roots Academy would have discovered if it assessed Student.

Community Roots Academy overlooked that it was required to assess in all areas of suspected deficit, including assistive technology, prior to offering related services or devices. (20 U.S.C. § 1414(b)(2) & (3); 34 C.F.R. § 300.304(b)(2), (c)(4) (2006); Ed. Code, § 56320, subds. (e), (f).) There was no evidence submitted that showed Student had

successfully used assistive technology that was offered other students during the time frame in dispute. Overwhelming evidence, including each IEP document, showed that Student had writing challenges, including pen-to-paper hand-writing delays, which warranted an assessment for assistive technology.

For Student, an assistive technology assessment was necessary because his IEPs identified that he required assistive technology. Community Roots Academy IEP team members believed that assistive technologies would improve Student's performance, participation, and behavior. School psychologist Zergman and school behaviorists Roemisch and Dr. Belmont each testified that Student required assistive technology to help address his writing challenges and related behavior difficulty. Consequently, to formulate Community Roots Academy's FAPE offer, it was necessary to assess Student to determine which assistive technology devices and services met his unique needs.

Community Roots Academy knowingly delayed providing Student the agreed upon assistive technology assessment. Mother signed and returned the assessment plan for the assistive technology assessment on September 26, 2019, the same day it was offered by Community Roots Academy. During IEP team meetings held on December 6 and 9, 2019, Mother requested that Community Roots Academy complete the assessment. Parent was concerned for this assessment in light of Student's difficulties in writing. The school had completed the psychoeducational assessment, which confirmed Student's writing challenges to the extent that the IEP team agreed to change Student's eligibility to specific learning disability based upon a writing delay. The school had also completed a revised functional behavior assessment, which found that Student's writing deficits directly contributed to his behavior problems. Yet, the school had overlooked the assistive technology assessment, which could support

Student's writing and mitigate his maladaptive behaviors by reducing the primary antecedent of pen-to-paper writing tasks.

During a March 4, 2020 IEP team meeting, when Community Roots Academy first proposed a more restrictive setting for Student based on behaviors related to writing challenges, Mother also inquired regarding the status of the assistive technology assessment. Community Roots Academy had not begun the assessment. Dr. Burke provided Mother another assessment plan, in an improper attempt to restart the 60-day assessment timeline. Dr. Burke misrepresented that the original assessment plan "was good for 60 days." Mother did not sign the new plan after the El Dorado Charter SELPA representative clarified that it was not necessary for Parents to sign a second assessment plan. At the IEP team's request, Mother signed a release of information authorization for a private agency, Goodwill Industries, that Community Roots Academy had selected to conduct the assessment.

During the May 1, 2020 IEP team meeting, Mother again inquired about the assistive technology assessment. Mother contacted Goodwill Industries prior to the meeting and discovered that it had not received a referral for Student. Dr. Burke took responsibility for failing to "follow up" on the assessment, but then, along with Cavallaro, downplayed the importance of assistive technology and an assistive technology assessment. Dr. Burke added that was probably why she did not "carve time out" to obtain the assessment.

By letter on April 23, 2020, Mother again requested the assistive technology assessment. Mother had again contacted Goodwill Industries, which still had not received an assessment referral from Community Roots Academy.

Dr. Burke responded to Mother's letter by emails on May 15 and 18, 2020. Dr. Burke had contacted Goodwill Industries, but believed the cost for assessment, \$1,000, was "outrageous." Dr. Burke was upset the assessor was "focused on making money" while Community Roots Academy was "trying to figure out how to keep the school open and not let people go due to the budget crisis." Dr. Burke tried to dissuade Parents from pursuing the assessment, arguing the money could be better spent for other purposes. Parents did not retract their consent for the assessment.

During the November 20, 2020 IEP team meeting, Mother again inquired regarding the status of the assistive technology assessment. Dr. Burke complained that Goodwill Industries required "a tremendous amount of paperwork on our part to move forward with the assistive technology assessment" but was continuing to follow up on the assessment. Mother again inquired regarding the status of the assistive technology assessment at the December 9, 2020 IEP team meeting. At the time the hearing commenced on April 13, 2021, the assessment had not been completed.

The foregoing conduct illustrated Community Roots Academy's unwillingness or inability to comply with fundamental special education laws regarding timely assessment of a child with a disability. (20 U.S.C. § 1414(b)(2) & (3); 34 C.F.R. § 300.304(b)(2), (c)(4) (2006); Ed. Code, § 56320, subds. (e) & (f).) Community Roots Academy's conduct was particularly egregious because a local educational agency should not try to convince a parent to withdraw an assessment request.

Community Roots Academy's failure to assess Student in the area of assistive technology to help Student with identified writing challenges was a procedural violation of the IDEA. (R.B., ex rel. F.B. v. Napa Valley Unified School Dist. (9th Cir. 2007) 496 F.3d 932, 940 ("we have, more often than not, held that an IDEA procedural violation denied

the child a FAPE.”.) A procedural violation of the IDEA constitutes a denial of a FAPE “only if the violation: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision making process; or (3) caused a deprivation of educational benefits.” (Ed. Code, § 56505 subd. (f)(2); Target Range School, *supra*, 960 F.2d at p. 1484.) Here, Student’s writing challenges resulted in maladaptive behaviors including off-task behavior and his removal from the classroom on many occasions, thereby causing him to miss instruction. Student’s writing delays were intertwined with his behavior delays, and impacted his ability to progress in a manner that was commensurate with his same-aged peers without special education or related services. Therefore, Community Roots Academy’s failure to assess Student in assistive technology deprived him of educational benefits, and, accordingly, Community Roots Academy denied Student a FAPE on that basis. (*Carrie I. ex rel. Greg I. v. Dep’t of Educ., Hawaii* (D.Haw. 2012) 869 F.Supp.2d 1225, 1247 (“The lack of assessments alone is enough to constitute a lost educational opportunity.”).)

For the foregoing reasons, Student showed by a preponderance of evidence that Community Roots Academy denied him a FAPE by failing to assess in the area of assistive technology.

ISSUE 5: DID COMMUNITY ROOTS ACADEMY DENY STUDENT A FAPE BY FAILING TO PROVIDE STUDENT’S RECORDS?

Student complains he was denied a FAPE by Community Roots Academy’s failure to provide requested school records. Community Roots Academy responds that it provided requested records or that Student was not denied a FAPE by its failure to provide school records.

Pursuant to Education Code section 56043, subdivision (n), "Parent or guardian shall have the right and opportunity to examine all school records of the child and to receive complete copies within five business days after a request is made by Parent or guardian, either orally or in writing, and before any meeting regarding an individualized education program of his or her child or any hearing or resolution session pursuant to Chapter 5 (commencing with Section 56500), in accordance with Section 56504 and Chapter 6.5 (commencing with Section 49060) of Part 27."

When formulating an IEP, a school district "must comply both procedurally and substantively with the IDEA." (*ML v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 644 (citing *Rowley, supra*, 458 U.S. at 206-207).) Procedural errors do not automatically result in a denial of FAPE. Procedural violations result in a denial of FAPE only if it (1) impedes the child's right to a FAPE, (2) significantly impedes the parents' opportunity to participate in the decisionmaking process regarding the provision of a FAPE to their child, or (3) causes a deprivation of educational benefits. (20 U.S.C. § 1415(t)(3)(E)(ii); see, *W.G. v. Board of Trustees of Target Range School Dist. No. 23*, (9th Cir. 1992) 960 F.2d 1479, 1484.)

Parental participation in the development of an IEP is essential to the IDEA. It is "[a]mong the most important procedural safeguards" in the Act. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(b) (2006).)

In sum, under the IDEA, parents of a child with a disability must be afforded an opportunity to participate in IEP team meetings with respect to the provision of a FAPE

to their child, and the school district must fairly and honestly consider parents' concerns. School officials may discuss the issues and concerns in advance of the IEP team meeting, but they may not arrive at an IEP team meeting with a "take it or leave it" offer. (*JG v. Douglas County School Dist.*, (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.)

The evidence for this matter is replete with Parents' request for school records, in particular behavior data collected for Student's behavior plan, behavior incident reports, and any behavioral data from teachers, therapists or staff that supported Community Roots Academy's offer to reduce Student's school day for the 2019-2020 school year, or to place Student in Capistrano Unified School District's behavior classroom for the 2020-2021 school year.

Mother testified that she requested records and data from Dr. Burke during Spring 2019. During an IEP team meeting on September 26, 2019, Student's advocate requested behavior data, records, and reports 13 times. During the March 4 and May 1, 2020 IEP team meetings, Mother requested behavior records and data and contact information for Capistrano Unified School District. On September 4, 22, and 30, and October 9, 2020, Student's attorney requested all of Student's school records. During a November 20, 2020 IEP team meeting, Parent requested records regarding parent counseling. By emails on January 14 and 29, 2021, Parent requested counseling records and contact information for Capistrano Unified School District. On February 1 and 9, 2021, Student's attorney requested records.

Despite the many requests for school records, Community Roots Academy failed to provide Parent data collected for Student's behavior intervention plan, behavior incident reports, counseling records or logs, any behavior records or data that supported placement in a more restrictive setting, or information regarding who

Community Roots Academy had communicated with at Capistrano Unified School District regarding Student's placement. While it is possible these records did not exist and therefore could not be provided, Community Roots Academy witnesses testified otherwise. Cavallaro testified that Community Roots Academy maintained behavior records for Student and Smallwood described that behavior incident reports were part of Student's school file. Yet, these records were not provided to Parent or submitted as evidence during the hearing.

Community Roots Academy provided Parents contradictory information during the IEP team meetings. For example, teachers and therapists reported that Student was progressing behaviorally and academically in regular education during the 2019-2020 and 2020-2021 school years. However, school administrators reported that Student's behavior problems had increased during that same timeframe, thereby necessitating a more restrictive placement. Having behavior data collected for the behavior intervention plan, behavior incident reports, counseling logs, current data that supported a more restrictive setting, and contact information for the Capistrano Unified School District's behavior classroom, was fundamental to Parents' ability to participate in the educational decisionmaking process for Student.

Community Roots Academy's failure to provide school records upon Parents' request significantly impeded Parents' opportunity to participate in the decisionmaking process regarding the provision of a FAPE to their child, and denied Student a FAPE on this basis. (20 U.S.C. § 1415(t)(3)(E)(ii); see, *Target Range School, supra*, 960 F.2d ,at p. 1484.)

ISSUE 6: DID COMMUNITY ROOTS ACADEMY DENY STUDENT A FAPE BY FAILING TO PROVIDE SUPPORTS, SERVICES, AND ACCOMMODATIONS INCLUDED IN STUDENT’S IEPs DURING THE STATUTORY TIMEFRAME?

Student asserts Community Roots Academy failed to materially implement his IEPs. Community Roots Academy responds that it offered to compensate Student for missed services in his IEPs.

A school district violates the IDEA if it materially fails to implement a child’s IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822. (*Van Duyn*)) However, “[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail.” (*Ibid.*) *Van Duyn* emphasized that IEPs are clearly binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to the statute, and “not to decide on its own no longer to implement part or all of the IEP.” (*Ibid.*)

A preponderance of evidence showed that Community Roots Academy materially failed to implement Student’s IEPs. For example, the December 17, 2019 IEP offered 120 minutes monthly of individual counseling and 30 minutes weekly of parent counseling. During hearing, Mother persuasively testified that parent counseling did not begin until February 2021, despite repeated requests by Mother for the service. Mother’s testimony was consistent with a transcript of the November 20, 2020 IEP team meeting.

By emails on May 5, 6, and November 12, 2020, Dr. Burke informed Parents that Community Roots Academy had not provided Student's individual counseling sessions for several months. During the December 9, 2020 IEP team meeting, the IEP team agreed that Student was owed 13 compensatory individual counseling sessions and six compensatory writing sessions because of missed services.

A preponderance of evidence also showed Community Roots Academy failed to implement Student's IEP and behavior intervention plan during school field trips. (20 U.S.C. § 1412 subd. (a)(5)(A); 34 C.F.R. § 300.114(a) (2006); Ed. Code, § 56031.) Testimony by Parent, Smallwood, and Voccola established that this failure denied Student the ability to participate during the Arrowhead school field trip in January 2020, and prevented him from attending a field trip with his same aged-peers in spring 2020.

As discussed in greater detail in Issue 7 below, testimony from Parent, Cavallaro, and Dr. Burke established that Student did not receive IEP accommodations and supports during his independent study classes during the 2019-2020 school year. As a result, Student was unable to access his independent study Science class during the school year.

In its closing brief, Community Roots Academy argues that its failure to implement Student's IEPs did not deny Student a FAPE because it already offered compensatory services in his IEPs. This argument fails for several reasons. During the December 9, 2020 IEP team meeting, the IEP team agreed that Student was owed 13 compensatory counseling sessions and six compensatory writing sessions because of missed services. However, these compensatory services were not provided by the time of the hearing four months later. D'Souza, who was responsible for providing Student's counseling services, erroneously testified that Student had not missed any counseling

sessions and was not owed compensatory education. Moreover, Student's IEPs did not provide compensatory education for the nine months of missed parent counseling, or Community Roots Academy's failure to implement Student's IEP and behavior intervention plan during independent study classes and school field trips. Consequently, Student's IEPs did not adequately provide for missed services.

For the foregoing reasons, a preponderance of evidence showed that Community Roots Academy denied Student a FAPE by failing to materially implement IEP supports, services, and accommodations during the statutory timeframe.

ISSUE 7: DID COMMUNITY ROOTS ACADEMY DENY STUDENT A FAPE DURING THE 2019-2020 SCHOOL YEAR BY ENROLLING HIM IN INDEPENDENT STUDY?

Student asserts that Community Roots Academy denied him a FAPE by reducing his school day and requiring that he take independent studies classes for Science and Social Studies, later called History, during the 2019-2020 school year. Community Roots Academy argues that Student required a reduced school day and independent study classes because of behavior problems.

Independent study provides an alternative education program that is available to all students. The option to take independent study must be continuously voluntary. (Ed. Code, § 51747, subd. (c)(7); Cal. Code Regs., tit. 5, § 11700, subd. (d)(2)(A).) While a student is participating in independent study, the local educational agency must continue to provide special education and related services pursuant to the child's IEP. (Ed. Code, § 47646, subd. (a).)

By state law an independent charter school like Community Roots Academy must have in place for each independent study student, every semester, a written agreement signed by the school and the student, and if the student is a minor, by the parent, guardian, or caregiver of the student. The agreement must specify, among other things, the specific resources, including materials and personnel, to be made available to the student. (Ed. Code, § 51747, subd. (c).) Because Student was eligible for special education, provisions of the Education Code governing the rights of special education students and their parents, and the IDEA, were also applicable. Education Code section 47646, subdivision (a), imposes on the independent charter school the duty to ensure that “all children with disabilities enrolled in the charter school receive special education ... in a manner that is consistent with their individualized education program” and is in compliance with the IDEA and its regulations. (*Ibid.*)

During hearing, uncontroverted evidence established that Community Roots Academy did not provide Parent a contract for independent study, did not describe resources, including materials and personnel, to be made available to Student during independent study, and did not implement Student’s IEP during independent study classes. A preponderance of evidence also established that the independent study classes were not continuously voluntary and that independent study classes were not appropriate to meet Student’s individual needs.

Community Roots Academy held an IEP team meeting for Student on May 20, 2019. The IEP team met to prepare for the pending 2019-2020 school year, Student’s sixth grade. Parents attended, along with the school’s behavior supervisor Roemisch, school psychologist Zergman, Dr. Burke, Smallwood, Cavallaro, a general education teacher, and the school’s speech-language pathologist.

The IEP team discussed Student's transition to middle school, including the increased transitions between multiple classes. The IEP team agreed to increase Student's behavior intervention services from 160 minutes weekly to 505 minutes weekly. There was no discussion regarding shortening Student's school day. Parents consented to the IEP.

During the second week of August 2019, prior to the commencement of Student's sixth grade, Cavallaro, Smallwood, and Dr. Burke met privately with Mother to discuss their decision to reduce Student's school day, purportedly to ease his transition into the sixth grade. The school administrators were concerned by Student's behaviors and poor attendance. The school administrators believed that they could reduce Student's problem behaviors and school absences by barring him from the school campus for half of the school day.

Following the private meeting with Parent and the school's administrators, Community Roots Academy held an amendment IEP team meeting on August 19, 2019. Mother, Zergman, Dr. Burke, Cavallaro, Smallwood, Voccola, Student's math teacher, and a speech-language pathologist attended the meeting.

Although the May 2020 IEP's increased behavior intervention services had not yet been implemented, the August 2020 IEP decreased Student's behavior intervention services from 505 minutes weekly to 160 minutes weekly.

The IEP also offered to decrease Student's school day by half. Student would attend English, Math, and Physical Education at school, along with a 20-minute morning recess, each school day. Student was required to leave school after third period, daily, one period before the lunch recess. Community Roots Academy offered Student independent study for Social Studies and Science, but Student would not receive

Advisory and Elective classes available to other sixth grade students. Mother wanted Student to receive the Elective and Advisory classes, and to participate in lunch and lunch recess with his peers, but Community Roots Academy denied this request. The Advisory class worked on social-emotional development, an area that Student required help in. Mother was reluctant to agree to a reduced schedule and independent study classes. She requested more time to discuss the reduced schedule with Father, who she did not believe would agree to a reduced school day for Student.

The school administrators made clear that Student could not be on campus following third period and was required to take the independent study classes. Dr. Burke misrepresented that the reduced schedule and independent study classes were not an IEP team decision, but a general education decision made outside of the IEP team. Dr. Burke stressed the decision to reduce Student's school day was based on his poor attendance. During the hearing, Dr. Burke erroneously testified the provision of independent study classes was a regular education, not special education, decision, because it impacted regular education classes.

The IEP team did not discuss any other placement options outside of the reduced schedule. During hearing, Smallwood and Dr. Burke testified that Community Roots Academy was not ready, by the August 2019 IEP team meeting, to consider alternative placements for Student.

Mother relied upon Dr. Burke's misrepresentations and agreed to reduce Student's schedule and to independent study classes for Science and Social Studies for four weeks. Community Roots Academy did not provide Parents an independent study contract nor did Parents sign an independent study contract. The IEP team did not discuss supports and accommodations for the independent study classes.

Per the El Dorado Charter SELPA guidelines for Independent Study, for students with IEPs, a determination as to whether independent study is appropriate must be made by the IEP team and documented in the IEP prior to the placement in independent study. The offer of special education and related services must continue to be based on a student's needs and must not be decreased solely on availability of staff or resources. The IEP must specify the percentage of time a student will participate in independent study, the percentage of time spent in regular education, the percentage of time a student will receive special education support, discussion of placement options and supports considered in developing an independent study program for a student with special needs, academic goals and services, accommodations and related services needed to maximize access to an independent study placement, and a plan that outlines the course of study as it relates to the independent study curriculum. (34 C.F.R. § 300.302 (2006); Ed. Code, § 51747 et seq.)

Community Roots Academy followed none of the requirements specified by the El Dorado Charter SELPA. The August 19, 2019 IEP failed to specify the percentages of time Student would participate in independent study, regular education, and special education. The IEP team failed to discuss placement options and supports considered when developing Student's independent study program. The IEP team did not discuss goals to be worked on during independent study or accommodations and related services needed to maximize access in independent study. Community Roots Academy administrators did not convey to Parents that the option to take independent study courses was continuously voluntary. During hearing, Cavallaro and Dr. Burke admitted they were not familiar with the El Dorado Charter SELPA requirements, although they were listed in an El Dorado Charter SELPA Procedures Manual that the SELPA made available to Community Roots Academy.

Immediately following the August 2019 IEP team meeting, Community Roots Academy barred Student from being on campus following his third period until mid-January 2020, when it added a fourth period elective. Student was then barred from campus following the fourth period elective.

On September 26, 2019, Community Roots Academy held an IEP team meeting. Mother attended with an advocate. The advocate requested data regarding Student's behaviors, including data collected for his behavior intervention plan. The advocate asked informed and relevant questions to the IEP team. However, some IEP team members were offended by the advocate's questions and Smallwood told Mother she did not believe the IEP team could deliver the same high level of support to Student because of the advocate's conduct. Following the meeting, Mother apologized to IEP team members, including Smallwood. Smallwood testified that she accepted Mother's apology. There were no changes to Student's IEP made during this meeting.

Community Roots Academy held another IEP team meeting for Student on September 30, 2019. Mother attended, but did not bring her advocate.

More than four weeks had passed since the August 19, 2019 IEP, however, Community Roots Academy failed to increase Student's school day. Instead, Dr. Burke devised a plan to transition Student back to a full day program that required Student to exhibit zero serious behaviors, including elopement, for six consecutive weeks. If Student demonstrated zero elopement behaviors, Community Roots Academy would add one class to his schedule. If Student did not elope for three additional weeks, then another class would be added. Student had never eloped from the school campus, but sometimes left his English class. Per the September 30, 2019 IEP, Student continued to

be barred from Advisory and Elective classes, lunch, and lunch recess, and was required to take independent study for Science and Social Studies.

Student desired to return to school for a full day, especially for lunch and lunch recess, and was embarrassed by leaving after his third period. Dr. Burke thought the reduced school day would teach Student a lesson about his behaviors and motivate him to act better. There was no evidence submitted that showed this was a research-based manner to reducing Student's behavior problems in English class.

Community Roots Academy still required that Student take independent study classes for Science and Social Studies classes, although it had not begun the independent study Science class. Mother persuasively testified that she did not know the independent studies classes were voluntary. She relied on Dr. Burke's misrepresentation that independent study was a unilateral regular education decision made by the school's administrators. Parents were not offered an independent study contract for the school year and there was no discussion during the IEP team meeting regarding supports, services, or accommodations necessary to support Student's participation in the independent study classes. Mother agreed to the transition plan, believing that was the only way to get Student back into a full school day.

Student met the goals set forth in the transition plan. By mid-November 2019, Student went six consecutive weeks without eloping or any serious behaviors. The day following the sixth week, Student ran up a hill on the school campus that was off limits to students. The school administrators considered this an elopement in violation of the transition plan and refused to increase his school day.

Community Roots Academy began providing Student's independent study Science class on October 2, 2019, five weeks after the school year began. Cavallaro and

Dr. Burke selected O'Bridge Academy to deliver the independent study Science class. Like all independent study programs, O'Bridge Academy required information regarding a pupil's IEP upon enrollment. For an additional fee, O'Bridge Academy provided additional assistance for students with special needs. Community Roots Academy failed to provide O'Bridge Academy Student's IEP or identify that he required special education supports and services. Dr. Burke and Cavallaro mistakenly believed that it was not necessary to provide independent study programs a copy of a student's IEP, although this requirement was listed in O'Bridge Academy's enrollment packet and the El Dorado Charter SELPA guidelines. However, neither Community Roots Academy's Executive Director nor its special education administrator had read the SELPA's or O'Bridge Academy's rules and procedures for independent study, despite being provided informational packets from each agency. Consequently, Student's IEP was not implemented during his independent study classes.

Student was unable to access or benefit from the independent study Science course. O'Bridge Academy did not include live teaching or supports and Student could not meet the course's intensive writing requirements without special education supports and accommodations. Mother frequently contacted Dr. Burke in-person and by email between mid-October 2019 and late February 2020, regarding Student's inability to access the independent study Science course without writing supports and accommodations.

Community Roots Academy convened an IEP team meeting on December 6 and 17, 2019. During the meeting, Mother informed Dr. Burke and Mr. Cavallaro that the independent study Science class had writing demands that exceeded Student's abilities. However, Community Roots Academy failed to contact O'Bridge Academy in response to Mother's requests for assistance.

The team developed nine new goals, including two behavior, six writing, and one social-emotional goal. The IEP offered Student writing accommodations and a writing modification. The December 17, 2019 IEP offered specialized academic instruction, individual counseling, and parent counseling. Although Student was on a reduced day and independent study purportedly because of behavior problems, the IEP eliminated Student's behavior intervention services. The IEP, including Student's writing goals, accommodations, and modification, were never reported to O'Bridge Academy or implemented during independent study classes.

During the December 2019 IEP team meetings, Mother again requested to increase Student's school day. Community Roots Academy agreed to add a fourth period elective, beginning the next school semester, January 25, 2020. Student was still required to leave school prior to lunch and lunch recess and to attend independent study classes for Science and Social Studies, which was later replaced by an independent study History class. During hearing, Smallwood expressed that Student was "lucky" to get an elective his second semester of sixth grade, in light of his absences. Smallwood shared Cavallaro and Dr. Burke's mistaken belief that a charter school could deny a student access to his educational program because of absences.

Community Roots Academy held an amendment IEP team meeting for Student on March 4, 2020. Student was still attending a reduced schedule with independent study classes. Mother was still concerned that writing support was not provided during the independent study classes. The classes' writing requirements, without IEP supports and accommodations, were too difficult for Student. In particular, Parent complained that O'Bridge Academy was not implementing IEP accommodations. Student did not receive a grade for his first semester Science because he could not meet the writing requirements for the independent study class.

The IEP team agreed that O'Bridge Academy's Science course was not aligned with Student's writing abilities, yet did not offer an alternative class or add supports to the O'Bridge Academy program. Despite Parent's repeated concerns, Community Roots Academy did not provide O'Bridge Academy a copy of Student's IEP or attempt to implement Student's IEP during his independent study courses.

Frustrated with the lack of support, Mother removed Student from the independent study Science course in early March 2020. Beginning late April 2020, Community Roots Academy permitted Student to attend a remote learning Science class that was recently offered to all students because of school closures related to the COVID-19 pandemic.

In sum, evidence overwhelmingly showed that Community Roots Academy failed to appropriately provide Student independent study classes. At every opportunity, the local educational agency, Community Roots Academy, denied Student substantive and procedural rights. Reducing Student's school day and placing him in independent study classes was not appropriate to meet Student's unique needs. During the hearing, Community Roots Academy's school psychologist Zergman and behavior specialists Roemisch and Dr. Belmont, along with Student's expert Dr. Bejarano, uniformly described that reducing Student's school day and placement in independent study classes was not an intelligible or research-based method for reducing Student's behavior problems or absences. Rather, behavior remediation required tracking Student's response to antecedents at school, and methodically teaching appropriate replacement behaviors, thereby reducing or eliminating his maladaptive behaviors. Behavior intervention strategies and remediation occurred at school, not at home.

Independent study did not meet Student's unique needs in light of his circumstances, thereby denying him a FAPE. (20 U.S.C. § 1414 subd. (d)(3)(B)(i); 34 C.F.R. § 300.324 subd. (a)(2)(i) (2006); Ed. Code, § 56341.1, subd. (b)(1); *Endrew, supra, F. v.* 580 U.S. __ [137 S.Ct. 988].; *E.F., supra*, 726 Fed.Appx. at p. 535.) Moreover, Community Roots Academy's failure to implement Student's IEP during independent study was a material breach of his IEP, thereby denying student a FAPE. (*Van Duyn, supra*, at 502 F.3d at pp. 815- 822.) Finally, Community Roots Academy failed to follow procedural requirements for placing Student in independent study, which significantly impeded Parents' opportunity to participate in the IEP decisionmaking process and deprived Student of educational benefits. (20 U.S.C. § 1415 subd. (f)(3)(E)(ii); Ed. Code, § 56505 subd. (f)(2); *Target Range School, supra*, 960 F.2d at p. 1484 .)

For the foregoing reasons, a preponderance of evidence showed that Community Roots Academy denied Student a FAPE by inappropriately providing him independent study classes during the 2019-2020 school year.

ISSUE 8: DID COMMUNITY ROOTS ACADEMY DENY STUDENT A FAPE BY PROHIBITING STUDENT'S EXPERT TO OBSERVE STUDENT AND INTERVIEW STUDENT'S TEACHERS?

Student complains that Community Roots Academy denied him a FAPE by failing to let his independent evaluator observe him and to interview his teachers. Community Roots Academy responds that it permitted Students' evaluator to observe hm at school, but Student's teachers did not have the time or opportunity for interviews or to complete questionnaires.

If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures made it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding. (Ed. Code, § 56329, subd. (c).)

In February 2021, Parent retained Dr. Crystal Bejarano to independently evaluate Student in the area of educationally related mental health services. As part of her evaluation, Dr. Bejarano reviewed Student's records, interviewed Parent, interviewed Student, conducted behavioral observations, conducted instructional observations, administered the Multidimension Anxiety Scale for Children, Second Edition, the Pier Harris Self-Concept Scale, Third Edition, and Risk Inventory and Strengths Evaluation, and attempted teacher interviews. Dr. Bejarano compiled her data and findings in a written report dated April 3, 2021.

By email on several occasions in February and early March 2021, Dr. Bejarano attempted to interview Student's teachers at Community Roots Academy, but the teachers did not respond. On March 23, 2021, Dr. Bejarano emailed teachers written questionnaires, in lieu of an interview, yet the teachers did not respond.

Community Roots Academy agreed to Dr. Bejarano's request to observe Student at school and arranged two observations during Student's remote learning classes. On February 9, 2021, Dr. Bejarano observed Student for 20 minutes during his English class, and observed Student for 32 minutes in his math class. Dr. Bejarano did not request additional time to observe Student.

During the hearing, Dr. Bejarano testified that it would have been beneficial to her assessment to have had the opportunity to interview Student's teachers, however, she obtained adequate information without the teacher's interviews to complete a valid educationally related mental health services evaluation.

Student failed to establish that Dr. Bejarano was denied sufficient opportunity to observe Student at school. Student also failed to provide legal authority to support that the teachers' failure to submit to interviews by Student's expert or to answer her questionnaires denied him an educational right.

Based on the foregoing, Student failed to show by a preponderance of evidence that Community Roots Academy denied him a FAPE by prohibiting Student's expert to observe him and to interview his teachers.

REMEDIES

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

An ALJ can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033 (*Park*).) Compensatory education is a prospective award of educational services designed to

catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531 F.Supp.2d 245, 265.)

The IDEA does not require compensatory education services to be awarded directly to a student, so school district staff training can be an appropriate remedy. (*Park, supra*, 464 F.3d at p. 1034 [student who was denied a FAPE due to failure to properly implement his IEP could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy violations that may benefit other pupils. (*Ibid.*; *Student v. Reed Union School Dist.* (2009) OAH Case No. 2008080580 [requiring training on predetermination and parental participation in IEPs].)

Community Roots Academy denied Student FAPE in the IEPs dated May 1, 2020, November 20, 2020, December 9, 2020, and January 15, 2021, by failing to offer appropriate behavior intervention services and placement in the least restrictive environment. During hearing, Dr. Bejarano credibly testified that Student required 30 minutes per week of behavior intervention services. While the November 20, 2020 annual IEP was later amended to offer behavior services, it was offered at a different local educational agency, which Community Roots Academy was unable to offer or provide. As a remedy, Community Roots Academy will fund for Student 20 hours of compensatory behavior intervention services by a nonpublic agency of Parents' choosing.

Community Roots Academy denied Student a FAPE by failing to provide supports, services, and accommodations included in Student's IEPs during the statutory timeframe. Community Roots Academy failed to provide IEP supports and services

during his independent study classes and field trips, failed to provide 13, 60-minute counseling sessions for Student, and 36, 30-minute parent counseling services, and six, 30-minute writing sessions. As a remedy, Community Roots Academy will fund for Student 48 hours of compensatory tutoring services by a nonpublic agency of Parents' choosing, 13 hours of counseling for Student by a nonpublic agency of Parents' choosing, and 18 hours of parent counseling by a nonpublic agency of Parents' choosing.

Community Roots Academy denied Student a FAPE by failing to timely assess Student in the area of assistive technology. During the hearing, Community Roots Academy completed the assessment, 17 months late, but had not yet reviewed the assessment during an IEP team meeting. Student failed to request a specific remedy for this violation. However, evidence overwhelmingly showed that Student required writing support during the time frame in dispute. As a remedy, Community Roots Academy will fund 17 hours of compensatory assistive technology or writing services by a nonpublic agency of Parents' choosing.

In addition, Community Roots Academy denied Student a FAPE by offering placement in another school district it did not have a contract with, by requiring Student to disenroll and seek FAPE from another school district, by failing to provide Student's records, and by inappropriately enrolling Student in independent study. The evidence established that Community Roots Academy committed these violations based, in part, upon a systemic misunderstanding or lack of care regarding its obligations to special education students. Community Roots Academy's conduct was sometimes egregious and knowing, and demonstrated a lack of ability to comply with its legal obligations as a publicly funded independent charter school. Consequently, Community Roots Academy shall provide a copy of this Decision to the California Department of Education, Charter

Schools Division, and to El Dorado Charter SELPA. In addition, there is a need to have Community Roots Academy administrators and IEP team members trained in these areas. As a remedy, Community Roots Academy is ordered to provide training to all school directors, administrators, and special education staff in the areas of requirements and best practices for ensuring that appropriate special education programs, assessments, and services are identified and provided by Community Roots Academy. The training shall be provided by a nonpublic agency or law firm that has not previously contracted with Community Roots Academy and shall be a minimum of 24 hours in length. All school directors, administrators, and special education staff shall complete their training by December 31, 2021.

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: Community Roots Academy denied Student a FAPE by offering placement in another school district. Student prevailed on this issue.

Issue 2: Community Roots Academy denied Student a FAPE by requiring Student to disenroll and seek FAPE from another school district. Student prevailed on this issue.

Issue 3: Community Roots Academy denied Student a FAPE by failing to offer appropriate behavior intervention services and placement in the least restrictive environments in the IEPs dated May 1, 2020, November 20, 2020, December 9, 2020, and January 15, 2021. Student prevailed on this issue.

Issue 4: Community Roots Academy denied Student a FAPE by failing to appropriately assess Student in the area of assistive technology. Student prevailed on this issue.

Issue 5: Community Roots Academy denied Student a FAPE by failing provide Student's records. Student prevailed on this issue.

Issue 6: Community Roots Academy denied Student a FAPE by failing to provide supports, services, and accommodations included in Student's IEPs during the statutory timeframe. Student prevailed on this issue.

Issue 7: Community Roots Academy denied Student a FAPE during the 2019-2020 school year, by enrolling him in independent study. Student prevailed on this issue.

Issue 8: Community Roots Academy did not deny Student a FAPE by prohibiting Student's expert to observe Student and interview Student's teachers. Community Roots Academy prevailed on this issue.

ORDER

1. Within 30 calendar days of this Decision, Community Roots Academy shall contract with a nonpublic agency selected by Parents, to provide 20 hours of compensatory behavior intervention services, funded by Community Roots Academy. Community Roots Academy shall also, and additionally, fund the cost for any assessments, materials, or other fees, associated with those services. Student shall have two years from the date Community Roots Academy contracts with the nonpublic agency selected by Parents to use those services.

2. Within 30 calendar days of this Decision, Community Roots Academy shall contract with a nonpublic agency selected by Parents, to provide 48 hours of compensatory tutoring services, funded by Community Roots Academy. Community Roots Academy shall also, and additionally, fund the cost for any assessments, materials, or other fees, associated with those services. Student shall have two years from the date Community Roots Academy contracts with the nonpublic agency selected by Parents to use those services.
3. Within 30 calendar days of this Decision, Community Roots Academy shall contract with a nonpublic agency selected by Parents, to provide 13 hours of compensatory individual counseling services, funded by Community Roots Academy. Community Roots Academy shall also, and additionally, fund the cost for any assessments, materials, or other fees, associated with those services. Student shall have two years from the date Community Roots Academy contracts with the nonpublic agency selected by Parents to use those services.
4. Within 30 calendar days of this Decision, Community Roots Academy shall contract with a nonpublic agency selected by Parents, to provide 18 hours of compensatory parent counseling services, funded by Community Roots Academy. Community Roots Academy shall also, and additionally, fund the cost for any assessments, materials, or other fees, associated with those services. Student shall have two years from the date Community Roots Academy contracts with the nonpublic agency selected by Parents to use those services.
5. Within 30 calendar days of this Decision, Community Roots Academy shall contract with a nonpublic agency selected by Parents, to provide 17 hours of compensatory assistive technology or writing services, funded by Community Roots Academy. Community Roots Academy shall also, and additionally, fund the cost for any assessments, materials, or other fees, associated with those

services. Student shall have two years from the date Community Roots Academy contracts with the nonpublic agency selected by Parents to use those services.

6. Within 30 calendar days of this Decision, Community Roots Academy shall contract with a nonpublic agency or law firm it has not previously contracted with to provide 24 hours of training to Community Roots Academy's directors, administrator, and special education staff concerning requirements and best practices for providing appropriate special education programs, assessments, and services. This training shall be completed by December 31, 2021.
7. Within 30 calendar days of this Decision, Community Roots Academy shall provide a copy of this Decision to the California Department of Education, Charter Schools Division, and to the El Dorado Charter SELPA.
8. Student's additional claims for relief are 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.

/s/

Paul H. Kamoroff
Administrative Law Judge
Office of Administrative Hearings