

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022110687

PARENTS ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL DISTRICT.

DECISION

April 13, 2023

On November 22, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Twin Rivers Unified School District. OAH continued the matter for good cause on December 7, 2022.

Administrative Law Judge Rommel P. Cruz heard this matter by videoconference on January 31, 2023, and February 1, 2, 7, and 8, 2023.

Attorney Colleen Snyder represented Student. Student's mother attended all hearing days on Student's behalf.

Attorneys Marcella Gutierrez and John Louis Chiappe represented Twin Rivers Unified. Special Education Local Plan Area Director of Special Education Kathleen Walker attended all hearing days on Twin Rivers Unified's behalf.

At the parties' request, the matter was continued to March 6, 2023, for written closing briefs. OAH closed the record and submitted the matter on March 6, 2023.

ISSUES

On January 25, 2023, Student withdrew, in writing, Issues 1e, 1g, 1i, 1j, 1k, and 3a as stated in the Order Following Prehearing Conference for Hearing by Videoconference dated January 20, 2023. On January 30, 2023, Student withdrew, in writing, Issues 1a, 1d, and 3b as stated in the January 20, 2023 Order.

The following are the issues heard and decided in this matter, as discussed by the parties and the Administrative Law Judge at the hearing, and reorganized for clarity and order. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did Twin Rivers Unified deny Student a FAPE during the 2022-2023 school year, through November 22, 2022, by failing to provide Parents with a copy of IEP documents within a reasonable time after the IEP team meetings on:
 - a. August 15, 2022; and
 - b. September 15, 2022?

2. Did Twin Rivers Unified deny Student a FAPE during the 2022-2023 school year, through November 22, 2022, by backdating the IEP that Twin Rivers Unified provided to Parents on October 26, 2022, with a date of June 8, 2022?
3. Did Twin Rivers Unified deny Student a FAPE during the 2022-2023 school year, through November 22, 2022, by failing to make a clear written IEP offer for:
 - a. pull-out reading intervention; and
 - b. paraeducator services?
4. Did Twin Rivers Unified deny Student a FAPE during the 2022-2023 school year, through November 22, 2022, by failing to offer:
 - a. adequate and appropriate specialized academic instruction; and
 - b. appropriate mental health services?

JURISDICTION

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

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student requested the hearing and had the burden of proof as to each issue. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 13 years old and in eighth grade at the time of the hearing. She resided in Twin Rivers Unified's geographic boundaries at all relevant times.

Student was eligible for special education under the categories of specific learning disability and autism. She also met special education eligibility criteria for a speech and language impairment and other health impairment due to anxiety and attention difficulties.

Student primarily spoke in Spanish at home and had limited understanding of the English language. At the time of the hearing, Student attended READ Academy, a private school, and had not attended Twin Rivers Unified during the 2022-2023 school year.

ISSUES 1a AND 1b: DID TWIN RIVERS UNIFIED FAIL TO PROVIDE PARENTS WITH A COPY OF IEP DOCUMENTS WITHIN A REASONABLE TIME AFTER THE AUGUST 15, 2022, AND SEPTEMBER 15, 2022 IEP TEAM MEETINGS?

Student contends Twin Rivers Unified denied her a FAPE by failing to timely provide Parents the IEP documents following the August 15, 2022, and September 15, 2022 IEP team meetings. Student argues that Twin Rivers Unified's untimely delivery of the IEP documents deprived Parents of the opportunity to meaningfully participate in the IEP process and deprived Student of educational benefit.

Twin Rivers Unified contends it timely provided Parents with copies of IEP documents following the IEP team meetings held on August 15, 2022, and September 15, 2022. Twin Rivers Unified also contends that any delays in providing the IEP documents to Parents were reasonable and did not deny Student a FAPE.

A FAPE means special education and related services available to an eligible child that meets state educational standards, at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) An IEP is a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs. (*School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996] (*Burlington*).) The IEP is the centerpiece of the IDEA's education delivery system for disabled children and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032 and 56345.)

Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.) A school district must make special education and related services available to an individual with exceptional needs as soon as possible following the development of the IEP. (Ed. Code, § 56344, subd. (b).)

A failure to timely provide a parent a written IEP offer is a procedural violation of the IDEA. However, a procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

2021-2022 SCHOOL YEAR AND EXTENDED SCHOOL YEAR

Student attended READ Academy during the 2021-2022 school year and extended school year. Pursuant to a settlement agreement between Parents and Twin Rivers Unified dated June 7, 2021, Twin Rivers Unified sent Parents an assessment plan on April 4, 2022. The June 7, 2021 settlement agreement also required Twin Rivers Unified to convene an IEP team meeting and make an offer of FAPE to Student by May 15, 2022.

Twin Rivers Unified briefly held an IEP team meeting on May 18, 2022, before the end of the school year on June 3, 2022. However, Parents could not attend that meeting, and the IEP team meeting was rescheduled to June 8, 2022. Mother provided written consent to the April 4, 2022 assessment plan on May 19, 2022.

The IEP team reconvened on June 8, 2022. Among those who attended the meeting were Mother, Director of Special Education Walker, and speech-language pathologist Hilari Talmage. The IEP team reviewed Student's progress reports from READ Academy.

At the June 8, 2022 IEP team meeting, Twin Rivers Unified's IEP team members decided that they could not propose new IEP goals or make a new FAPE offer because Student's assessments were not yet completed. Twin Rivers Unified proposed to reconvene the IEP team meeting after the assessments were completed, to update Student's IEP goals and to develop a new offer of FAPE. In the meantime, Twin Rivers Unified offered to implement Student's September 30, 2020 IEP, as amended on January 26, 2021, until Twin Rivers Unified made a new offer of FAPE. Parents provided written consent on February 22, 2021, to implement the amended September 30, 2020 IEP, but Parents wrote on the IEP that it did not offer Student a FAPE. At the hearing, Mother testified that Parents disagreed with the amended September 30, 2020 IEP because it was not consistent with the recommendations of an independent psychoeducational evaluation conducted by Arlene Ortiz, Ph.D. Dr. Ortiz presented her independent psychoeducational evaluation to Twin Rivers Unified at an IEP team meeting on September 9, 2020.

On June 20, 2022, Twin Rivers Unified provided Parents with a copy of the IEP documents dated June 8, 2022. The IEP documents included meeting notes from the June 8, 2022 IEP team meeting.

On July 1, 2022, Twin Rivers Unified sent Parents a prior written notice that Twin Rivers Unified would implement the amended September 30, 2020 IEP if Student returned to Twin Rivers Unified before a new IEP for the 2022-2023 school year was completed.

ISSUE 1a: AUGUST 15, 2022 IEP TEAM MEETING

Student failed to prove Twin Rivers Unified denied her a FAPE by failing to timely provide Parents with the IEP documents after the August 15, 2022 IEP team meeting. The IEP team reconvened on August 15, 2022, to review Student's academic and psychoeducational assessment reports. Mother, Walker, Talmage, special education teacher Jose Manosa, and school psychologist Adriana San Millan were among those who attended the meeting. San Millan was not employed by Twin Rivers Unified, but was hired by Twin Rivers Unified to conduct a psychoeducational assessment of Student during summer 2022. San Millan presented her assessment report at the August 15, 2022 IEP team meeting.

At the conclusion of the August 15, 2022 IEP team meeting, Mother requested Twin Rivers Unified make a new offer of FAPE. Twin Rivers Unified explained that no changes would be made to the IEP offer until the remaining assessments were completed, and the IEP goals revised. Twin Rivers Unified further explained that based on the information available at the time of the August 15, 2022 IEP team meeting, they would continue to offer the goals, services, and placement in the amended September 20, 2020 IEP. The

June 7, 2021 settlement agreement provided that Twin Rivers Unified would implement the amended September 20, 2020 IEP if Student returned to Twin Rivers Unified for the 2021-2022 school year. The agreement did not specify which IEP would be implemented for the 2022-2023 school year, pending a new IEP.

At the hearing, Mother testified she requested a new offer of FAPE at the August 15, 2022 IEP team meeting, and Parents were open to returning Student to Twin Rivers Unified. However, Parents continued to disagree that the amended September 30, 2020 IEP offered Student a FAPE. Despite Parents' disagreement, Twin Rivers Unified continued to offer to implement that IEP. As a result, Mother explained to the IEP team on August 15, 2022, that Student would not be returning to Twin Rivers Unified, and would remain at READ Academy. The IEP team agreed to continue the IEP team meeting to September 15, 2022.

On August 31, 2022, Talmage emailed Mother a copy of the IEP documents developed on June 8, 2022, and August 15, 2022. Mother testified she did not receive the email with the attached IEP documents. Her testimony was not persuasive. Mother confirmed at the hearing that Talmage's email contained her correct email address. Talmage testified with confidence and certainty that she did not receive an email notification that the email to Mother could not be delivered. Accordingly, Talmage's account that the email was delivered to Mother was credible.

The evidence established that Twin Rivers Unified's delivery of the IEP document on August 31, 2022, was timely. Parents receipt of the IEP document 16 days after the IEP team meeting, and nine school days after Twin Rivers Unified's first day of instruction on August 18, 2022, was not unreasonable or untimely. Student offered no contention or evidence to establish otherwise.

Furthermore, even if Twin Rivers Unified's delivery of the IEP documents to Parents 16 days after the August 15, 2022 IEP team meeting was untimely, it did not result in a denial of a FAPE. Mother meaningfully participated in the August 15, 2022 IEP team meeting by asking questions, making requests, and expressing concerns. Mother understood Twin Rivers Unified's IEP offer at the time, which was stated in the amended September 30, 2020 IEP that Parents had a copy of, and as discussed at the June 8, 2022 IEP team meeting, described in the IEP document dated June 8, 2022, and outlined in the July 1, 2022 prior written notice.

The IEP document provided to Parents on August 31, 2022, consistently described Twin Rivers Unified's IEP offer made on August 15, 2022, which Parents had already known and disagreed with at the August 15, 2022 IEP team meeting. Therefore, Twin Rivers Unified did not significantly impede Parents' opportunity to meaningfully participate in the development of Student's IEP by providing the IEP document to Parents on August 31, 2022.

Student's first day of instruction at READ Academy for the 2022-2023 school year was August 29, 2022. Student offered no testimony or documentary evidence demonstrating how the delivery of an IEP document two weeks after the IEP team meeting impeded Student's right to a FAPE or deprived her of an educational benefit since Parents had a written IEP which Twin Rivers Unified offered to implement at the August 15, 2022 IEP team meeting.

Twin Rivers Unified's delivery of the IEP documents to Parents on August 31, 2022, did not significantly impede Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, impede Student's right to a FAPE, nor deprive Student of educational benefit. Student failed to meet her burden

of proving Twin Rivers Unified denied her a FAPE by failing to provide Parents a copy of the IEP document within a reasonable time after the August 15, 2022 IEP team meeting. Accordingly, Twin Rivers Unified prevailed on Issue 1a.

ISSUE 1b: SEPTEMBER 15, 2022 IEP TEAM MEETING

Student proved Twin Rivers Unified failed to timely provide Parents with a copy of the IEP documents after the September 15, 2022 IEP team meeting. Twin Rivers Unified reconvened Student's IEP team meeting on September 15, 2022. Mother, Walker, Talmage, San Millan, and resource specialist program teacher Montip Miller were among those who attended. The IEP team reviewed Twin Rivers Unified's speech and language assessment of Student. The IEP team drafted new goals based on the recent assessments, and concluded the development of Student's IEP at the meeting.

Twin Rivers Unified did not immediately provide Parents with a copy of the IEP. On October 20, 2022, Mother emailed Talmage requesting a copy of the IEP because Parents had not received a copy of the IEP following the September 15, 2022 IEP team meeting. On October 24, 2022, Mother again emailed Talmage to request a copy of the IEP.

On October 26, 2022, Talmage emailed Mother a copy of the IEP identified as the final IEP, along with a prior written notice dated October 26, 2022. The attached IEP document consisted of 55 pages, and contained meeting notes from the IEP team meetings held on June 8, 2022, August 15, 2022, and September 15, 2022. The IEP documents Parents received on October 26, 2022, will be called the October 26, 2022 IEP.

The 41 days it took Twin Rivers Unified to provide the IEP to Parents after the September 15, 2022 IEP team meeting was untimely and unreasonable. Twin Rivers

Unified argues the delay in providing the October 26, 2022 IEP documents to Parents was reasonable because Twin Rivers Unified needed additional time to respond to the questions Mother asked at the September 15, 2022 IEP team meeting. This argument was not persuasive.

Twin Rivers Unified failed to present any testimony or documentary evidence explaining why it needed 41 days to respond to Mother's questions. The October 26, 2022 prior written notice was silent on the delay in getting the IEP document to Parents. Furthermore, Director of Special Education Walker conceded during testimony that the delivery of the IEP documents to Parents "took too long."

A preponderance of the evidence established that Twin Rivers Unified's untimely delivery of the October 26, 2022 IEP documents to Parents significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. Mother requested a new offer of FAPE at the August 15, 2022, and September 15, 2022 IEP team meetings, and Twin Rivers Unified's IEP team members proposed a new offer of FAPE at the September 15, 2022 meeting. Mother testified that Parents were open to returning Student to Twin Rivers Unified for the 2022-2023 school year if the new offer of FAPE in the final written IEP was consistent with San Millan's recommendations.

Unlike Twin Rivers Unified's offered program at the August 15, 2022 IEP team meeting, Parents did not have a written IEP to scrutinize after the September 15, 2022 IEP team meeting, when a new IEP offer was made. Twin Rivers Unified's unreasonable delay in providing Parents with a copy of the IEP significantly impeded Parents from

making a timely, informed decision about whether or not to return Student to Twin Rivers Unified for the 2022-2023 school year. As a result, Twin Rivers Unified denied Student a FAPE.

Student met her burden of proving by a preponderance of the evidence that Twin Rivers Unified denied her a FAPE by failing to provide Parents with a copy of the IEP documents within a reasonable time after the September 15, 2022 IEP team meeting. Accordingly, Student prevailed on Issue 1b.

ISSUE 2: DID TWIN RIVERS UNIFIED DENY STUDENT A FAPE BY BACKDATING THE IEP DOCUMENT PROVIDED TO PARENTS ON OCTOBER 26, 2022, WITH A DATE OF JUNE 8, 2022?

Student contends Twin Rivers Unified improperly backdated the October 26, 2022 IEP with a date of June 8, 2022, which confused and impeded Parents' ability to participate in the IEP process. Twin Rivers Unified contends the October 26, 2022 IEP was properly dated. It argues the IEP clearly documented what transpired over the course of three IEP team meetings in June, August, and September 2022, to enable Parents to participate meaningfully in the development of the IEP.

In *Union School Dist. v. Smith* (1994) 15 F.3d 1519, *cert. den.* (1994), 513 U.S. 965 (*Union*), the Ninth Circuit held that the IDEA requires a school district to make a clear, written IEP offer that parents can understand. The purpose of a written offer is to alert parents of the need to consider seriously whether a school district's proposed placement is appropriate under the IDEA. It helps parents determine whether to oppose or accept the placement with supplemental services. (*Id.* at p. 1526). *Union* emphasized the need for rigorous compliance with this requirement, finding the requirement of a formal,

written offer creates a clear record which helps to eliminate subsequent factual disputes regarding when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. (*Ibid*; see also 20 U.S.C. § 1415 (b)(1)(C).) A school district's failure to make a clear written offer of placement and services is a procedural violation of the IDEA. (*Union, supra*, 15 F.3d at p. 1527; see also 20 U.S.C. § 1414(d)(1)(A)(i), 34 C.F.R. § 300.320(a), and Ed. Code, § 56345, subd. (a).)

Student failed to prove Twin Rivers Unified improperly backdated the October 26, 2022 IEP. The evidence established the June 8, 2022 date on October 26, 2022 IEP was not confusing. The IEP date of June 8, 2022 was internally consistent with Twin Rivers Unified's offer of FAPE. The October 26, 2022 IEP was developed on June 8, 2022, August 15, 2022, and September 15, 2022. The June 8, 2022 date on the October 26, 2022 IEP was consistent with the dates listed for the annual goals, accommodations, and services offered in the IEP, which had end dates of June 7, 2023.

The October 26, 2022 IEP also identified the next annual IEP review for June 7, 2023. The June 8, 2022 date was expressly used as a start date for program services to ensure annual review of the IEP, and Student's progress on goals by the end date of June 7, 2023. This ensured that Student's IEP review was timely, and was helpful to Student rather than hurtful. Student offered no testimony or documentary evidence to demonstrate that any of the dates in the October 26, 2022 IEP were so confusing as to significantly impede Parents from making an informed decision to either accept or reject any aspect of the Twin Rivers Unified's offer of FAPE.

The evidence also established Parents understood Twin Rivers Unified's placement and services when Parents received the October 26, 2022 IEP. The October 26, 2022 IEP

contained meeting notes that clearly described Twin Rivers Unified's proposed program components discussed at each of the IEP team meetings held on June 8, 2022, August 15, 2022, and September 15, 2022. The June 8, 2022 IEP team meeting notes stated that Twin Rivers Unified would implement the offer of FAPE as set forth in the amended September 30, 2020 IEP until a new IEP offer was complete. Twin Rivers Unified provided Parents with the IEP documents with the June 8, 2022 IEP team meeting notes on June 20, 2022.

The August 15, 2022 IEP team meeting notes stated that Twin Rivers Unified would continue to implement the offer of FAPE in the amended September 30, 2020 IEP. On August 31, 2022, Twin Rivers Unified provided Parents with the IEP documents with the June 8, 2022, and August 15, 2022 IEP team meeting notes.

The September 15, 2022 IEP team meeting notes reflected Twin Rivers Unified's new offer of FAPE. The October 26, 2022 IEP contained all the meetings notes separated by IEP team meeting dates. The meeting notes were well organized and easy to understand. Accordingly, the dates on October 26, 2022 IEP was not confusing, in light of the various IEP documents Twin Rivers Unified provided to Parents over the course of the IEP's development.

Moreover, Student failed to offer any evidence to explain how the date of June 8, 2022, significantly impeded Parents' opportunity to meaningfully participate in the IEP process. Mother testified generally that the June 8, 2022 date on the IEP was confusing, but did not explain how the June 8, 2022 date on the October 26, 2022 IEP, significantly impeded Parents' ability to make an informed decision as to any aspect of Twin Rivers Unified's October 26, 2022 offer of FAPE.

Twin Rivers Unified did not deny Student a FAPE by backdating the IEP document Parents received on October 26, 2022, with a date of June 8, 2022. Accordingly, Twin Rivers Unified prevailed on Issue 2.

ISSUES 3a AND 3b: DID TWIN RIVERS UNIFIED FAIL TO MAKE A CLEAR WRITTEN OFFER FOR PULL-OUT READING INTERVENTION AND PARAEDUCATOR SERVICES DURING THE 2022-2023 SCHOOL YEAR, THROUGH NOVEMBER 22, 2022?

Student contends the October 26, 2022 IEP failed to specify whether the specialized academic instruction outside of the regular classroom would be delivered to Student individually or with other students. Instruction or services that occur outside of the regular classroom are referred to as pull-out instruction or services, while those that occur within the regular classroom are referred to as push-in instruction or services.

Student also contends the October 26, 2022 IEP document failed to provide a clear description of a paraeducator's role as a support to facilitate and model interactions for Student. Student argues the lack of clarity impeded Parents' ability to make an informed decision regarding the IEP.

Twin Rivers Unified argues Parents understood the offers of pull-out specialized academic instruction and paraeducator support because they were explained to Parents at the September 15, 2022 IEP team meeting. Therefore, Twin Rivers Unified contends the October 26, 2022 IEP's offer for pull-out specialized academic instruction and paraeducator support as written did not significantly impede Parents' ability to meaningfully participate in the IEP process, nor deny Student a FAPE.

The IEP describes the child's needs, academic and functional goals, and a statement of the special education, related services, and program modifications and accommodations that will be provided. (*B.H. v. Manhattan Unified Sch. Dist.* (2019) 35 Cal.App.5th 563, 570; 20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, §§ 56032 and 56345, subd. (a).) The IEP must contain the projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).)

ISSUE 3a: PULL-OUT READING INTERVENTION SERVICES

The evidence established the October 26, 2022 IEP's written offer of pull-out specialized academic instruction was not clearly written. The October 26, 2022 IEP provided 105 minutes each week of pull-out specialized academic instruction. The IEP specified the 105 minutes of weekly specialized academic instruction would provide a specific reading intervention designed for students with dyslexia. Neither box indicating whether the 105 minutes of weekly pull-out reading instruction would be delivered individually or in a group were selected, and the IEP team meeting notes did not clarify the delivery.

However, Student failed to prove the October 26, 2022 IEP's written offer of pull-out specialized academic instruction impeded Parents' opportunity to meaningfully participate in the IEP process. Mother testified that she did not understand the setting for the 105 minutes of pull-out reading intervention because the boxes for individual or group were not selected. However, Miller credibly testified that she explained to Mother at the September 15, 2022 IEP team meeting that pull-out specialized academic instruction would be delivered individually, or occur in small group if all students in the small group were working on the same lesson. Student

failed to offer testimony or documentary evidence to contradict Miller's recollection of that discussion at the IEP team meeting. Student also failed to offer any testimony or documentary evidence to demonstrate how the October 26, 2022 IEP's written offer of pull-out specialized academic instruction significantly impeded Parents' decision to accept or decline the offer of FAPE.

Student failed to prove the October 26, 2022 IEP's offer of pull-out specialized academic instruction as written significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. As a result, Student failed to meet her burden of proving Twin Rivers Unified denied her a FAPE by failing to make a clear written IEP offer for pull-out reading intervention. Accordingly, Twin Rivers Unified prevailed on Issue 3a.

ISSUE 3b: PARAEDUCATOR SERVICES

Student also failed to prove Twin Rivers Unified denied her a FAPE by failing to make a clear written offer for paraeducator services. Student's sole contention involving a paraeducator was the IEP's written offer involving facilitation and modeling of interactions. Student argues it was unclear as to what Twin Rivers Unified meant by facilitation and modeling of interactions, and the lack of clarity impeded Parents' ability to meaningfully participate in the IEP process. The argument was not persuasive.

The paraeducator supports in the IEP were clearly written. The October 26, 2022 IEP did not specifically offer paraeducator services as a related service. Rather, the IEP described a paraeducator would support Student by facilitating and modeling interactions with Student for 20 minutes, three times a year. The IEP also offered consultations

between general education teachers, the resource program specialist teacher, and paraeducator to support Student's success in the general education curriculum and classroom, and to discuss updates to the IEP. The paraeducator supports as described in the October 26, 2022 IEP was clear.

Even assuming the October 26, 2022 IEP's offer regarding a paraeducator to facilitate and model interactions with Student was not entirely clear to Parents, it did not significantly impede Parents' ability to participate in the decision-making process regarding the provision of a FAPE to Student. The September 15, 2022 IEP team reviewed the proposed paraeducator supports. Mother only questioned whether the paraeducator had a special education credential. Miller explained that the paraeducator did not have a special education credential but was supervised by credentialed staff. Miller testified that a paraeducator was assigned to work with Miller to deliver special education services. Parents did not question Twin Rivers Unified at the September 15, 2022 IEP team meeting, or any time after the meeting, regarding the paraeducator's role in facilitating and modeling interactions with Student. Student failed to present any persuasive evidence that Parents' lack of understanding as to that support significantly impeded Parents' ability make an informed decision whether to accept or reject any aspect of the October 26, 2022 IEP's offer of FAPE.

Twin Rivers Unified's offer of paraeducator services as written in the October 26, 2022 IEP did not significantly impede Parents' opportunity to meaningfully participate in Student's IEP process. Student failed to meet her burden of proving Twin Rivers Unified denied her a FAPE by failing to make clear written IEP offer for paraeducator services. Accordingly, Twin Rivers Unified prevailed on Issue 3b.

ISSUE 4a: DID TWIN RIVERS UNIFIED FAIL TO OFFER ADEQUATE AND APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION DURING THE 2022-2023 SCHOOL YEAR, THROUGH NOVEMBER 22, 2022?

Student contends Twin Rivers Unified denied her a FAPE by failing to offer sufficient minutes of pull-out specialized academic instruction. Student also contends Twin Rivers Unified denied her a FAPE by failing to offer an evidence-based structured literacy program at the start of the 2022-2023 school year. Student further contends that Twin Rivers Unified denied her a FAPE by failing to offer specialized academic instruction using an evidence-based math curriculum.

Twin Rivers Unified contends its offer of specialized academic instruction, both push-in and pull-out, were adequate and appropriate to allow Student to make appropriate progress towards her IEP goals. Twin Rivers Unified also contends the offer of specialized academic instruction allowed Student maximum opportunities for mainstreaming.

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

performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).)

The IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) Additionally, the IEP must contain statements of how the child's goals will be measured and the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3), (4).) The IEP must show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.)

In California, related services such as specialized academic instruction are also called designated services and instruction, and generally understood to have the same meaning as specially designed instruction described in federal law. (20 U.S.C. § 1401(29); Ed. Code, § 56031; see, e.g., Cal. Legislative Analyst, Overview of Special Education in California (Jan. 3, 2013).) Specially designed instruction means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability, and to ensure access of the child to the general curriculum, so that the child can meet the educational standards. (34 C.F.R. § 300.39(b)(3).)

The methodology used to implement an IEP is left to the school district's discretion so long as it meets a student's needs and is reasonably calculated to provide an educational benefit. (*Rowley, supra*, 458 U.S. at p. 208; *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950, citing *T. B. v. Warwick School Commission* (1st Cir. 2004) 361 F.3d 80, 84.). However, school districts are instructed to follow California program guidelines to offer students with dyslexia educational services that are evidence-based, multisensory, direct, explicit, structured, and sequential in its instructions. (Ed. Code, § 56335, subd. (a).)

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

Student proved by a preponderance of the evidence Twin Rivers Unified failed to offer adequate and appropriate specialized academic instruction following the August 15, 2022 IEP team meeting. The information available at the August 15, 2022 IEP team meeting established Student required explicit, structured, evidence-based interventions to address her significant academic deficits.

Assessments established that Student required explicit, structured, evidence-based interventions because of her dyslexia. In 2020, Dr. Ortiz found, among other disabilities, Student had a specific learning disability that impacted Student's listening comprehension, reading comprehension, and math reasoning. Dr. Ortiz recommended Student receive

small-group instruction using an evidence-based curriculum that was structured, scientifically based, and used multi-sensory strategies to address Student's challenges in reading decoding, reading fluency, and math.

The June 8, 2022 IEP team reviewed Student's seventh grade READ Academy progress reports. According to READ Academy's periodic assessments, Student was at a second-grade reading level in July 2021. By May 2022, Student's reading improved to a sixth-grade level using READ Academy's reading program for students with learning problems associated with dyslexia. This data would have informed the June 8, 2022 IEP team that Student made progress with a program directly addressing her diagnosed dyslexia.

The IEP team reconvened on August 15, 2022, and reviewed an academic assessment report by Manosa dated June 20, 2022, and San Millan's psychoeducational assessment report dated August 8, 2022. Both reports established Student continued to have significant deficits in reading, writing, and math.

San Millan was a credentialed school psychologist for 20 years. She was also credentialed as a special education teacher and a school administrator. San Millan had master's degrees in school psychology and special education. She was fluent in English and Spanish. San Millan had a private practice in 2022, but Twin Rivers Unified contracted with her to conduct Student's psychoeducational assessment.

San Millan's psychoeducational assessment was comprehensive. She assessed Student's cognitive and processing abilities, academic achievement, executive functioning and attention skills, social emotional functioning, and behavior. San Millan also assessed Student for autism. She used a variety of assessment tools, both in English and Spanish.

San Millan also reviewed Student's educational records, including the September 30, 2020 IEP, and earlier psychoeducational evaluations from 2016 and 2019. She interviewed Student and obtained input from Mother and Student's teachers. San Millan also observed Student on two occasions at READ Academy in July 2022.

Student's deficits in reading, writing, and math were not areas of contention between the parties. Generally, Manosa found Student's reading skills were in the low range, well below grade level.

In reading comprehension, Manosa and San Millan found Student's performance was in the very low range. Student read very slowly and had difficulty identifying words. In reading comprehension, Manosa found Student's skills were at the second-grade level, while San Millan found Student performed at the first-grade level.

In writing, Manosa found Student's abilities varied, with spelling skills generally at the fourth-grade level. San Millan determined Student's writing skills to be much lower, at the second-grade level.

For math calculations, Student was slow at solving problems, with less automaticity on more complex calculations. Student could add up to four-digit numbers, multiply two-digit numbers with single-digit numbers, and add decimals to the hundredth place. She struggled with adding and subtracting fractions, dividing four-digit dividends with three-digit divisors, dividing dividends with decimal points, and solving algebraic equations with single variables. According to Manosa, Student's math assessment performance was in the very low range. San Millan also found Student's math skills were in the very low range.

For math reasoning, Manosa found Student's math problem solving, analysis, and reasoning skills were in the low average range. However, San Millan found Student's math problem solving skills were extremely low. According to San Millan, Student's math problem solving skills were at a second-grade level. In her report, San Millan opined that Student's math reasoning skills were a weakness.

San Millan found Student met special education eligibility criteria for specific learning disability and other health impairment due to anxiety and problems with sustaining attention. San Millan also found Student met special education eligibility criteria for autism.

San Millan based her finding of a specific learning disability on a pattern of strengths and weaknesses between Student's cognitive processing abilities and academic achievement. San Millan opined Student's processing weaknesses in memory, phonological processing, auditory processing, visual perception, visual processing, orthographic processing, and verbal comprehension, negatively impacted Student's reading, reading comprehension, writing, and math reasoning skills.

San Millan diagnosed Student with mixed dyslexia. Mixed dyslexia is characterized by poor phonological processing, slower rapid and automatic word recognition, and inconsistent language comprehension skills. San Millan opined that Student's phonological awareness was well below average. Student had difficulty perceiving discrete sounds, making it difficult for her to accurately combine letters and sounds. San Millan also found Student's phonological processing weakness, combined with Student's deficits in orthographical processing, attention, and executive functioning, contributed to Student's struggles with reading comprehension.

San Millan recommended Student receive specialized academic instruction using interventions that research had shown to be effective. San Millan's written recommendations included evidence-based interventions for 90 minutes each day to address reading, reading comprehension, writing, and math reasoning. She specifically recommended the daily 90 minutes of evidence-based specialized academic instruction consist of 60 minutes for reading and writing, and 30 minutes for math. San Millan also recommended Student receive specialized academic instruction in a small group. San Millan did not specify in her August 8, 2022 psychoeducational assessment report, nor at the IEP team meetings, whether any of the 90 minutes of daily evidence-based instruction should occur in the regular classroom or outside of the regular classroom.

San Millan testified at the hearing. Her testimony was measured and competent. She was experienced and well-trained in assessing and developing strategies to support students with learning disabilities and social emotional challenges. Accordingly, her testimony and written report as to the appropriate interventions for Student's mixed dyslexia and mental health needs were persuasive.

TWIN RIVERS UNIFIED'S OFFER OF SPECIALIZED ACADEMIC INSTRUCTION ON AUGUST 15, 2022

Twin Rivers Unified failed to offer Student evidence-based intervention to address her academic goals following the August 15, 2022 IEP team meeting. As discussed in Issue 1a, Twin Rivers Unified continued to offer the goals and services from the September 30, 2020 IEP, as amended on January 26, 2021, until all of Student's assessments were completed, and the IEP team developed new IEP goals. However, Director of Special Education Walker testified that Twin Rivers Unified could have amended the IEP offer at the August 15, 2022 IEP team meeting.

The amended September 30, 2020 IEP offered 300 minutes each week of specialized academic instruction. The 300 minutes consisted of 120 minutes a week of pull-out reading instruction, with integrated English language development, and 60 minutes of push-in reading instruction each week, with designated English language development. It also included 60 minutes of push-in math instruction, and 60 minutes of pull-out math instruction each week.

The amended September 30, 2020 IEP offered goals for

- vocabulary,
- reading fluency,
- reading comprehension,
- math calculation,
- math reasoning, and
- counting money.

Student did not raise an issue for hearing with respect to the appropriateness of Twin Rivers Unified's continued offer of the September 2020 IEP goals and objectives at the time of the August 15, 2022 IEP team meeting. Therefore, the adequacy and appropriateness of the specialized academic instruction offered by Twin Rivers Unified must be analyzed with respect to its relationship to Student's IEP goals and objectives contained in the amended September 30, 2020 IEP. (Cal. Code Regs., tit. 5, § 3040.)

Twin Rivers Unified knew at the time of August 15, 2022 IEP team meeting Student required explicit, structured, evidence-based interventions proven to be effective in helping students with dyslexia. In September 2020, Dr. Ortiz recommended Student receive evidence-based reading interventions to improve her reading decoding and fluency. Dr. Ortiz also recommended an evidence-based math curriculum to

address Student's math deficits. Similarly, San Millan persuasively opined that Student required evidence-based interventions to make meaningful progress towards her September 2020 reading, reading comprehension, writing, and math reasoning goals.

The August 15, 2022 IEP team also knew that an evidence-based reading program was effective in helping Student improve her reading. San Millan explained in her assessment report that Student received instruction at READ Academy using the Wilson Reading System. Wilson Reading was an explicit, structured, evidence-based reading curriculum, which used the Orton-Gillingham method. Orton-Gillingham is a multisensory teaching method to help readers with dyslexia. At the August 15, 2022 IEP team meeting, Manosa opined that Student made great progress since attending READ Academy.

A preponderance of the evidence established that Student required instruction that was multisensory, direct, explicit, structured, sequential, and proven by research to be effective in helping students with dyslexia, to make meaningful progress towards her IEP goals. The amended September 30, 2020 IEP did not offer an explicit, structured, evidence-based curriculum. Twin Rivers Unified did not offer an explicit, structured evidence-based curriculum at the June 8, 2022, or August 15, 2022 IEP team meetings. Twin Rivers Unified's decision not to offer Student evidence-based interventions was not objectively reasonable based on the information available at the time of the August 15, 2022 IEP team meeting.

Walker testified that Twin Rivers Unified adopted the Sonday System during the 2021-2022 school year, and began using the system that school year. The Sonday

System was an evidence-based structured literacy curriculum designed for students with dyslexia using the Orton-Gillingham method. However, Twin Rivers Unified failed to offer Student the Souday System at the August 15, 2022 IEP team meeting.

At the hearing, Walker and Talmage explained that Twin Rivers Unified's IEP team members wanted to review the results of the speech and language assessment, and consider the input of all the assessors before offering any changes to the IEP. Twin Rivers Unified's decision to wait until the IEP team reviewed the speech and language assessment report prior to making any changes to the IEP was not objectively reasonable. Twin Rivers Unified failed to present any persuasive testimony or documentary evidence to demonstrate the findings and recommendations from a speech and language assessment, or input from a speech-language pathologist, would impact the IEP team's ultimate decision to offer Student an evidence-based curriculum to address her significant academic deficits.

At the time of the August 15, 2022 IEP team meeting, Twin Rivers Unified was aware, but ignored the data that established, Student required an explicit, structured, evidence-based curriculum due to her dyslexia, and other deficits in attention and executive functioning, to make meaningful progress towards her academic IEP goals. Accordingly, a preponderance of the evidence established Twin Rivers Unified's failure to offer Student specialized academic instruction using an evidence-based curriculum, such as the Souday System or Orton-Gillingham, at the August 15, 2022 IEP team meeting, was not objectively reasonable, and denied Student a FAPE.

Student contends Twin Rivers Unified's offer of 300 minutes a week of specialized academic instruction was insufficient. Student argues she required 90 minutes each day of specialized academic instruction. However, a determination of whether enough

specialized academic instruction was offered is not necessary, because Twin Rivers Unified's failure to offer any explicit, structured, evidence-based interventions designed for students with dyslexia at the August 15, 2022 IEP team meeting, denied Student a FAPE.

OCTOBER 26, 2022 IEP

Student did not prove Twin Rivers Unified failed to offer adequate and appropriate specialized academic instruction following the September 15, 2022 IEP team meeting. As discussed in Issue 1b, Student's IEP team completed the October 26, 2022 IEP on September 15, 2022, but did not provide the IEP documents to Parents until October 26, 2022.

The October 26, 2022 IEP offered goals in the areas of reading comprehension, reading vocabulary, reading fluency, and math calculation. The IEP also offered goals to address Student's communication, executive functioning, social emotional, and behavioral needs. Student did not raise an issue for hearing with respect to the appropriateness of Twin Rivers Unified's offer of IEP goals in the October 26, 2022 IEP.

The October 26, 2022 IEP offered 556 minutes each week of push-in specialized academic instruction. The 556 weekly minutes consisted of two 60-minute classes each day, four days a week. One day a week Student would receive specialized academic instruction for two 38-minute classes. The IEP indicated the two classes were English language arts and math.

The October 26, 2022 IEP also offered 105 minutes a week of pull-out specialized academic instruction to provide Student with specific reading interventions for dyslexia. At the IEP team meeting, Twin Rivers Unified explained the Soliday System would be

used during pull-out reading instruction. At the hearing, Miller explained the 105 minutes of weekly pull-out specialized academic instruction would target Student's reading comprehension and reading fluency.

San Millan did not opine in her assessment report, or at any of the IEP team meetings she attended for Student, that Student required 60 to 90 minutes each day of pull-out specialized academic instruction to address Student's specific IEP goals. Instead, San Millan testified generally that 105 minutes a week of specialized academic instruction was not enough based on her understanding that 60 to 90 minutes of daily evidenced-based intervention was required to address Student's academic deficits. However, San Millan's opinion did not account for the offered 60 minutes, four days per week, and 38 minutes, once a week, of push-in specialized academic instruction in English language arts in addition to the 105 minutes per week of pull-out reading intervention for dyslexia. The October 26, 2022 IEP's offer of 105 minutes per week of reading intervention for dyslexia, and 278 minutes per week of specialized academic instruction in reading and writing, met and exceeded San Millan's specialized academic instruction recommendations. At the hearing, Talmage and Miller opined generally that the October 26, 2022 IEP's offer of specialized academic instruction was appropriate to enable Student to make progress towards her academic IEP goals.

The adequacy and appropriateness of instruction and services offered in an IEP must be analyzed with respect to their relationship with the present levels of performance and the specific goals and objectives in the IEP, and not to unspecified, general goals and objectives. (Cal. Code Regs., tit. 5, § 3040.). Accordingly, San Millan's criticism of the amount and frequency of minutes for the pull-out reading intervention services to address the IEP goals offered in the October 26, 2022 IEP was not persuasive.

The evidence did not establish that 105 minutes a week of pull-out reading intervention services was inappropriate or inadequate to enable Student to make meaningful progress towards the reading comprehension and reading fluency goals in the October 26, 2022 IEP. The baseline for the reading comprehension goal indicated that Student performed in the very low range in reading comprehension. The goal required Student to identify three important details about an instructional-level text with the help of visuals, an explicitly stated main idea, and guiding questions. Instructional-level text is text she can accurately read with minimal supports. Student failed to offer any persuasive testimony or evidence that 105 minutes each week of pull-out reading intervention using the Sonday System with the supports identified in the IEP goal, was not objectively reasonable to enable Student to make meaningful progress towards identifying three important details of a text she read. Accordingly, Student failed to prove the specialized academic instruction offered in the October 26, 2022 IEP was inadequate or inappropriate to support the reading comprehension goal.

Similarly, Student failed to prove she required more pull-out reading intervention instruction to make meaningful progress towards her reading fluency goal. The reading fluency goal stated Student could correctly read 89 words per minute. The goal required Student to increase the number of words she could correctly read in one minute by 21 words, to 110 words per minute, with 98 percent accuracy, over the course of the school year. Student offered no persuasive testimony or documentary evidence to show that Student required more pull-out reading intervention instruction to make meaningful progress towards increasing her reading accuracy by 21 words per minute by June 7, 2023. Accordingly, Student failed to prove the specialized academic instruction offered in the October 26, 2022 IEP was inadequate or inappropriate to support the reading fluency goal.

Student also failed to prove the totality of the specialized academic instruction offered in the October 26, 2022 IEP would not enable her to make meaningful progress towards the vocabulary goal. The vocabulary goal required Student to identify the meanings of three unfamiliar target words after reading an independent level passage. Student could use visual supports, and materials such as a dictionary or the internet, to help her explain the informational text.

At the hearing, Miller explained that Student's vocabulary needs would not be specifically addressed during the pull-out reading intervention services. However, the evidence failed to establish that the push-in specialized academic instruction, in conjunction with the pull-out reading intervention in the Sonday System, was not reasonably calculated to enable Student to make meaningful progress towards identifying three unfamiliar target words after reading an independent level passage. Accordingly, Student failed to prove the specialized academic instruction offered in the October 26, 2022 IEP was inadequate or inappropriate to support the vocabulary goal.

Student also failed to prove Twin Rivers Unified denied her a FAPE by failing to offer pull-out specialized academic instruction using an evidence-based curriculum for math. Miller testified the push-in specialized academic instruction for math would not involve an evidence-based curriculum. However, San Millan did not recommend evidence-based specialized academic instruction in the area of math calculation, but rather for math reasoning. The October 26, 2022 IEP did not offer a goal for math reasoning. This Decision makes no determination about the appropriateness of the October 26, 2022 IEP's lack of a math reasoning goal, or any other goal, because Student did not raise an issue for hearing of whether Twin Rivers Unified failed to offer appropriate goals in her IEPs.

San Millan testified generally that the specialized academic instruction as offered was inadequate and inappropriate to address Student math deficits. However, San Millan offered no testimony specifically on the adequacy or appropriateness of the offered specialized academic instruction to support the math calculation goal. As a result, San Millan's criticism of the October 26, 2022 IEP's offer of specialized academic instruction for math was not persuasive.

The October 26, 2022 IEP's baseline for the math calculation goal stated that Student scored in the very low range in the area of math calculation on academic assessments. The math calculation goal required Student to correctly solve five one-step equations involving rational numbers over three attempts. Student could use a multiplication chart, and receive teacher modeling and maximum prompting to meet the goal.

Student did not prove the October 26, 2022 IEP's offer of 60 minutes, four times a week and 38 minutes once a week, of push-in specialized academic instruction for math, was inadequate or inappropriate to allow Student to make meaningful progress towards that goal. At the time of the September 15, 2022 IEP team meeting, Student could already add up to four-digit numbers, multiply two-digit numbers with single-digit numbers, and add decimals to the hundredth place. Student failed to offer persuasive testimony or documentary evidence to establish that Student required pull-out instruction in math calculation using evidence-based interventions to learn to solve one-step multiplication problems, by June 7, 2023. Accordingly, Student failed to prove the October 26, 2022 IEP's failure to offer pull-out specialized academic instruction using an evidence-based curriculum for math, denied Student a FAPE.

In sum, Twin Rivers Unified denied Student a FAPE by failing to offer any specialized academic instruction using explicit, structured, evidence-based interventions, in the 2022-2023 school year, until October 26, 2022, when Parents received the IEP offer for that year. However, Student failed to prove the October 26, 2022 IEP's offer of 556 minutes each week of push-in specialized academic instruction, and 105 minutes a week of pull-out reading intervention was inadequate or inappropriate to enable Student to make meaningful progress towards her IEP annual goals. Therefore, Student proved by a preponderance of the evidence Twin Rivers Unified denied her a FAPE by failing to offer adequate and appropriate specialized academic instruction during the 2022-2023 school year, through October 25, 2022. Accordingly, Student prevailed on Issue 4a.

ISSUE 4b: DID TWIN RIVERS UNIFIED FAIL TO OFFER APPROPRIATE MENTAL HEALTH SERVICES?

Student contends Twin Rivers Unified denied her a FAPE by failing to offer adequate minutes of counseling services each week for the 2022-2023 school year. Student also contends the counseling services offered by Twin Rivers Unified failed to include a therapist who could speak Spanish. Twin Rivers Unified contends the October 26, 2022 IEP's offer of 45 minutes a week of psychological services with a Spanish-speaking provider, or in the alternative, a Spanish-language interpreter, was appropriate to meet Student's mental health needs.

The educational benefit to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A

child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500.)

California law defines special education as instruction designed to meet the unique needs of the child coupled with related services as needed to enable the child to benefit from instruction. (Ed. Code, § 56031.) Related services include transportation and other developmental, corrective, and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401.) In California, related services are called designated instruction and services, and must be provided as needed to assist an individual with exceptional needs to benefit from special education. (Ed. Code, § 56363, subd. (a).)

MENTAL HEALTH SERVICES FOLLOWING THE AUGUST 15, 2022 IEP TEAM MEETING

Student proved Twin Rivers Unified failed to offer her appropriate mental health services at the start of the 2022-2023 school year. The information available at the August 15, 2022 IEP team meeting established that Student had a high level of anxiety and required counseling services in Spanish to make meaningful progress in addressing her social emotional functioning deficits.

Assessments showed Student had an elevated level of anxiety. Student completed a rating scale that showed an at-risk level of anxiety, described as feelings of nervousness, worry, and fear, in addition to feelings of being overwhelmed by problems.

Mother also completed rating scales which showed clinically significant signs of withdrawal and elevated levels of anxiety. Rating scales from Student's READ Academy

teacher showed at-risk levels of withdrawal. Withdrawal was defined as the tendency to evade others to avoid social contact. Student had difficulty understanding and engaging in social communication because of her autism.

San Millan interviewed Student. Student comfortably spoke to San Millan in Spanish. Student reported to San Millan that Student struggled with feelings of anger and would hit when angry. Student also reported feeling hopeless and depressed and had thoughts of hurting herself.

San Millan's assessment report recommended Student receive counseling services to address her anxiety and service providers to be bilingual because Student preferred to communicate in Spanish. San Millan did not recommend a duration and frequency of counseling services in her report, or at the August 15, 2022 IEP team meeting.

As discussed in Issues 1a and 4a, Twin Rivers Unified continued to offer the goals and services in the amended September 30, 2020 IEP, at the August 15, 2022 IEP team meeting. The amended September 30, 2020 IEP included two goals to help Student regulate her emotions. They aimed to help Student recognize her reactions to stress and teach her coping strategies to reduce negative reactions to anxiety. The amended September 20, 2020 IEP offered 60 minutes a month of individual counseling service for Student, and 20 minutes a month of consultation between the counselor and staff to support her social emotional IEP goals. The amended September 30, 2020 IEP did not offer counseling services in Spanish.

Student was an English language learner, who's primary language was Spanish. Student's performance on English Language Proficiency Assessments for California on March 16, 2021, placed Student at the beginning stages of English language

development. Student was considered a long-term English language learner because she had more than six years of education in the United States and continued to have a low level of English proficiency.

Student was most comfortable speaking in Spanish. Speaking in Spanish, Student openly shared deeply personal thoughts and feelings with San Millan, despite having difficulty in identifying and expressing emotions, and with social interactions because of her autism. Accordingly, a preponderance of the evidence proved that Student required counseling services in Spanish to enable her to fully engage and meaningfully benefit from counseling services.

A determination of whether Twin Rivers Unified offered enough mental health service minutes at the August 15, 2022 IEP team meeting is not necessary. Regardless of the minutes offered at the August 15, 2022 IEP team meeting, none of the mental health service minutes offered were in the Spanish language. Accordingly, Student met her burden of proving by a preponderance of the evidence that Twin Rivers Unified denied her a FAPE by failing to offer appropriate mental health services at the August 15, 2022 IEP team meeting.

MENTAL HEALTH SERVICES FOLLOWING THE SEPTEMBER 15, 2022 IEP TEAM MEETING

Student further contends the October 26, 2022 IEP failed to offer counseling services to be provided solely by a bilingual Spanish therapist. Student argues that Twin Rivers Unified's offer to use a Spanish language interpreter if a bilingual Spanish therapist was unavailable, was inappropriate to meet Student's mental health needs. The evidence did not support this contention.

The October 26, 2022 IEP offered two social emotional goals to teach Student relaxation and coping strategies when she felt

- hopeless,
- anxious,
- nervous,
- angry, or
- had thoughts of hurting herself.

The IEP offered 45 minutes of psychological services each week, consistent with San Millan's recommendation at the September 15, 2022 IEP team meeting. At the hearing, San Millan confirmed 45 minutes a week of counseling services would meet Student's social emotional needs. No witness with education, training, and experience in psychology and social emotional functioning, testified in contradiction to San Millan's opinion. Accordingly, the October 26, 2022 IEP's offer of 45 minutes of weekly counseling was appropriate for Student to make progress on her social emotional goals.

The October 26, 2022 IEP also offered the counseling services to be delivered by a Spanish-speaking therapist until Student no longer qualified as a long-term English language learner. The IEP also offered in the alternative, a Spanish language interpreter for counseling services in the event a Spanish-speaking therapist was not available.

Mother testified that a Spanish language interpreter would not be helpful because Student would not be comfortable talking about herself in the presence of someone she did not know. Mother's concern was not persuasive. Mother did not provide any specific examples where Student had difficulty talking to unfamiliar persons.

Further, San Millan developed rapport with Student and Student shared very personal feelings with San Millan, although she did not know San Millan before the assessment. Other than Mother's unsupported opinion, there was no other evidence presented that showed Student would have difficulty speaking to a therapist with the help of an interpreter. Therefore, it was reasonable for Twin Rivers Unified to expect Student to develop rapport with a therapist and an interpreter to enable her to benefit from counseling services.

In addition, San Millan testified that if a Spanish-speaking therapist was not available, a Spanish language interpreter would suffice to ensure that Student received counseling. San Millan was concerned about Student's thoughts of self-harm, and opined that counseling even with an interpreter, would serve the purpose of intervening when Student felt overwhelmed and teaching Student interpersonal skills and coping strategies for anxiety. Interpreters perform an invaluable service of providing access without language barriers, and Twin Rivers Unified appropriately included the use of a language interpreter to ensure Student received vital counseling services in the event a bilingual therapist was unavailable.

Student proved by a preponderance of the evidence Twin Rivers Unified denied her a FAPE by failing to offer her appropriate mental health services for the 2022-2023 school year, prior to October 26, 2022. However, Student did not prove the October 26, 2022 IEP failed to offer appropriate mental health services. Accordingly, Student prevailed on Issue 4b.

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 1a:

Twin Rivers Unified did not deny Student a FAPE during the 2022-2023 school year, through November 22, 2022, by failing to provide Parents with a copy of IEP documents within a reasonable time after the August 15, 2022 IEP team meeting.

Twin Rivers Unified prevailed on Issue 1a.

ISSUE 1b:

Twin Rivers Unified denied Student a FAPE during the 2022-2023 school year, through November 22, 2022, by failing to provide Parents with a copy of IEP documents within a reasonable time after the September 15, 2022 IEP team meeting.

Student prevailed on Issue 1b.

ISSUE 2:

Twin Rivers Unified did not deny Student a FAPE during the 2022-2023 school year, through November 22, 2022, by backdating the IEP that Twin Rivers Unified provided to Parents on October 26, 2022, with a date of June 8, 2022.

Twin Rivers Unified prevailed on Issue 2.

ISSUE 3a:

Twin Rivers Unified did not deny Student a FAPE during the 2022-2023 school year, through November 22, 2022, by failing to make a clear written IEP offer for pull-out reading intervention.

Twin Rivers Unified prevailed on Issue 3a.

ISSUE 3b:

Twin Rivers Unified did not deny Student a FAPE during the 2022-2023 school year, through November 22, 2022, by failing to make a clear written IEP offer for paraeducator services.

Twin Rivers Unified prevailed on Issue 3b.

ISSUE 4a:

Twin Rivers Unified denied Student a FAPE during the 2022-2023 school year, through November 22, 2022, by failing to offer adequate and appropriate specialized academic instruction.

Student prevailed on Issue 4a.

ISSUE 4b:

Twin Rivers Unified denied Student a FAPE during the 2022-2023 school year, through November 22, 2022, by failing to offer appropriate mental health services.

Student prevailed on Issue 4b.

REMEDIES

Student prevailed on Issues 1b, 4a and 4b. Student proved by a preponderance of the evidence Twin Rivers Unified denied her a FAPE during the 2022-2023 school year, through October 25, 2022, by failing to offer adequate and appropriate specialized academic instruction, appropriate mental health services, and untimely providing Parents with the IEP documents after the September 15, 2022 IEP team meeting.

As remedies, Student requests Twin Rivers Unified reimburse a compensatory education fund established by Twin Rivers Unified for Student's use pursuant to the June 7, 2021 settlement agreement. Student argues that Parents had to use the compensatory education fund to pay for Student's tuition, tutoring, and transportation to READ Academy for the 2022-2023 school year in the amount of \$14,230, because of Twin Rivers Unified's failure to offer Student a FAPE for the 2022-2023 school year. Student also requests Twin Rivers Unified continue to fund Student's attendance at READ Academy, and reimburse Parents for mileage for transporting Student to and from READ Academy, until Twin Rivers Unified offers Student an appropriate IEP.

Twin Rivers Unified contends Student is not entitled to any remedies. Specifically, Twin Rivers Unified argues that Twin Rivers Unified paid for Student's attendance and tutoring services at READ Academy for fall 2022. Therefore, Twin Rivers Unified argues it would be inequitable to reimburse Parents for costs related to READ Academy because Parents did not incur any out-of-pocket expenses. Twin Rivers Unified also contends a balance of the equities established that Student is not entitled to remedies because Parents were clear that Student would not return to Twin Rivers Unified and that Parents delayed Student's assessments.

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)(2)(C)(iii); see also, *Burlington, supra*, 471 U.S. at p. 369.) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243, n. 11 [129S.Ct. 2484, 174 L.Ed.2d 168].) An ALJ can award compensatory education or additional services to a student who has been denied a FAPE as a form of equitable relief. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033; *Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) The conduct of the parties must be reviewed and considered in determining whether equitable relief is appropriate. (*Puyallup, supra*, 31 F.3d at p. 1496.)

Parents may also be entitled to reimbursement for the costs of placement or services they independently obtained for their child when the school district has failed to provide a FAPE. (*Burlington, supra*, 471 U.S. at p. 374.) Reimbursement is not a remedy for damages, but merely requires a school district to belatedly pay expenses that it should have paid all along and would have born in the first instance had the school district developed a proper IEP. (*Id.* at pp. 370-371.)

A parent may be reimbursed for placing their child in a private placement without the agreement of the local school district if the parent proves at a due process hearing the school district had not made a FAPE available to the child in a timely manner prior to the private placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *Burlington, supra*, 471 U.S. at pp. 369-370 [reimbursement for unilateral placement may be awarded under the IDEA where the school district's proposed placement does not provide a FAPE].) The private school placement does not need to meet state standards that apply to public

agencies to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 11, 14 [114 S.Ct. 361, 126 L.Ed.2d 284] [despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement was found reimbursable where the placement substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade, and student made substantial progress based on expert testimony].)

The IDEA does not require a private school placement provide all services that a child with exceptional needs requires as a condition to full reimbursement. (*C.B. v. Garden Grove Unified Sch. Dist.* (9th Cir. 2011) 635 F.3d 1155, 1158-1159.) Parents do not need to show that a private placement provided every special service necessary to maximize their child's potential to qualify for reimbursement under the IDEA. (*Ibid.* at pp. 1159-1160.) Parents only need to show that the private placement provided educational instruction specially designed to meet the unique needs of the child, supported by services necessary to enable the child to benefit from instruction. (*Ibid.* at p. 1159; see also *S.L. v. Upland Unified Sch. Dist.* (9th Cir. 2014) 747 F.3d 1155, 1159; *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1048.)

Student's request for Twin Rivers Unified to pay for Student's monthly tuition at READ Academy until Twin Rivers Unified offers Student an appropriate IEP is not appropriate. Student did not prove the October 26, 2022 IEP failed to offer adequate and appropriate specialized academic instruction or mental health services. Student also failed to prove Twin Rivers Unified denied her a FAPE by failing to make a clear written IEP offer for pull-out reading intervention services and paraeducator services. Student did not challenge, nor prove a violation regarding, any other procedural or substantive aspect of the October 26, 2022 IEP's offer of FAPE. Accordingly, Student's

request for Twin Rivers Unified to fund her attendance at READ Academy, and to reimburse Parents for Student's transportation to and from READ Academy until Twin Rivers Unified offers her an appropriate IEP is denied.

STUDENT'S ATTENDANCE AT READ ACADEMY FOR THE 2022-2023 SCHOOL YEAR

A preponderance of the evidence established that Student benefitted from READ Academy's educational instruction specially designed to meet Student's unique academic needs. READ Academy owner and administrator Leah Skinner testified at the hearing. Skinner had a master's degree in special education, with a specialty in dyslexia. She was working towards a doctorate degree in education, with a focus on reading, literacy, and assessment. Skinner was a certified Orton Gillingham instructor, and certified in the delivering the Wilson Reading System curriculum.

Skinner testified that READ Academy provided Student small group instruction four days a week, Monday through Thursday. On Fridays, Student received individual tutoring services.

For the 2022-2023 school year, Student's instructional group consisted of three other eighth graders, taught by one teacher. For reading, Student received 90 minutes of instruction each day for decoding, spelling, comprehension, and vocabulary, using Wilson Reading and Wilson Just Words, a component of Wilson Reading focused on decoding and spelling.

For writing, READ Academy used the Excellence in Writing curriculum, an explicit evidence-based writing program. In math, READ Academy used Making Math Real, a structured, sequential method of instruction which used visuals and tactiles.

Student benefitted academically from READ Academy's specifically designed instruction. Student performed well on periodic assessments which allowed Student to advance through seven units in the Wilson Just Words. Student's performance on the Wilson Just Words midterm exam was excellent. She scored 93 percent, earning her an A grade. Overall, the evidence demonstrated Student benefitted from READ Academy's small-group instruction, and evidence-based interventions and methods.

READ ACADEMY TUITION AND TUTORING COSTS

Pursuant to a final settlement agreement between Parents and Twin Rivers Unified dated May 13, 2020, Twin Rivers Unified established and maintained a compensatory education fund for Student's use in an amount of \$14,000. Parents used the fund for Student to receive speech and language services, and academic services and supports, through September 1, 2022.

Parents and Twin Rivers Unified entered into a second settlement agreement on June 7, 2021, as discussed in Issues 1a and 1b. Pursuant to the June 7, 2021 settlement agreement, Twin Rivers Unified funded Student's placement at READ Academy through the 2021-2022 school year and extended school year, and established and maintained a compensatory education fund for Student's use in the amount of \$15,000. The June 7, 2021 settlement agreement allowed Parents to use the funds through June 1, 2023, by seeking reimbursement or requesting Twin Rivers Unified to pay for the service directly. Any remaining balance in the fund would revert to Twin Rivers Unified after June 1, 2023.

The June 7, 2021 settlement agreement allowed Parents to use the fund to provide Student speech and language services, academic intervention and supports,

private school tuition, social skills development, direct instruction in executive functioning skills, mental health services, and English language instruction to be provided by appropriately qualified providers. The settlement agreement defined appropriately qualified providers as certified nonpublic schools or nonpublic agencies, or providers with the requisite license, credential, or certificate in the service delivered. Parents could also use the fund for mileage reimbursement for transporting Student to and from the educational services and Student's home. The rate of mileage reimbursement would be based on the current Internal Revenue Services rate, and would not exceed \$500.

On February 23, 2022, Parents provided Twin Rivers Unified a written request to fund Student's attendance at READ Academy for the 2022-2023 school year. Twin Rivers Unified responded to Parents' request by proposing a new settlement agreement allowing Parents to use the balance of the compensatory education funds to pay for READ Academy tuition.

On July 1, 2022, Mother emailed Twin Rivers Unified that Parents did not agree that Twin Rivers Unified offered Student a FAPE following the June 8, 2022 IEP team meeting. The email indicated that Student would continue at READ Academy for the 2022-2023 school year, as a unilateral placement, and Parents intended to seek reimbursement from Twin Rivers Unified for the costs of Student's attendance at READ Academy.

On July 27, 2022, Twin Rivers Unified provided Parents prior written notice denying Parents' request for reimbursement of costs for Student to attend READ

Academy for the 2022-2023 school year. However, Twin Rivers Unified offered Parents to use the compensatory education funds from the May 13, 2020, and June 7, 2021 settlement agreements to pay for READ Academy.

Student returned to READ Academy on August 29, 2022, for the 2022-2023 school year. At the time of the hearing, Twin Rivers Unified paid Student's monthly tuition payments for READ Academy each month, for the months of August, September, October, November, and December 2022, and January 2023, in the amount of \$2,000 per month, for a total of \$12,000. At the request of Parents, Twin Rivers Unified paid the \$12,000 out of Student's compensatory education funds established from the two settlements.

Student also attended tutoring services from READ Academy once a week, also paid for with the compensatory education funds for a total of \$2,340 from October 2022, through December 2022. Specifically, Twin Rivers Unified used \$1,885 of Student's compensatory education fund to pay for tutoring services at READ Academy for the months of September, October, and November 2022.

Mother testified that Parents planned to use the compensatory education fund for services such as counseling, and English language development, had Student returned to Twin Rivers Unified for the 2022-2023 school year, to receive a FAPE. However, Mother testified that Parents could not use the compensatory education fund from the June 7, 2021 settlement agreement as planned because they had to dedicate the fund to pay for READ Academy, and the fund was exhausted by the time of the hearing.

Student requests Twin Rivers Unified reimburse the compensatory education fund in the amount of \$14,230 related to Student's tuition and tutoring at READ Academy because of Twin Rivers Unified's failure to offer her a FAPE for the 2022-2023 school year. Student also requests Parents have access to the fund for an additional year. Twin Rivers Unified argues Parents did not incur any out-of-pocket expenses for Student to attend READ Academy for the 2022-2023 school year, and therefore, reimbursement would be inequitable.

Twin Rivers Unified's contention that Parents had no intention of removing Student from private school and returning her to Twin Rivers Unified, and thus are not entitled to any remedy, was not persuasive. Parents' February 23, 2022 request for Twin Rivers Unified to fund READ Academy for the 2022-2023 school year, and their July 1, 2022 notice of unilateral placement, did not establish Parents had no intention of returning Student to Twin Rivers Unified regardless of what Twin Rivers Unified offered Student for the 2022-2023 school year. Parents' disagreement with Twin Rivers Unified's offer to implement the amended September 30, 2020 IEP was not unexpected as Parents wrote on February 22, 2021, that they disagreed the IEP offered Student a FAPE. Still, Parents remained engaged in the IEP process. Mother attended and participated in robust discussions at three IEP team meeting to develop a new IEP, and requested a new offer of FAPE at the August 15, 2022, and September 15, 2022 IEP team meetings. Mother also requested the IEP documents twice following the September 15, 2022 IEP team meeting. Accordingly, Parents conduct was consistent with Student's possible return to Twin Rivers Unified.

Furthermore, Parents delay in providing written consent to assess Student does not bar Student from obtaining relief. The delay in Parent's providing consent to the April 4, 2022 assessment plan did not impede Twin Rivers Unified's ability to timely

complete and convene an IEP team meeting to review a psychoeducational assessment and a separate academic achievement assessment prior to the start of Twin Rivers Unified's 2022-2023 school year. The information from those two assessments, along with other information available to the IEP team on August 15, 2022, established Twin Rivers Unified's FAPE violations for failing to offer adequate and appropriate specialized academic instruction and appropriate mental health services.

In addition, the timing of Parents' written consent to assess Student had no bearing on Twin Rivers Unified's untimely delivery of the IEP documents to Parents 41 days after the September 15, 2022 IEP team meeting. Accordingly, Parents' conduct in this matter does not bar Student from obtaining relief.

A balance of the equities requires Twin Rivers Unified to establish and maintain a compensatory education fund, independent of any settlement agreement between the parties, in the amount of \$9,885. A compensatory education fund for the costs of Student's tuition and tutoring at READ Academy for the 2022-2023 school year, through November 30, 2022, is appropriate. Student returned to READ Academy for the 2022-2023 school year, because Twin Rivers Unified failed to offer her a program to meet her academic needs. Twin Rivers Unified did not provide Parents with a copy of the October 26, 2022 IEP until October 26, 2022. Parents' decision to keep Student at READ Academy through the month of November 2022, was reasonable to allow them to consider the written IEP offer, and to contemplate a possible transition back to Twin Rivers Unified.

However, Student failed to prove the October 26, 2022 IEP could not meet Student's academic needs. Student also offered no evidence that Parents were obligated to pay for any remaining tuition payment for READ Academy if Student

disenrolled from READ Academy. Therefore, a compensatory education fund to account for the costs of Student's tuition and tutoring at READ Academy for December 2022, and January 2023, is not equitable based on the findings of this Decision.

Parents would have had the full amount of the compensatory education fund established through the June 7, 2021 settlement agreement to provide Student related services had Student attended Twin Rivers Unified for the 2022-2023 school year. However, Parents allocated, and used most of the compensatory education fund, to pay for tuition and tutoring at READ Academy because of Twin Rivers Unified's failure to offer Student a FAPE through October 25, 2022. As a consequence, Parents had \$9,885 less in the compensatory education fund available to potentially reimburse Parents for out-of-pocket costs to pay for Student to receive speech and language services, social skills development, direct instruction in executive functioning skills, mental health services, English language instruction, mileage reimbursement, additional academic intervention and supports, and private school tuition, through June 1, 2023. Student's September 15, 2022 IEP team determined she continued to have significant academic deficits, and social emotional, executive functioning, communication, and English language development needs.

Twin Rivers Unified's argument that Parents did not incur any out-of-pocket expenses for Student to attend READ Academy for the 2022-2023 school year, and therefore, reimbursement would be inequitable, was also not persuasive. Though Parents did not directly pay for Student's attendance at READ Academy for the 2022-2023 school year, through November 2022, Student's attendance was paid through a compensatory education fund established for Student to receive educationally related services, and not paid with funds Twin Rivers Unified could use for other purposes. As a result, Parents were deprived of funds to reimburse their out-of-pocket costs, and Student was deprived of

educationally related services she could have received but for Twin Rivers Unified's failure to offer her a FAPE through October 25, 2022. Depleting a compensatory education fund established for Student's use and for reasons other than to remedy Twin Rivers Unified's violations for the 2022-2023 school year, is inconsistent with the purpose of the IDEA, to provide an eligible child a FAPE at no charge to the parent or guardian. Accordingly, a compensatory education fund of \$9,885 for Student's use is appropriate relief to provide Student the same level of educationally related services Student was entitled to pursuant to the June 7, 2021 settlement agreement.

Allowing Parents access to the compensatory education fund through June 1, 2024, for Student to receive speech and language services, academic intervention and supports, private school tuition, social skills development, direct instruction in executive functioning skills, mental health services, English language instruction, and mileage reimbursement is also equitable under these circumstances. Nearly two thirds of Student's compensatory education fund was depleted to pay for READ Academy through November 2022, because of Twin Rivers Unified's FAPE violations, which reduced the amount of funds available through June 1, 2023. Accordingly, relief allowing Parents to use the compensatory education fund through June 1, 2024, for the services described in this paragraph is appropriate.

ORDER

1. Twin Rivers Unified shall establish and maintain a compensatory education fund for Student's use in the amount of \$9,885. The compensatory education fund is independent of, and in addition to, any past settlement agreements between the parties.

2. Parents shall have until June 1, 2024, to access the fund for speech and language services, academic intervention and supports, private school tuition, social skills development, direct instruction in executive functioning skills, mental health services, English language instruction, and mileage reimbursement for transporting Student to and from these services and Student's home.
3. Services shall be provided by a certified nonpublic school or nonpublic agency, or providers with the requisite license, credential, or certificate in the service delivered, for Parents to access the compensatory education fund.
4. Parents may access the compensatory education fund by seeking reimbursement from Twin Rivers Unified or by requesting that Twin Rivers Unified directly pay the provider. Parents shall provide Twin Rivers Unified with invoices for service, with the date, type, and cost of service, and proof of payment in the form of cancelled checks, bank statements, or credit card statements before receiving reimbursement. Twin Rivers Unified shall reimburse Parents within 60 days of receiving proof of payment.
5. If Parents elect for Twin Rivers Unified to directly contract with a nonpublic school, nonpublic agency, or READ Academy, Parents shall provide Twin Rivers Unified with written notice requesting Twin Rivers Unified contract with the selected provider, and provide Twin Rivers Unified with the provider's contact information. If the selected provider does not wish to contract with Twin Rivers Unified, Parents may identify an alternative provider.
6. Mileage reimbursement shall be at the Internal Revenue Service rate of \$0.655 per mile. Mileage reimbursement shall not exceed a total of \$500

for transporting Student to and from services and private school, and Student's home. Parents shall submit proof of attendance to receive mileage reimbursement for each day of Student's attendance. Twin Rivers Unified shall reimburse Parents within 60 days of receiving proof of attendance.

7. All other relief sought by Student is denied.

RIGHT TO APPEAL THIS DECISION

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

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings