

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

CASE NO. 2023100030

CASE NO. 2023100175

THE CONSOLIDATED MATTERS INVOLVING  
  
PARENTS ON BEHALF OF STUDENT, AND  
  
SOUTH SUTTER CHARTER SCHOOL.

DECISION

JANUARY 22, 2024

On September 29, 2023, Parents on behalf of Student filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings, called OAH, in OAH case number 202300030, naming South Sutter Charter School, called South Sutter.

On October 5, 2023, South Sutter filed a complaint with OAH, in OAH case number 2023100175, naming Student. On October 18, 2023, OAH consolidated the cases and designated Student's case as the primary case.

Administrative Law Judge Jennifer Kelly heard this matter by videoconference on November 14, 15, 16, 21, 28, 29, and 30, and December 5 and 6, 2023.

Attorneys Colleen A. Snyder and Melissa Cummins represented Student. Parent attended all hearing days on Student's behalf. Attorney Anisa Z. Pillai represented South Sutter. Maria Carr, Director of Special Education, attended the hearing on South Sutter's behalf on November 14, 15, 16, 21, 28, and 29, and December 5 and 6, 2023. Rania Shalaby, Assistant Director of Special Education, attended on South Sutter's behalf on the mornings of November 16, and 30, 2023. Megan Kelly, Administrator of Special Support, attended on South Sutter's behalf on the morning of November 21, 2023.

At the parties' request, the matter was continued to January 2, 2024, for written closing briefs. OAH closed the record and submitted the matter on January 2, 2024.

## ISSUES

At the start of the due process hearing on November 14, 2023, Student withdrew Issues 4(e), 5(c), and 5(d), as stated in the Order Following Prehearing Conference for Hearing by Videoconference dated November 7, 2023. Student also partially withdrew portions of Issue 4(a) (regarding math and speech), 4(b) (regarding educationally related mental health services and reading decoding), and 5(a) (regarding spelling.).

The ALJ has renumbered the issues as allowed by the holdings in *J.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified Sch. Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].) No change in substance has been made. Student's issues are analyzed first in this Decision because they begin earlier in time and are relevant to the appropriateness of South Sutter's offer of FAPE in a May 4, 2023, individualized education program, called IEP, as amended on May 16, 2023.

The following are the issues heard and decided in this matter, as discussed by the parties and the Administrative Law Judge at the hearing. A free appropriate public education is called a FAPE.

## STUDENT'S ISSUES

1. Did South Sutter deny Student a FAPE during the 2021-2022 school year, including extended school year, beginning September 29, 2021, by failing to convene an IEP team meeting when Student did not make anticipated progress towards his May 11, 2021 IEP goals?
2. Did South Sutter deny student FAPE in a May 10, 2022 IEP, by failing to:
  - a. develop appropriate measurable goals in
    - i. written expression,
    - ii. reading decoding,
    - iii. spelling,
    - iv. math, and
    - v. speech;
  - b. offer appropriate measurable goals in written expression, reading fluency, reading comprehension, math calculation and attention/work completion;
  - c. offer adequate and appropriate specialized academic instruction;
  - d. offer assistive technology services; and
  - e. offer extended school year services?

3. Did South Sutter deny Student a FAPE during the 2022-2023 school year, including extended school year, by failing to make an adequate offer of goals and services at IEP team meetings held on August 29, 2022, October 3, 2022, and November 18, 2022, by failing to:
  - a. develop appropriate measurable goals in written expression, reading decoding, and spelling;
  - b. offer appropriate measurable goals in reading fluency, reading comprehension, and math calculation;
  - c. offer adequate and appropriate specialized academic instruction; and
  - d. offer assistive technology services?
4. Did South Sutter deny Student a FAPE in a May 4, 2023 IEP, as amended on May 16, 2023, by failing to:
  - a. develop appropriate measurable goals in writing, reading, and math; and
  - b. offer adequate and appropriate specialized academic instruction?
5. Did South Sutter deny Student a FAPE from September 29, 2021, through October 6, 2022, by failing to timely assess Student in:
  - a. occupational therapy; and
  - b. assistive technology?

## SOUTH SUTTER'S ISSUE

6. Did South Sutter's May 4, 2023 IEP, as amended on May 16, 2023, offer Student a FAPE in the least restrictive environment, such that South Sutter may implement the IEP without parental consent?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as the IDEA, 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 IDEA are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; 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).) In this consolidated matter, Student had the burden of proof on the issues raised in Student's case, and South Sutter had the burden of proof on its sole 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).) All references to the Code of Federal Regulation are to the 2006 version, unless otherwise noted.

Student was 11 years old and in sixth grade at the time of hearing. Student attended South Sutter, a public charter school, at all relevant times. Student was eligible for special education under the categories of specific learning disability and speech and language impairment. Student had diagnoses of dyslexia, dysgraphia, dyscalculia, and attention deficit hyperactivity disorder.

#### ISSUE 1: DID SOUTH SUTTER DENY STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BEGINNING SEPTEMBER 29, 2021, BY FAILING TO CONVENE AN IEP TEAM MEETING WHEN STUDENT DID NOT MAKE ANTICIPATED PROGRESS TOWARDS HIS MAY 11, 2021 IEP GOALS?

Student contends South Sutter denied Student a FAPE beginning on September 29, 2021, by failing to convene an IEP team meeting when Student did not make anticipated progress towards his May 11, 2021 IEP goals. South Sutter contends Student made progress towards his IEP goals during the 2021-2022 school year.

South Sutter was a nonprofit public benefit corporation and, therefore, was designated as a local educational agency, or LEA, responsible for providing special

education and related services to its students. (Ed. Code, §§ 56026.3, 47604.) South Sutter's program was primarily delivered through independent study, distance learning, and homeschool models. Parents at South Sutter worked with credentialed general education teachers to select curriculum for their children. A child's general education teacher met with their parents at least once every 20 school days. Parents at South Sutter were generally responsible for delivering academic instruction to their child.

Students with disabilities retain all rights under the IDEA when they attend a charter school, just as they would when attending traditional public schools. (34 C.F.R. § 300.209(a).) A charter school that is a LEA must serve children with disabilities in the same manner that a LEA serves children with disabilities in other public schools. (*Id.*, subd. (b)(1)(i); Ed. Code, § 47604.) An LEA is defined as a "school district, a county office of education, a nonprofit charter school participating as a member of a special education local plan area, or a special education local plan area." (Ed. Code, § 56026.3.)

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

A FAPE means special education and related services that are available to an eligible child that meet state educational standards at no charge to the parents. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14),

1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.) In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 403 [137 S.Ct. 988, 1000, 197 L.Ed.2d 335] (*Endrew F.*))

The IEP must include a statement of the special education, related services, and supplemental aids and services, based on peer-reviewed research to the extent practicable, and program modifications and accommodations to assist the child to advance towards attaining the goals, make progress in the general education curriculum, and participate in education with peers, with and without disabilities. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IEP must state 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).)

Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(2); 34 C.F.R. § 300.39(a), (b)(3); Ed. Code, § 56031, subd. (a).) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefitting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [in California, related services are also called designated instruction and services].)



A school district must ensure the IEP team reviews the student's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved and revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum, and to consider new information about the student provided by the parents. (20 U.S.C. § 1414(d)(4)(A); 34 C.F.R. § 300.324(b)(1); Ed. Code, §§ 56380, subd. (a)(1), 56343, subd. (d); *Anchorage School Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1055-56 (*Anchorage*).)

Procedural violations do not automatically require a finding of a FAPE denial. A procedural violation only constitutes a denial of FAPE if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parents' opportunity to participate in the decision-making process regarding provision of a FAPE to the student; or
3. caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

## MAY 11, 2021 IEP, IN EFFECT DURING 2021-2022 SCHOOL YEAR

Student had reading, writing, and mathematical calculation deficits due to dyslexia. South Sutter first identified Student as having a specific learning disability in October 2020. Student had significant psychological processing deficits in phonological processing and sensory motor, and performed below average in reading comprehension, reading fluency, and written expression. Student scored in the average range in mathematics but struggled with math fluency. South Sutter's October 2020 academic assessment recommended Student be provided supplemental reading interventions at the early kindergarten level that were explicit, intensive, delivered in a small group, and

employed scaffolding principles with emotional supports. The assessor recommended that Student receive targeted and intensive math interventions at the late-first to early-second grade level to address his deficits in math calculation and writing instruction at the early to mid-first grade level.

Student's IEP team met on May 11, 2021, to develop Student's annual IEP. Student struggled in all academic areas. He displayed difficulties understanding directions and completing tasks. When a new strategy was presented to Student, he was reluctant to learn the new task and was easily frustrated. Parent and Student's special education teacher reported Student had difficulty maintaining self-control at times and was argumentative. Student struggled with writing by hand and wrote slowly and laboriously.

Parents were primarily concerned that Student was academically below grade level, particularly in reading where Student was one-to-two years below grade level. Parent used an Orton-Gillingham curriculum in the home setting and believed Student was making progress. Orton-Gillingham is a structured, multisensory learning method to teach reading and vocabulary skills. Parent asked about what methodology South Sutter intended to use for Student's specialized academic instruction. Parent wanted South Sutter to implement Student's specialized academic instruction using an Orton-Gillingham based methodology.

Student had needs in speech, reading, and writing because of phonological processing deficits. I-Ready diagnostic tests were computer-adaptive, untimed assessments for kindergarten through 12th grade. South Sutter used the tests to monitor a student's academic standing and progress throughout the school year. On i-Ready assessments, Student's overall reading score was at the first-grade level.

Student's overall reading score had not improved since the prior year. Student had needs in reading comprehension and vocabulary. Student was below grade level in written language and spelling. His estimated instructional writing and spelling levels were at second grade. Student's overall math score on i-Ready assessments was at second grade. Student had strong mental math skills but struggled with memorizing and retaining math facts.

South Sutter developed seven annual goals: five academic goals, one behavioral goal, and one speech goal. The academic goals targeted Student's skills in

- decoding,
- reading decoding,
- reading fluency,
- reading, and
- writing.

Decoding is the ability to sound out parts of words and join them to form a word. Fluency is the ability to read with speed, accuracy, and proper expression. Comprehension is the ability to understand what is read.

The May 11, 2021 IEP offered Student 30 minutes weekly speech and language services and two weekly 60-minute sessions of specialized academic instruction. The IEP did not state what methodology or intensive reading intervention program would be used to deliver Student's specialized academic instruction. The IEP included program accommodations, including

- extra time,
- breaks,
- a word list and journal,

- positive reinforcement,
- a visual schedule,
- shortened work assignments, and
- a graphic organizer.

Parents consented to the May 11, 2021 IEP, on May 18, 2021.

## LACK OF PROGRESS TOWARDS GOALS

Student proved South Sutter should have held an IEP team meeting based on Student's failure to make adequate progress towards his May 11, 2021 IEP goals. Student was in fourth grade during the 2021-2022 school year. At the start of the school year, Student's operative IEP was the May 11, 2021 IEP. Parent used All About Reading and All About Spelling for Student's general education instruction. These were online programs based in principals of structured literacy, a teaching methodology emphasizing highly explicit and systematic teaching of literacy components. These programs were recommended by South Sutter's Early Literacy Coordinator Chantel Touryan-Schaefer. Parent used Saxon Math 5-4, which was a traditional math curriculum. Parent also used supplemental materials, including i-Ready lessons for English language arts and math, and Lexia Learning for reading.

Special education teacher Damaris Sabo was responsible for implementing Student's reading and writing goals during the 2021-2022 school year. Sabo held a bachelor's degree in education and a mild to moderate special education teaching credential. Sabo began working at South Sutter in July 2021.

At hearing, Sabo explained the structure of her weekly specialized academic instruction. Sabo worked with the small group for approximately 20 minutes on new

words, 20 minutes on reading fluency, and 20 minutes in writing. Sabo testified she provided structured literacy to Student but could not explain what program or methodology she used with Student. Sabo's testimony reflected a lack of understanding of structured literacy and the requirement it be taught through an evidence-based, multisensory, direct, explicit, structured, and sequential approach. Other than generally learning about the principles of structured literacy in a college course, she conceded she was not trained in any program using the principles of structured literacy, such as Orton-Gillingham. Sabo also could not explain any other intensive reading intervention methodology, curriculum, or strategies she used to target Student's reading and writing goals.

Sabo testified she regularly checked for understanding by informal and formal assessments. At hearing, Sabo had difficulty explaining what assessment measures she used, or how she tracked Student's progress. Sabo appeared uncomfortable and nervous when asked about the content and methodology she used to work on Student's reading and writing goals, or how she assessed Student for understanding, which negatively affected her credibility.

Sabo prepared two progress reports during the 2021-2022 school year on Student's three academic goals. She reported progress on January 14, 2022, and May 10, 2022. The January 14, 2022, progress report stated Student was making "good progress" towards his goals. At hearing, Sabo opined at the time of the January 14, 2022, progress report, she believed Student was on-track to meet his goals by his annual May 2022 IEP. Although Student did not meet his reading, decoding, reading fluency, and writing goals by the May 2022 IEP, Sabo believed he made consistent and steady progress. As an example, she testified Student made "good progress" on his reading fluency goal and could read third grade level text with 70 percent accuracy.

However, the reading fluency goal required Student to fluently and accurately read fourth grade level text, demonstrating he remained at least one grade level behind his targeted fluency. Further, i-Ready assessments administered in April 2021 showed Student's overall reading level was at grade one. Student's writing goal required Student to write three to five sentences with guidance and support from adults and use of graphic organizers, word banks and direct instruction, scoring eight out of ten on a writing rubric. As of January 14, 2022, Student could write two to four sentences but relied heavily on adult support. Student's progress on the writing goal did not improve, and at the time of the May 10, 2022 IEP, Student could write two to three sentences but still relied heavily on adult support. Student had difficulty sounding out multisyllabic words and words using digraphs and diphthongs and did not meet his reading decoding goals.

Sabo prepared a second progress report on May 10, 2022. Student did not meet any of his academic goals, nor make meaningful progress towards them. In summary, Sabo's testimony about Student's progress towards his academic goals was not persuasive when weighted against more compelling evidence about Student's lack of expected progress towards his academic goals.

In addition to struggling academically, Student displayed school avoidance behavior on several occasions during specialized academic instruction. Sabo described an incident in fall 2021 when Student was upset because he was not chosen for a role in a reading activity and hid under the desk. Sabo was able to redirect him to the activity. Sabo described one or two other similar incidents that occurred during the 2021-2022 school year.

Speech and language pathologist Carly Gordon provided speech and language services to Student during the 2021-2022 school year. Gordon testified at hearing. She described Student as sometimes displaying intensive outbursts in speech and language sessions during fall 2021. On one occasion when Student was presented with a passage, he responded, "I can't read."

Parent observed Student's specialized academic instruction on numerous occasions throughout the 2021-2022 school year. At hearing, Parent described the virtual classroom as "episodic." Sabo generally taught a concept and moved on before Student completed a task. Student was often frustrated and on at least two occasions became dysregulated and hid under the desk. After his specialized academic instruction, Student often required a break before he could work on other academic tasks. Sabo did not coordinate her specialized academic instruction with Parent's work with Student in the home setting.

In winter 2022, Student became frustrated using online reading programs, specifically Lexia Core. As the content became increasingly challenging, Student displayed frustration when he made mistakes. Parent could not engage Student with his schoolwork and sometimes it took Student the entire school day to complete his math assignments. On some occasions, Student ran away from his desk, slammed his bedroom door, and threw items on the floor. Student sometimes looked away during math facts practice and yelled when Parent asked him questions. When he made a mistake on a problem, he crumpled the paper and threw it away.

Martin Baker was Student's general education teacher, called an education specialist by South Sutter, during the 2021-2022 school year. Baker held a bachelor's degree and clear single subject and multisubject teaching credentials. He worked as an education specialist for South Sutter since 2008.

Baker met with Student and Parents once every 20 school days for approximately one hour each session. He worked with Parents to develop and purchase curriculum, generally oversaw Student's work progress, reviewed work samples, and collaborated with Parents on Student's progress towards the general education curriculum. Students at South Sutter received an annual instructional fund to purchase curriculum and materials. Baker helped Parents select appropriate curriculum. He held the role of general education teacher at IEP team meetings.

At hearing, Baker described Student's academic and behavioral challenges during the 2021-2022 school year. Student did not make progress in the general education curriculum and was below grade level. Student had not memorized his math facts and was below grade level in reading. Student had below grade level scores on i-Ready assessments.

Parent contacted Baker on March 3, 2022, and requested Baker work with Student on math during office hours. Student's behaviors had escalated during math instruction, and he sometimes shouted at Parent. At Parent's request, Baker provided Student math instruction for several weeks in spring 2022.

On March 8, 2022, Parent told Baker Student was taking a long time to complete his schoolwork and engaged in angry outbursts and defiance. Parent requested Baker's input about whether Parents should seek an independent educational evaluation. Baker



responded he was not aware of the process for obtaining independent educational evaluations. Baker did not recommend to Parents that they request an IEP team meeting or speak with anyone else at South Sutter.

Parents became increasingly concerned about Student's lack of progress in academics, specifically reading, writing, and math, as well as Student's increasing displays of frustration and school avoidance. On March 28, 2022, Parents requested South Sutter conduct an independent psychoeducational evaluation at public expense. On April 18, 2022, South Sutter agreed to Parents' request and gave them an assessment plan. The assessment plan proposed to assess Student in academic achievement, intellectual development, motor development, and social emotional/behavior. Parent consented to the assessment plan on April 18, 2022.

South Sutter held Student's annual IEP team meeting on May 10, 2022. Student's independent educational evaluation had not yet been completed. Parents attended and participated in the meeting. South Sutter's IEP team members were Baker, Sabo, Gordon, and an administrative designee. The IEP team agreed Student remained eligible for special education and related services under the categories of speech and language impairment and specific learning disability.

The weight of the evidence, including testimony by Parent, Baker, and Gordon, established Student did not make meaningful progress towards his May 11, 2021 IEP goals during the 2021-2022 school year. Student's overall reading placement at the time of the May 10, 2022 IEP, was at a third-grade level based on an i-Ready assessment. Student's scores in vocabulary, comprehensive text, and phonics were stagnant compared to the previous year at the first-grade level. His score in comprehensive literature decreased from first grade to kindergarten. The May 10,

2022 IEP document did not contain progress reports, a summary of Student's progress towards his goals, or any comments. South Sutter did not provide the IEP team with teacher charted data or work samples to demonstrate Student's progress towards his reading and writing goals.

South Sutter was on notice through communications with Parent, and observations by Sabo, Baker, and Gordon that Student struggled academically, exhibited school avoidance, and expressed frustration about his difficulties in reading, writing, and mathematics. Student's behavioral and school avoidance issues, together with his academic struggles, were sufficient to put South Sutter on notice of Student's lack of expected progress toward the annual goals and in the general education curriculum. (20 U.S.C. § 1414(d)(4)(A); 34 C.F.R. § 300.324(b)(1); Ed. Code, §§ 56380, subd. (a)(1), 56343, subd. (d); *Anchorage, supra*, 689 F.3d 1047, 1055-56.)

South Sutter should have convened an IEP team meeting as early as winter 2022, given Student's academic challenges, and certainly following Parent's discussion with Baker on March 8, 2022, about whether Parents should request an independent educational evaluation. The failure to convene an IEP team meeting is a procedural violation under the IDEA. (20 U.S.C. § 1414(d)(4)(A); 34 C.F.R. §§ 300.323(a), 300.324(b)(1); Ed. Code, §§ 56380, subd. (a)(1), 56343, subd. (d); *Anchorage, supra*, 689 F.3d 1047, 1055-56.) South Sutter's failure to convene an IEP team meeting significantly impeded Parents' opportunity to participate in decision making about Student's educational program. Had an IEP team meeting been held earlier, Parent could have relayed her concerns about Student's academic and behavior challenges and the IEP team could have considered measures to address Student's lack of progress. At the time of the May 10, 2022, annual

IEP team meeting, Student had not met, or made meaningful progress towards any of his academic IEP goals. As a result, Student was denied educational benefit. Student prevailed on Issue 1.

STUDENT'S ISSUES 2(a)-(c) AND (e): DID SOUTH SUTTER DENY STUDENT FAPE IN A MAY 10, 2022 IEP, BY FAILING TO DEVELOP APPROPRIATE MEASURABLE GOALS IN WRITTEN EXPRESSION, READING DECODING, SPELLING, MATH, AND SPEECH; FAILING TO OFFER APPROPRIATE MEASURABLE GOALS IN WRITTEN EXPRESSION, READING FLUENCY, READING COMPREHENSION, MATH CALCULATION, AND ATTENTION/ WORK-COMPLETION; FAILING TO OFFER ADEQUATE AND APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION; AND FAILING TO OFFER EXTENDED SCHOOL YEAR SERVICES?

Student contends South Sutter denied him a FAPE in developing his May 10, 2022 annual IEP. Specifically, Student contends the May 10, 2022 IEP, denied a FAPE because it failed to offer appropriate and measurable goals in all areas of need, adequate and appropriate specialized academic instruction, and extended school year services. Student contends that throughout the period at issue, South Sutter knew its methods of addressing Student's reading difficulties were not working and he needed a structured literacy program consistent with the California Dyslexia Guidelines. (California Dyslexia Guidelines, Sacramento 2017, last modified December 2018, p. 64 (California Dyslexia Guidelines).)

South Sutter contends the May 10, 2022 IEP offered Student a FAPE. It further contends the Dyslexia Guidelines are not binding and South Sutter was not required to specify any particular methodology in Student's IEP. South Sutter also contends it used principles of structured literacy in implementing Student's specialized academic instruction.

The IEP must describe the child's present levels of academic achievement and functional performance, and include annual goals designed to meet the child's needs. (20 U.S.C. § 1414(d)(1)(A)(i)(I) and (II); 34 C.F.R. § 300.320(a)(1)(2); Ed. Code, § 56345, subd. (a)(1) and (2).) An IEP must contain a statement of measurable annual goals for the child, 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)(i); Ed. Code, § 56345, subd. (a)(2).)

The purpose of annual goals is to permit the IEP team to determine whether the child is making progress in an area of need. (Ed. Code, § 56345, subd. (a); see also, 64 Fed. Reg. 12,471 (1999).) For each area in which a child has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56344; Letter to Butler (United

States Department of Education, Office of Special Education and Rehabilitative Services, March 25, 1988); U.S. Dept. of Educ., Notice of Interpretation, Appendix A to 34 C.F.R., part 300, 64 Fed. Reg. 12,406, 12,371 (1999 regulations).)

An IEP also must contain a statement of the special education, related services, and program modifications and accommodations that will be provided to the student to:

- advance in attaining the goals,
- make progress in the general education curriculum, and
- participate in education with disabled and nondisabled peers.

(20 U.S.C. §§ 1401(14), 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1).)

The student's needs must be described through a statement of present levels of academic achievement and functional performance, including how the student's disability affects the involvement and progress in the general education curriculum.

(20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320 (2007); Ed. Code, § 56345, subd. (a).)

The IEP shall 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.) The IEP must include a description of how the child's progress toward meeting the annual goals will be measured, and when periodic reports of the child's progress will be issued to the parent. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320 (2007); Ed. Code, § 56345, subd. (a)(3).)

An IEP need not contain every goal from which a student might benefit.

(34 C.F.R. § 300.137; *Capistrano Unified Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1134, cert. denied (*Capistrano*).) Further, a school district is not required to develop

goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (34 C.F.R. § 300, Appendix A – Assistance to States for the Education of Children with Disabilities (1999), discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C. § 1414(d)(1)(A)(i)(II).)

## ISSUE 2(a) AND 2(b): FAILURE TO OFFER APPROPRIATE GOALS IN AREAS OF NEED IN THE MAY 10, 2022 IEP

Student contends in Issue 2(a) that South Sutter denied him a FAPE in the May 10, 2022 IEP by failing to offer adequate or appropriate goals in reading decoding, written expression, and spelling. Student did not offer evidence at hearing challenging South Sutter's failure to offer appropriate speech and language or attention/work-completion goals, and therefore they are not analyzed in this Decision. Student contends in Issue 2(b) that South Sutter failed to offer goals in known areas of need, specifically in reading fluency, reading comprehension, and math facts fluency. South Sutter contends it offered appropriate goals in all areas of need.

Student proved South Sutter failed to offer appropriate goals in reading decoding, written expression, and spelling. The May 10, 2022 IEP team reviewed Student's present levels of performance. Special education teacher Sabo identified areas of concern in decoding, specifically multi-syllabic words, digraphs (two letters representing one sound), and diphthongs (the sound formed by the combination of vowels in a single syllable). Student could decode second-grade level sight words with 81 percent accuracy. He read fluently at the second-grade level. He could answer comprehension questions with 100 percent accuracy with teacher guided support.

Writing was an area of concern. Student could write two to three sentences but relied heavily on adult support for spelling. He preferred to type but was not proficient in this skill.

Parent expressed her concerns. Student showed signs of dyslexia, including letter reversal. He had difficulty memorizing math facts and spent an extraordinary amount of time completing his math work. He threw tantrums when asked to complete work. His confidence in reading decreased, particularly following his inability to complete the California Assessment of Student Performance and Progress in spring 2021 due to work refusal.

Education Specialist Baker reported Student could identify and interpret figurative language in fourth grade level literary or informational texts. Student's estimated instructional reading level was at a third-grade level. In math, Student displayed strengths in determining unknown whole numbers. He had needs in multiplying or dividing whole numbers. His estimated instructional math level was at grade four. In writing, Student had a vivid imagination and could express his ideas verbally. He lacked patience and motor skills to write with a pen or pencil. Parent usually wrote for Student or Student dictated to Parent. Student relied heavily on adult support for spelling. Student's estimated instructional writing and spelling level was at third grade.

## STUDENT DID NOT MEET OR MAKING MEANINGFUL PROGRESS TOWARDS HIS PRIOR ACADEMIC GOALS

The IEP team reviewed progress towards Student's May 11, 2021 IEP goals from the previous year. Student did not meet five academic goals. Goal one, a reading

goal, required Student to decode words in a nonpreferred grade level text with 80 percent accuracy as measured over three consecutive trials and documented through teacher-charted reading logs. Goal two, a reading decoding goal, aimed for Student to distinguish short and long vowels when reading regularly spelled one-syllable words and recognize common vowel teams (ai, ay, ee, ea, ie, ey, oa, and ow) and digraphs (st, ch, th, wh) with 90 percent accuracy as measured by work samples, teacher logs, and observations. Goal three, a reading fluency goal, required Student to demonstrate the ability to read a text at grade level reading with sufficient fluency, accuracy, defined as 50 correct words per minute, and expression, and use context clues to confirm or self-correct word recognition. This goal was measured in three separate trials and documented through teacher-charted reading logs. Goal four, a reading goal, required Student to read grade three high frequency words with 80 percent accuracy as measured in three consecutive trials and documented by teacher charted observations. Goal five, a writing goal, required Student to write three to five sentences with appropriate development and organization using guidance and support from adults and use of graphic organizers, word banks, and direct instruction. The goal was measured by scoring eight out of ten on a writing rubric of Student's work samples collected over three consecutive sessions.

The May 10, 2022 IEP identified Student's areas of need as speech, behavior, reading, and writing. The IEP offered three academic goals in reading and writing.

### THE WRITING GOAL WAS INAPPROPRIATE

Student's estimated instructional writing level was at a third-grade level at the time of the May 10, 2022 IEP. Goal one, a writing goal, aimed for Student to write two-to-three complete sentences when provided with a writing topic, a sentence



frame, and a list of high frequency words at his reading level, at 80 percent accuracy as measured by teacher charted data and student work samples. The baseline stated Student required adult assistance to write. He could write two-to-three sentences using a word bank and graphic organizer 30 percent of the time. The goal identified Parent, the education specialist, and special education teacher as the persons responsible for Student meeting the goal.

The writing goal was inappropriate for several reasons. First, the goal did not specify whether the goal required Student to handwrite or type the sentences. South Sutter was aware at the time of the May 10, 2022 IEP of Student's difficulties writing by hand, and the goal should have clarified whether it aimed for Student to write or type. Second, the goal did not specify the reading level for the high frequency words. At hearing, Sabo could not explain the level of the high frequency words or specify any sight words. The failure to clarify what high frequency words or at what grade level made it impossible for a future IEP team to determine if Student made progress or met the goal. Third, the goal did not specify the writing level Student would be writing and editing sentences or state how the goal would be measured to obtain 80 percent accuracy. For example, the goal failed to reference or include a writing rubric, a document which sets forth specific criteria and performance expectations. These deficiencies made the goal immeasurable and inappropriate.

In its closing brief, South Sutter unpersuasively argued the goal was more advanced than the prior written expression goal because it required Student to write two to three sentences without adult support. However, it was unclear how Student could accomplish this goal, for example with the use of assistive technology, rendering the goal insufficient. South Sutter further argued the failure to include a writing rubric was inconsequential because Student's special education teacher during the 2022-2023

school year, Chandra LaRose, was “familiar with the school rubric” and could measure progress on the goal. The lack of clarity about how the goal would be measured deprived Parents of important information about how progress towards the goal would be met, thereby denying them meaningful participation in development of the IEP. The failure to offer an appropriate writing goal was a procedural violation of the IDEA.

### THE READING DECODING GOAL WAS INAPPROPRIATE

Goal two, a reading decoding goal, required Student to decode 20 multisyllabic words at his instructional level that included digraphs or diphthongs with 80 percent accuracy on three consecutive trials. Student’s overall reading ability was at the third-grade level. His vocabulary level was at grade one. Student could decode third-grade level high frequency words with 75 percent accuracy and decode multisyllabic words 40 percent of the time.

The reading decoding goal was inappropriate. It failed to specify the instructional level for the multisyllabic words in either the baseline or the goal. At hearing, Sabo could not explain what grade level multisyllabic words Student could decode. The goal also did not specify the digraphs or diphthongs Student was required to decode. Student’s IEP team could not accurately measure Student’s reading decoding progress without concrete information about the instructional or grade level of the multisyllabic words. Finally, the goal failed to state how Student’s progress on the goal would be measured and reported.

South Sutter argued Student could work on increasingly complex words throughout the year as his decoding skills progressed, suggesting it was not necessary to describe Student’s reading level in the goal. This argument

demonstrates a misunderstanding of the purpose of IEP goals, to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345.) Without a specific reading decoding goal, there was not any objective and measurable way to determine if Student was making progress in reading decoding. (20 U.S.C. § 1414(d)(1)(A)(viii); 34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3).) This point was conceded by LaRose at hearing. She testified the reading decoding goal was unclear because she did not understand whether the goal aimed for Student to decode words based on his instructional level or independent reading level. The failure to offer an appropriate reading decoding goal was a procedural violation under the IDEA.

### THE SPELLING GOAL WAS INAPPROPRIATE

Goal three was labeled as a writing goal but aimed for Student to correctly spell 10 high frequency words at Student's reading level. Student's instructional writing and spelling was at the third-grade level at the time of the May 10, 2022 IEP. The baseline indicated Student's reading level was at a third or fourth grade level, and his spelling and writing level was between a first and second grade level. Student could spell first grade words correctly 65 percent of the time.

The goal was ambiguous because it did not specify the grade level for the spelling words, nor did it include a list of spelling words. Further, the goal was inappropriately ambitious because it required Student to jump from spelling first grade words to third or fourth grade words within one-year. The goal also failed to specify how the goal would be measured and reported. South Sutter unpersuasively argued that as the year progressed, Student would have the ability to spell increasingly challenging spelling words, implying the goal could be modified. This is contrary to

the requirement that an IEP 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.) For these reasons, goal three was inappropriate.

Student met his burden of proving the three academic goals offered in the May 10, 2022 IEP, were inappropriate. South Sutter's failure to offer appropriate goals in reading decoding, written expression, and spelling impeded Student's right to a FAPE. The failure to offer appropriate measurable goals prevented Student from working towards his targeted area of need, and thereby denied him educational benefit. The failure to offer appropriate measurable goals also significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE because they could not determine if Student made progress towards his goals. Student prevailed on Issue 3(a).

### MAY 10, 2022 IEP FAILED TO OFFER GOALS IN ALL AREAS OF NEED

Student also proved South Sutter failed to offer goals in Student's known areas of need, in the May 10, 2022 IEP, specifically in reading fluency, reading comprehension, and math facts fluency.

No goals were offered in reading fluency or reading comprehension, nor did the one reading decoding goal encompass these skills, although these were known areas of need. In its closing brief, South Sutter conceded Student had deficits in reading fluency and comprehension but argued it would have been "premature" to develop goals in these areas. Sabo testified that reading fluency and comprehension goals were not

necessary until Student's automaticity with decoding improved. This argument was unpersuasive because Student's prior IEP contained goals in reading fluency and reading comprehension, which were not met at the time of the May 10, 2022 IEP. The failure to offer goals in these areas left Student's areas of need in reading fluency and reading comprehension unaddressed. Further, South Sutter's argument that Student could practice reading fluency and answer questions to "practice reading comprehension" during specialized academic instruction was unconvincing and violated the requirement that goals be developed to meet each of Student's educational needs resulting from his disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).)

Student proved South Sutter also should have offered a goal in math facts fluency. At the time of the May 10, 2022 IEP, Student's overall math level was at the early fourth grade level. On a math i-Ready assessment administered in May 2022, Student's overall math score was at the third-grade level. Student had a known deficit in math facts fluency, as indicated in South Sutter's October 2020 psychoeducational evaluation. Parent communicated to the IEP team that math was an area of strength for Student, but he had difficulty retaining and memorizing math facts.

At hearing, Parent and Baker persuasively explained Student struggled with completing math schoolwork, particularly in memorizing and retaining math facts. Although Student's need in math facts fluency was known, it was not stated as an area of need and was not addressed by any goal. Without a math fluency goal, Student's need in this area was left unaddressed, and he was denied educational benefit.

## SOUTH SUTTER DENIED STUDENT A FAPE

A failure to offer an appropriate goal is a procedural violation of the IDEA. A procedural violation results in a denial of a FAPE only if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decision-making process; or
3. caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a); Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23 Missoula, Mont.*, 960 F.2d 1479, 1484, *superseded in part by statute on other grounds*).

South Sutter failed to offer appropriate goals in written expression, reading decoding, and spelling. The failure to offer appropriate goals in these areas impeded Student's right to a FAPE because Student did not have adequate, measurable goals to target. South Sutter knew at the time of the May 10, 2022 IEP that Student had needs in reading fluency and reading comprehension, and that he had not met his goals in these areas from the May 11, 2021 IEP, leaving these areas unaddressed. The failure to offer goals in these areas denied Student the opportunity to work on these deficits and progress in the general education curriculum. The failure to offer goals in these areas also significantly impeded Parents' opportunity to participate in the decision-making process of Student's program because there were no goals that could be monitored and measured. (*Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 4646 F.3d 1025, 1032.) Student prevailed on Issues 2(a) and (b).

## ISSUE 2(c): FAILURE TO OFFER APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION IN THE MAY 10, 2022 IEP

Student contends South Sutter's offer of specialized academic instruction in the May 10, 2022 IEP, was insufficient to address Student's dyslexia-related academic deficits for two reasons. First, Student contends South Sutter should have offered an intensive intervention program using an evidence-based, multisensory, direct, explicit, structured, and sequential approach to instruction. Student contends South Sutter's offer was deficient because it did not state what curriculum and methodology would be used to address Student's dyslexia. Second, Student argues the offer of specialized academic instruction was insufficient in frequency and duration for Student to make progress towards his IEP goals.

South Sutter contends its offer of specialized academic instruction was appropriate, and it was not required to state in the IEP what methodology it used for specialized academic instruction. South Sutter further contends it used instruction specially tailored to meet Student's goals during specialized academic instruction and Student did not require the four to five hours weekly specialized academic instruction recommended by Student's experts.

A specific learning disability is a disorder in one or more of the basic psychological processing involved in understanding or using language. (34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5. § 3030(b)(10).) The basic psychological processes include

- attention,
- visual processing,
- auditory processing,

- sensory-motor skills, and
  - cognitive abilities including association, conceptualization, and expression.
- (Cal. Code Regs., tit. 5. § 3030.)

The specific learning disability category includes “such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.” (20 U.S.C. § 1401(30)(B).) A student who is assessed as being dyslexic and meets eligibility criteria under the category of specific learning disabilities is entitled to special education and related services. (Ed. Code, § 56337.5, subd. (a).)

California has outlined specific guidelines for providing educational services for students with dyslexia. Educational services for students with dyslexia means an evidence-based, multisensory, direct, explicit, structured, and sequential approach to instruction. (Ed. Code, § 56335, subd. (a).) In the context of educating students with dyslexia, each of these terms has a specific meaning and together constitute approaches called “Structured Literacy.” (California Dyslexia Guidelines, *supra*, at p. 64.) There are many methods with different names that fall under the umbrella of Structured Literacy, all of which have common content, or what is taught, and principles of instruction, or how to teach. (*Id.* at p. 65.) At Student’s request, the ALJ took official notice of the California Dyslexia Guidelines.

Education Code section 56335 required the Superintendent of Public Instruction to develop program guidelines for identifying, assessing, and educating students with dyslexia, including strategies for remediating dyslexia characteristics, by the start of the 2017-2018 school year. (Ed. Code, § 56335, subds. (a), (b), and (d).) This provision does not require any additional information to be included in the IEP of a student with dyslexia, and nothing in the law requires a school district to follow these guidelines.



However, the intent of the Legislature was for school districts to develop program guidelines for students with specific learning disabilities, including dyslexia, and other related disorders, for use by teachers and parents to have knowledge of the strategies that can be utilized with students for the remediation of the various types of specific learning disabilities. (Ed. Code, § 56337.5, subd. (c).)

A student who is identified as having a specific learning disability is entitled to specially designed instruction and related services, at no cost to parent, to meet the unique educational needs of the child. (20 U.S.C. § 1401(3)(a); Ed. Code, § 56026.) Specially designed instruction is defined as adapting the content, methodology, or delivery of instruction to address the unique needs of the student with a disability to ensure access to the general curriculum so the student can meet the applicable state educational standards that apply to all students equally. (34 C.F.R. § 300.39(b)(3).)

SOUTH SUTTER FAILED TO OFFER EVIDENCE-BASED,  
MULTISENSORY, DIRECT, EXPLICIT, STRUCTURED, AND  
SEQUENTIAL INSTRUCTION TO ADDRESS STUDENT'S DYSLEXIA

Student proved he required evidence-based, multisensory, direct, explicit, structured, and sequential instruction to address his dyslexia-related academic deficits. The overwhelming weight of the evidence proved Student required a Structured Literacy program to make meaningful progress towards his May 10, 2022 IEP reading and writing goals.

To meet its substantive FAPE obligation to a disabled child, a school district must provide an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Endrew F.*, *supra*, 137 S.Ct. at 1001.)

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, not that preferred by the parent. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)). 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 considering information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

An IEP is not required to include the specific instructional methodologies the school district will use to educate the child. (34 C.F.R. § 300.320(d)(1); 71 Fed. Reg. 46,665 (Aug. 14, 2006)). The methodology used to implement an IEP is left to the school district's discretion so long as it is designed to meet the student's unique needs, comports with the child's IEP, and is reasonably calculated to provide an educational benefit. (*Rowley, supra*, 458 U.S. at p. 208; *Crofts v. Issaquah School Dist. No. 411* (9th Cir. 2022) 22 F.4th 1048, 1056-57.) School districts are "entitled to deference in deciding which programming is appropriate as a matter of educational policy." (*J.L. v. Mercer Island Sch. Dist.* (9th Cir. 2010) 592 F.3d 938, 945, n.5 (*Mercer Island*); *Rowley, supra*, 458 U.S. 176, 208 [102 S.Ct. 3034 ("[O]nce a court determines that the requirements of the [IDEA] have been met, questions of methodology are for resolution by the States."); *R.P. ex. rel. C.P. v. Prescott Unified Sch. Dist.* (9th Cir. 2011) 631 F.3d 1117, 1122 ("The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit.") Districts do not need to specify an instructional method unless that method is necessary to enable a student to receive a FAPE. (*Mercer Island, supra*, 592 F.3d at 952; *E.E. by and through Hutchinson-Escobedo v. Norris School*

*Dist.* (E.D. Cal. April 27, 2023) 2023 WL 3124618, at \*12 [IEP needed to specify that personnel be trained in the use of applied behavioral analysis to meet FAPE standard].) Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled child even if that program will result in greater educational benefit to the child. (*Rowley, supra*, 458 U.S. at p. 208.)

In *Crofts*, the Ninth Circuit held the school district was not required to include the Orton-Gillingham method in a student's IEP as the student failed to demonstrate this method was necessary to provide a FAPE. (*Crofts, supra*, 22 F.4th 1048, 1056.) The Ninth Circuit explained that for a district to meet its substantive obligations, it must provide an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Id.*, citing *Endrew F., supra*, 137 S.Ct. 988, 1001.) In *Crofts*, the student's teachers used reading programs designed to improve Student's reading comprehension and fluency, including multi-sensory, kinesthetic reading programs adapted from the principles of the Orton-Gillingham approach. (*Id.*, at p. 1056). The student made educational progress without the Orton-Gillingham approach and progressed multiple levels in the school's reading program. (*Id.*, at p. 1057.) Under these facts, the student did not prove she required the Orton-Gillingham method to receive educational benefit.

In a recent case, the District of Nevada concluded that a student did not "necessarily require[ ] the Orton-Gillingham methodology, but she did require an equivalent methodology that was a) research-based, b) systematic, c) cumulative, and d) rigorously implemented" and that "[f]ailing to identify a methodology that would ensure that the same approach is consistently utilized throughout the day by all of [student's]

instructors necessarily means that [student] will not have the opportunity to learn as she needs to." (*Rogich v. Clark Cty. Sch. Dist.* (D.Nev. Oct. 12, 2021) 2021 WL 4781515, at \*7.)

In *Rogich*, the court found the IEP team committed a procedural IDEA violation by failing to consider parents' concerns or respond to their inquiries about which program, if not Orton-Gillingham, the district would provide to address the student's unique needs. The court found the district substantively violated the IDEA by failing to offer an Orton-Gillingham methodology, or equivalent methodology, in the student's IEP. The district did not have the requisite knowledge to properly identify or create a program, and the IEP team did not have the requisite knowledge of Orton-Gillingham to determine whether their recommended IEP incorporated its specific tenets. "Moreover, using only some of the specific methods in Orton-Gillingham and mixing them with other methods is precisely the type of mixing of methodologies ... that would confuse and impede" the student in her educational development. (*Rogich, supra*, 2021 WL 4781515, at \*6.) While *Rogich* is not binding authority, it is persuasive when analyzing this issue.

Student proved by a preponderance of the evidence that South Sutter failed to offer adequate and appropriate specialized academic instruction in the May 10, 2022 IEP. The information available to the May 10, 2022 IEP team established Student required evidence-based, multisensory, direct, explicit, structured, and sequential instruction because of his dyslexia.

Assessments established Student required explicit, structured, evidence-based intervention because of his specific learning disability. In October 2020, South Sutter's school psychologist Mila Sindle Francis found Student had a specific learning disability that impacted his reading comprehension. Francis Sidel had worked as a school

psychologist for South Sutter since 2019. She held a master's degree in school psychology and was a licensed school psychologist. At hearing, she opined that students with dyslexia require a Structured Literacy program that uses explicit and consistent instruction. She persuasively explained Structured Literacy instruction must be provided on an almost daily basis to be implemented with fidelity, depending on the severity of a child's dyslexia.

Special education teacher Gina Younger conducted an academic assessment for Student in September 2020. Student's overall academic achievement based on the Woodcock Johnson Test of Achievement, Fourth Edition, was in the very low range compared to his same aged peers. Student scored in the average range in mathematics, broad mathematics, and math problem solving, and in applied problems, calculation, writing samples, and word attack. Student scored in the low range in

- math calculation skills,
- written language,
- broad written language,
- written expression, and
- academic applications.

He scored in the low range in spelling, and within the very low range for

- reading,
- broad reading,
- basic reading skills,

- reading fluency,
- academic skills, and
- academic fluency.

Student demonstrated relative weaknesses in basic reading, reading fluency, letter-word identification, oral reading, and sentence reading fluency.

Younger's academic report recommended Student be provided supplemental reading interventions at the early Kindergarten level that were explicit, intensive, delivered in a small group, and employed scaffolding principles with emotional supports. The report recommended that Student receive targeted and intensive math interventions at the late-first to early-second grade level to address his deficits in math calculation and writing instruction at the early to mid-first grade level.

At hearing, all the witnesses agreed Student required Structured Literacy to address his dyslexia related needs. Parents made repeated inquiries starting at the May 11, 2021 IEP team meeting about what methodology and curriculum South Sutter intended to use. Although South Sutter was not required to provide an Orton-Gillingham program, Student required an equivalent methodology that was explicit, structured, and evidenced-based. Over the course of the IEP team meetings at issue, South Sutter did not explain what methodology or curriculum it would use or communicate to Parents that it would implement a Structured Literacy program consistent with the California Dyslexia Guidelines or offer an equivalent program.

READ Academy and READ Learning Center owner and administrator Leah Skinner testified at the hearing as Student's expert. 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 delivering the Wilson Reading System curriculum.

Skinner readily identified and explained key components of Structured Literacy, defined terms, and provided practical examples based on her expertise. Skinner explained that Structured Literacy involved following a scope and sequence using a logical sequence from simple to complex. Structured Literacy also required progress monitoring where the teacher ensured the student had mastered the content to the degree of automaticity, thereby freeing cognitive resources to move to the next learning step. Teachers at READ Learning Center were trained in the Barton System, a Structured Literacy program. The program sequentially advanced students through 12 progressions,

- from closed syllables to vowel-consonant syllables,
- open syllables,
- suffix endings,
- sound options,
- r-controlled syllables,
- vowel digraphs and diphthongs,
- adding suffixes,
- additional i.e., y vowel work, and
- advanced concepts.

In its opening statement, South Sutter stated the evidence would prove Student was provided Structured Literacy in specialized academic instruction. At hearing, South Sutter's witnesses, including Sindle Francis and Touryan-Schaeffer, agreed Student

required Structured Literacy to address his reading deficits. Carr, LaRose, and Sabo testified Student was provided Structured Literacy during specialized academic instruction, but their testimony was discredited on cross-examination.

In its closing brief, South Sutter changed its position and argued it was not required to use Structured Literacy in delivering Student's specialized instruction, and it could pick and choose between methodologies without violating the principles of Structured Literacy. South Sutter's argument was not persuasive and was contrary to the weight of the evidence.

South Sutter's witnesses, including Carr and LaRose, testified Parents were primarily responsible for providing Student's reading instruction to address his dyslexia-related deficits. Carr believed Parent provided Structured Literacy because she used All About Reading, All About Spelling, and Lexia Core, which were computer-based programs using principals of Structured Literacy. Carr testified Structured Literacy was provided to all students who required it and that Structured Literacy is "good teaching" for students with dyslexia. When questioned about how Structured Literacy was provided, she explained parents could use instructional funds to purchase a Structured Literacy curriculum.

Carr could not explain whether Structured Literacy or any intensive reading intervention program was offered for Student's specialized academic instruction. She agreed it was generally beneficial to explain to parents the methodology used in a student's specialized academic instruction, and that sometimes an IEP had to specify the program a child required to receive a FAPE. However, none of the IEPs at issue in this



matter, including the May 10, 2022 IEP, stated any methodology or curriculum for delivery of Student's specialized academic instruction, despite the undisputed evidence that Student required Structured Literacy to address his dyslexia-related deficits.

LaRose testified that specialized academic instruction "filled in" the general education instructional gaps, and that it worked "parallel" with instruction delivered in the general education setting. LaRose did not coordinate her instruction with Parent.

The overall implication of Carr and LaRose's testimony was that because Parents used Structured Literacy programs in the home school setting, this alleviated South Sutter's obligation to offer provide Student sufficient specialized academic instruction to address his reading and writing deficits. This was contrary to the IDEA's mandate that students assessed as dyslexic and meeting eligibility under the category of specific learning disability are entitled to specially designed instruction and related services at no cost to parent. (20 U.S.C. § 1401(3)(a); Ed. Code, §§ 56026; 56337.5, subd. (a).)

In its closing brief, South Sutter relied on *Parents on Behalf of Student v. Los Alamitos Unified Sch. Dist.* (November 10, 2022) OAH No. 20220700072, to support its argument its special education teachers could select from "various methodologies" in implementing Student's specialized academic instruction and not violate the principles of Structured Literacy. OAH decisions are persuasive, although not binding. (Cal. Code Regs., tit. 5, § 3085.) In *Los Alamitos* the school district followed the California Dyslexia Guidelines in its literacy program. The governing board for Los Alamitos adopted a Structured Literacy program, and its education specialists were trained in the program. The school district informed the parents at the student's IEP team meeting that it followed

a Structured Literacy approach consistent with the California Dyslexia Guidelines. It also issued a prior written notice to the parents explaining the proposed reading interventions that would be used.

In contrast, South Sutter did not explain to Parents at any IEP team meeting at issue, in any IEP, or in a prior written notice, what proposed reading interventions would be used to implement Student's specialized academic instruction. South Sutter's staff told Parents on multiple occasions they could not commit to providing any specific reading methodology or intervention during group specialized academic instruction. At hearing, Sabo and LaRose unconvincingly opined they used Structured Literacy during specialized academic instruction. Sabo had not been trained in Structured Literacy and could not explain its principles. LaRose incorporated some principles of Structured Literacy in specialized academic instruction, but she did not implement any Structured Literacy program or scope and sequence with fidelity. Their testimony was unconvincing for these reasons.

South Sutter argued the California Education Code and California Dyslexia Guidelines do not require the use of a Structure Literacy curriculum provided the "core structure and content are implemented," and does not require any specific scope and sequence of instruction. There are different programs that fall under the Structured Literacy umbrella and South Sutter was not required to adopt any specific program. However, Structured Literacy requires material to be taught systematically, meaning the instruction follows the logical order of language that "begins with the easiest and most basic concepts and elements and progresses to the most difficult." (California Dyslexia Guidelines, *supra*, at p. 66.) Further, Structured Literacy requires the instruction to be cumulative, meaning each step is based on concepts previously learned. (*Id.*) At

hearing, LaRose conceded she often taught concepts out of sequence under both the Wilson Reading System and Logic of English programs. Here, South Sutter did not follow the systematic and cumulative principles of Structured Literacy. South Sutter also did not make a clear offer of specialized academic instruction explaining how it intended to target Student's reading and writing goals.

The weight of the evidence proved South Sutter's offer of specialized academic instruction in the May 10, 2022 IEP was not reasonably calculated to enable Student to make progress in light of his circumstances. (*Endrew F., supra*, 137 S.Ct. at 1001.) The offer of specialized academic instruction was objectively unreasonable based on information known to South Sutter at the time the May 10, 2022 IEP was developed. South Sutter knew Student required Structured Literacy, but did not offer a Structured Literacy program, or indeed any intensive reading program. Student proved South Sutter denied him a FAPE.

### SOUTH SUTTER FAILED TO OFFER STUDENT A SUFFICIENT FREQUENCY AND DURATION OF SPECIALIZED ACADEMIC INSTRUCTION

Student proved South Sutter's offer of specialized academic instruction in the May 10, 2022 IEP, did not offer Student a sufficient frequency and duration of specialized academic instruction to meet Student's dyslexia-related needs. South Sutter knew as of October 2020, that Student had a specific learning disability that impacted Student's

- reading comprehension,
- reading fluency,

- reading decoding,
- basic reading skills, and
- written expression.

South Sutter also knew as early as the October 22, 2020 IEP team meeting, that Student required intensive interventions to address his deficits in reading and mathematics. At the time of the May 10, 2022 IEP team meeting, 19 months later, Student continued to have significant reading and writing deficits due to dyslexia. Student's overall reading score based on an i-Ready assessment taken on December 16, 2021, was at third grade. His vocabulary was at a first-grade level. Student's instructional writing level was at third grade. His overall math level was at early fourth grade, but he had math facts fluency deficits. Student had not met any of his academic goals from the prior IEP. However, South Sutter inexplicably reduced Student's specialized academic instruction by one-half from 120 minutes to 60 minutes per week.

The weight of the evidence proved 60 minutes weekly specialized academic instruction was insufficient to address Student's IEP reading and writing goals. South Sutter's witnesses, including school psychologist Mila Sindel Francis and Early Literacy Coordinator Chantal Touryan-Schaefer, and Student's experts, psychologist Erika Frieze and Skinner, consistently and emphatically opined, without reservation, that students with dyslexia require evidence-based, multi-sensory, direct, explicit, structured and sequential instruction. They each opined that a sufficient duration and frequency of instruction is between two to five days per week, for 45 to 90 minutes per session, depending on the severity of the child's dyslexia.

Skinner opined Student required Structured Literacy intervention services four times weekly, for 60 minutes per session. Skinner's testimony was compelling based

upon her substantial experience working with students with dyslexia and knowledge of Structured Literacy programs. None of South Sutter's experts disagreed with Skinner's recommendations about the frequency and duration of Structured Literacy interventions Student required to make progress towards his reading and writing goals.

Sindle Francis opined that students with dyslexia require a Structured Literacy program that uses explicit and consistent instruction. She persuasively explained Structured Literacy instruction must be provided on an almost daily basis to be implemented with fidelity, depending on the severity of a child's dyslexia.

Touryan-Schaefer worked at South Sutter as an Early Literacy Coordinator. She held a bachelor's degree in liberal studies and a master's degree in education. Touryan-Schaefer held a clear multiple subject teaching credential and a reading literacy leadership specialist credential. Touryan-Schaefer completed 30 hours of training in Orton-Gillingham methodology. Consistent with Sindel Francis, Touryan-Schaefer opined that students with dyslexia require direct and explicit daily instruction using a dyslexia-based curriculum, such as Orton-Gillingham, as well as frequent checks for understanding. She explained the frequency and duration of instruction depended on the severity of a child's dyslexia. For example, the Wilson Reading System recommended two to five sessions per week for 45 to 60 minutes per session. Touryan-Schaefer opined Structured Literacy could be used in specialized academic instruction. She explained it was important to follow the same principles of phonemic awareness, phonics, vocabulary, comprehension, and fluency, and to monitor a student's progress every four to six weeks.

Student proved South Sutter denied Student a FAPE by failing to offer a sufficient frequency and duration of specialized academic instruction reasonably calculated to meet Student's reading and writing needs and enable him to make progress in light of

his circumstances. The evidence proved Student required 60 minutes of specialized academic instruction, four times per week, using Structured Literacy to make progress towards his reading and writing goals. Student prevailed on Issue 2(c).

## ISSUE 2(e): EXTENDED SCHOOL YEAR SERVICES

Student contends South Sutter denied him a FAPE by failing to offer extended school year services in the May 10, 2022 IEP. South Sutter contends Student did not require extended school year services.

The purpose of special education during the extended school year is to prevent serious regression over the summer months. (*Hoelt v. Tucson Unified Sch. Dist.* (9th Cir. 1992) 967 F.2d 1298, 1301.) The mere fact of likely regression is not enough to require an extended school year placement, because all students “may regress to some extent during lengthy breaks from school.” (*MM v. School Dist. of Greenville County* (4th Cir. 2002) 303 F.3d 523, 538.) In California, eligibility for extended school year requires, among other things, a finding by the IEP team that

“interruption of the pupil’s educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition.” (Cal. Code Regs., tit. 5, § 3043.)

Student did not offer evidence in support of his contention that he required extended school year services at the time of the May 10, 2022 IEP team meeting. Although Student was behind grade level and required repetition and additional time to complete his work, without additional evidence that he would suffer regression, this

does not meet the standard for extended school year services. Therefore, Student failed to prove South Sutter should have provided him extended school year services in the May 10, 2022 IEP. South Sutter prevailed on Issue 2(e).

ISSUES 3(a)-(c): DID SOUTH SUTTER DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO MAKE AN ADEQUATE OFFER OF GOALS AND SERVICES AT IEP TEAM MEETINGS HELD ON AUGUST 29, 2022, OCTOBER 3, 2022, AND NOVEMBER 18, 2022; FAILING TO DEVELOP APPROPRIATE AND MEASURABLE GOALS IN WRITTEN EXPRESSION, READING DECODING, AND SPELLING, FAILING TO OFFER APPROPRIATE MEASURABLE GOALS IN READING FLUENCY, READING COMPREHENSION, AND MATH CALCULATION; AND FAILING TO OFFER APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION?

Student contends South Sutter denied him a FAPE in developing his educational program for the 2022-2023 school year. Specifically, Student contends the amendments to the May 10, 2022 IEP, developed in IEP team meetings held on August 29, October 3, and November 18, 2022, denied Student a FAPE because they failed to offer appropriate measurable goals in all areas of need, and failed to offer adequate and appropriate specialized academic instruction. South Sutter contends it offered appropriate goals, supports, and services during the 2022-2023 school year.

### ISSUES 3(a) AND (b): GOALS

Student contends the math, written expression, and reading goals developed in the August 29, 2022, and November 19, 2022 IEP amendments were inappropriate. South Sutter contends the goals were appropriate to address Student's deficits in math facts fluency, written expression, and reading.

The IEP team met on August 29, 2022, to review the results of an independent psychological evaluation completed by licensed clinical psychologist Erika Frieze, PSY.D. Parent attended the IEP team meeting. South Sutter's IEP team members included Carr, Baker, Gordon, and a special education teacher.

Frieze was the owner of Bridges of the Mind, a private clinic that provided educational and medical evaluations. Frieze was a licensed clinical psychologist. She held bachelor's and master's degrees in psychology and a doctorate degree in clinical psychology. Frieze had conducted hundreds of private psychological assessments over her career. South Sutter contracted with Frieze in spring 2022 to conduct Student's independent psychological evaluation. Frieze had significant expertise in diagnosing the causes of reading disabilities, including dyslexia.

Frieze's testimony at hearing was measured and competent. Her extensive experience assessing students with learning disabilities, including dyslexia, and her thoughtful and thorough answers to questions, rendered her testimony persuasive. No expert, including school psychologist Sindie Francis or reading specialist Touryan-Schaefer, disputed Frieze's findings and recommendations as to the appropriate interventions for Student's dyslexia.



Frieze's psychological assessment was comprehensive. She assessed Student over approximately six hours in two sessions on May 5, and 11, 2022. Frieze assessed Student's

- cognitive and processing abilities,
- academic achievement,
- executive functioning and attention skills,
- social emotional functioning, and
- behavior.

Frieze reviewed Student's educational records, including South Sutter's fall 2020 psychoeducational and academic assessments, Student's May 11, 2021 IEP; and i-Ready assessments from December 2021. Frieze interviewed Parents and obtained input from Student's special education teacher Sabo and speech and language pathologist Gordon. Frieze observed Student during administration of the assessments.

Parent reported concerns about Student's lack of academic progress, inattention, school refusal, and increased frustration and emotional outbursts related to schoolwork. Student's motivation to complete his schoolwork significantly decreased after the 2021 winter break. Student told Parents, "I can't read." Gordon relayed that Student told her in a speech and language session that he could not read. Gordon also relayed Student was easily frustrated.

Sabo reported Student sometimes interrupted the class and did not take turns. Sabo confirmed she did not use a Structured Literacy program, or any intensive intervention reading program, during specialized academic instruction. Student had difficulty waiting his turn and interrupted others. He also demonstrated frustration during writing tasks.

Frieze administered numerous standardized assessments and rating scales. Student's cognition fell in the average range. He had high average verbal skills, average visual spatial skills, and high average fluid reasoning skills. He displayed relative weaknesses in working memory, phonological processing speed, and reading, which indicated a pattern consistent with dyslexia.

Consistent with South Sutter's 2020 psychoeducational and academic evaluations, Freize found Student to have strong learning potential but demonstrated academic weaknesses in spelling, sentence composition, and math fluency. Student scored in the very low range in spelling. He had difficulty writing sentences and often omitted capitalization and punctuation. He had low average sentence composition and sentence writing fluency. Student could verbalize his thoughts but could not effectively and fluently write them.

In reading, Student had weaknesses in isolated word fluency. When asked to read a list of fourth-to-fifth grade level words within 60 seconds, he could only read four words. He exhibited significant deficits in fluently reading grade level passages. He had a low fluency index and lacked the ability to automatically and effortlessly recognize words in print. Student's reading comprehension was a personal strength. He could use context clues to answer questions about passages. Student also had strengths in phonemic awareness and positioning sounds, and semantic concepts. On the Feifer Assessment of Reading, a standardized assessment, Student scored in the below average range on the phonological index and in the significantly below-average range on the fluency index.

Frieze diagnosed Student with mixed dyslexia, a severe form of dyslexia characterized by poor phonological processing and fluency. In her report, Frieze

opined poor logical processing skills, slower rapid and automatic word recognition skills, and inconsistent language comprehension skills disrupt the natural flow of rapidly and fluidly recognizing words in print. Student's phonemic awareness was above average, but his rapid automatic naming, visual perception, irregular word fluency, and orthographical processing were moderately to significantly below average.

For math, Student's overall score was in the average range. Student scored in the average range in math problem solving and numerical operations. He scored in the very low range in math fluency. Student lacked fluency and a consistent understanding of mathematical concepts.

In adaptive behavior, Parent rated Student low in functional academics and self-direction. Student displayed inattention, impulsivity, and overaction. In executive functioning, Parent rated Student clinically elevated in impulse control.

Frieze diagnosed Student with a specific learning disorder with impairments in reading (dyslexia), written expression (dysgraphia), and mathematics (dyscalculia). She also diagnosed Student with attention-deficit hyperactivity disorder, combined type, based on elevated depression, anxiety, and inattention. At hearing, Frieze opined Student's anxiety and depression symptoms were related to Student's educational struggles.

In her report, Frieze made various recommendations. Dr. Frieze recommended accommodations, such as written schedules, reduced distractions, frequent movement breaks, as well as assistive technology. She reported Student should be assessed in assistive technology to determine which assistive technology tools would assist Student in accessing his education. She recommended the use of dictation (speech to text), and

the use of text to speech to support Student's writing and reading deficits. She also recommended an occupational therapy assessment based on Student's apparent fine motor and sensory processing deficits.

At hearing, Frieze opined that Student's reading, writing, and mathematics deficits could be remediated with an evidence-based, multi-sensory, direct, explicit, structured, and sequential approach to instruction. She opined Student required in-person, one-to-one intensive reading intervention instruction using an Orton-Gillingham based program. Consistent with Skinner's testimony, Frieze opined Student should receive four to five hours weekly instruction to remediate his deficits. Frieze also recommended two hours weekly intensive math intervention, such as Making Math Real, to address Student's deficits in math calculations and fluency.

### THE MATH FACTS FLUENCY GOAL WAS APPROPRIATE

The August 29, 2022 IEP team considered Parents' concerns about Student's difficulties in math facts fluency. Student's overall math problem solving, and numerical operational skills were within the average range. Student was below average in math facts fluency. The IEP team developed a math goal to address Student's math facts fluency deficit. The goal aimed for Student to calculate 15 multiplication facts in three through nine digits with 80 percent accuracy over three trials as measured by work samples. The baseline indicated Student knew his multiplication math facts in the zeros, ones, twos, 10s, and 11s with 70 percent accuracy. The IEP team added 30-minutes weekly specialized academic instruction to target address Student's math goal.

Student challenged the appropriateness of the math goal on the basis it was not sufficiently challenging. According to LaRose, whose opinion was not rebutted,

Student generally knew his multiplication facts but required practice and repetition. She explained learning the multiplication facts with automaticity was necessary for him to solve more complex math problems. LaRose's testimony on this issue was persuasive. The math goal appropriately targeted Student's multiplication fluency deficit and was directly tied to his present levels of performance. Student did not meet his burden of proving the math fluency goal was inappropriate.

### THE WRITING GOAL WAS INAPPROPRIATE

The November 18, 2022 IEP team revised Student's writing goal. The new writing goal required Student to compose one or more informative, narrative, or persuasive paragraphs, that introduced the topic, used facts and details, transition words or phrases, and a concluding statement, and was edited for spelling errors. The goal required Student to score three out of four on a teacher/school writing rubric, with "teacher-led, pre-writing activities ..." Student's baseline indicated Student had creative ideas but had a difficult time "typing and organizing them."

On its face, the goal was unclear because it required Student to write informative, narrative, or persuasive paragraphs, but neither the baseline nor the goal adequately describe his present levels of performance. The baseline stated he scored a two on a writing rubric, but it was not attached to or described the IEP. This rendered the goal unclear and incapable of measurement.

The goal also was flawed because it did not specify whether Student was required to handwrite or type the sentences or paragraph, or whether he could use assistive technology. At hearing, Frieze persuasively opined the goal was deficient because it failed to include use of assistive technology. Frieze's testimony was consistent with the

assistive technology evaluation reviewed at the November 18, 2022 IEP team meeting, and the recommendation by the assessor that Student be provided accommodations, including assistive technology, to support his reading and writing. The failure to offer an appropriate writing goal was a procedural violation under the IDEA.

### THE READING GOAL WAS INAPPROPRIATE

The November 18, 2022 IEP team also created a reading fluency goal. The goal required Student to read unfamiliar, fourth-grade level text with sufficient accuracy and fluency to support comprehension. Student was required to read at least 60 correct words per minute with 95 percent accuracy in three trials and answer explicit and implicit comprehension questions with at least 90 percent accuracy in three trials. The baseline stated Student was reading fourth-grade level text at an average of 45 to 46 correct words per minute with 98 percent accuracy and answered grade level questions with at least 80 percent accuracy. The goal did not specify how progress would be measured and reported.

Student proved the reading fluency goal was inappropriate because it was not measurable or sufficiently ambitious. At hearing, Frieze opined that reading a fourth-grade level text at an average of 45 or 46 correct words per minute was "significantly below" what Student could achieve with appropriate reading interventions given his cognitive abilities. LaRose opined that an average fifth grader was expected to read between 90 to 140 words per minute by mid-year. However, LaRose could not explain why the goal aimed for Student to read only 60 correct words per minute if provided appropriate interventions. She opined she could measure progress on the

goal through data collection after reading passages, but this was not specified in the goal making it immeasurable and inappropriate. Student proved the reading goal was inappropriate.

### NO READING COMPREHENSION, READING DECODING, OR SPELLING GOAL OFFERED

The evidence established Student continued to have needs in reading comprehension. Although reading comprehension was encompassed in the reading fluency goal, the goal was unclear how progress would be measured and reported. This left Student's area of need in reading comprehension unaddressed. Student also continued to have needs in spelling and reading decoding, but South Sutter did not offer new spelling and reading decoding goals in the August 29, 2022, October 3, 2022, or November 18, 2022 IEPs. The failure to offer appropriate measurable goals in Student's areas of need that could be monitored, and progress measured through data collection, impeded Student's right to a FAPE because Student did not have appropriate goals to work on and measure. It further significantly impeded Parents' opportunity to participate in the IEP-decision making process because Parents could not determine if Student was making progress in areas of need. Student prevailed on Issue 3(a), except for the math fluency goal. Student partially prevailed on Issue 3(b).

### ISSUE 3(c): SPECIALIZED ACADEMIC INSTRUCTION

Student contends South Sutter's August 29, 2022, October 3, 2022, and November 18, 2022 IEP amendments failed to offer Student sufficient specialized

academic instruction to allow Student to make meaningful progress towards his reading, writing, and math goals. South Sutter contends its offer of weekly specialized academic instruction was reasonably calculated to address Student's IEP goals.

### AUGUST 29, 2022 IEP TEAM MEETING

The August 29, 2022 IEP offered 90 minutes weekly specialized academic instruction delivered in one session. 30 minutes of the specialized academic instruction was intended to address Student's math goal. The 90 minutes of specialized academic instruction was to be delivered in a group setting. The IEP also offered Student accommodations, including extra time, breaks, positive reinforcement, a visual schedule, graphic organizers, and shorted work assignments.

On September 12, 2022, Parent consented to the May 10, 2022 IEP, as amended by the August 29, 2022 IEP amendment, with exceptions. Parents expressed concerns with the goals and services South Sutter offered. Parents consented to the new math goal but were unclear about what instructional curriculum or methodology would be used for specialized academic instruction. Parents again inquired about what curriculum or methodology South Sutter intended to use in specialized academic instruction. Parents objected to the reading and writing goals developed in the May 10, 2022 IEP because, among other things, the goals did not correlate to Student's baselines and were unclear about how they would be measured.

On September 12, 2022, Parents provided South Sutter 10 days' notice of their intent to seek private tutoring for reading and writing and advised South Sutter of their



intent to seek reimbursement of these costs. On September 23, 2022, Parent notified South Sutter of their intention to retain READ Learning Center to obtain intensive interventions for Student's reading, writing, and mathematic deficits.

### OCTOBER 3, 2022 IEP TEAM MEETING

South Sutter reconvened an IEP team meeting on October 3, 2022, to address Parents' concerns. Parents attended along with their advocate, Christina Maehr. South Sutter's IEP team members included

- Carr,
- Baker,
- LaRose,
- general education advisor Ali Salizar, and
- Gordon.

Special education teacher LaRose reported Student's reading level was at an early fourth grade level. He read an average of 45 to 46 words correctly per minute. Parent expressed concern about Student's inability to read at grade level and his need for intensive reading interventions. Parents' advocate expressed that Student did not have the base knowledge to master the reading goal. LaRose agreed to gather more data and to propose a new reading goal at the next IEP team meeting scheduled for November 18, 2022. The advocate also expressed the spelling goal was unclear because it did not specify the level of words Student needed to master.

Parents and their advocate expressed concern about Student's struggles to memorize math facts. They requested South Sutter use Making Math Real in Student's specialized academic instruction. Carr and Salazar agreed to research math curriculum

and provide special education staff with any additional math curriculum, if needed. Parent relayed Student struggled writing sentences. The IEP team agreed to revise the writing goal to include the school writing rubric, and to review the revised goal at a November 18, 2022 IEP amendment meeting.

Parents believed Student required intensive, daily specialized academic instruction, and they renewed their request that South Sutter fund services through READ Learning Center. South Sutter rejected the request because READ Learning Center was not a non-public agency certified by the State of California. Carr informed Parents they could use instructional funds for READ Academy. Carr also told Parent she would “look into” getting Wilson Reading System curriculum to Parents and possible staff training. At hearing, no evidence was offered that South Sutter obtained the Wilson Reading System curriculum, or any other Structured Literacy program, or followed-up with Parents.

## NOVEMBER 18, 2022 IEP TEAM MEETING

The IEP team reconvened on November 18, 2022. The IEP team reviewed the results of a November 16, 2022, assistive technology assessment and report completed by South Sutter. Student’s handwriting speed was 2.4 words per minute, while average for his age was approximately 13 words per minute. Student’s handwriting was neat, but contained spelling errors, and one letter reversal. The assessor determined Student’s reading fluency and comprehension were below-grade level. He required accommodations to complete class work and all written assignments. The assessor recommended a variety of tools, including text-to-speech in the form of a screen reader and audiobooks, a grammar tool, such as Grammarly, and access to a digital graphic organizer.

Student proved South Sutter's offer of specialized academic instruction was insufficient for Student to make progress towards his reading and writing IEP goals. The November 18, 2022 IEP amendment offered Student 150 minutes weekly specialized academic instruction in a group setting as follows: 60 minutes weekly reading, 60 minutes weekly writing, and 30 minutes weekly math instruction. As with the earlier IEPs at issue in this Decision, the offer failed to specify the specialized academic instruction would use an evidence-based, multisensory, direct, explicit, structured, and sequential approach to address Student's dyslexia. Further, the offer was insufficient in duration and frequency to target Student's reading decoding, written expression, and spelling goals.

The preponderance of the evidence proved 120 minutes of specialized academic instruction in the group setting was not adequate to enable Student to make meaningful progress towards his reading and writing goals. As discussed in Issue 3(b) above, Student's estimated instructional writing and spelling level was third grade at the time of the May 10, 2022 IEP. Student's overall reading ability was at a third-grade level. His vocabulary level was at first grade. Student had not met any of his prior annual IEP goals and made minimal progress.

South Sutter argued Student received Structured Literacy at home and in specialized academic instruction during the 2022-2023 school year, and that it was not required to use a "specific" Structured Literacy based curriculum. LaRose initially opined she used Structured Literacy in delivering Student's specialized academic instruction during the 2022-2023 school year. She adopted principles of Structured Literacy by identifying the lesson content or scope based on Student's needs and followed a logical

sequence from simple to complex. LaRose used Wilson Reading System's and Logic in Reading's scope and sequence to teach single letters and sounds. She incorporated multisensory methods such as writing on a white board.

At hearing, LaRose presented as a caring and diligent educator. However, LaRose's credibility was negatively impacted on cross-examination because she changed her testimony and conceded she did not deliver either the Wilson Reading System's or Logic in Reading's scope and sequence in a systematic and cumulative way. She agreed the scope and sequence of these two programs did not align, resulting in LaRose teaching concepts out of sequence. LaRose acknowledged she used the scope and sequences from these programs to guide her instruction and "fill in the gaps." Although she was generally familiar with principles of Structured Literacy, she had never actually implemented a Structured Literacy curriculum. She agreed it was difficult to follow the scope and sequence of a Structured Literacy program in a group setting, particularly when not working with students five days weekly.

As discussed in Issue 2(c), although the frequency and duration of Structured Literacy can vary based on the severity of a child's dyslexia, here, the weight of the evidence established Student required Structured Literacy 60 minutes per day, four days per week to target his reading goals. Skinner, Touryan-Schaeffer, and Sindle Francois generally agreed with Frieze's findings and recommendations. Skinner opined Student required four days weekly Structured Literacy intervention for 60 minutes per session. Sindle Francis concurred that students with dyslexia require frequent reading intervention instruction, and sometimes daily. Touryan-Schaeffer did not offer any testimony contradicting the frequency and duration recommended by Frieze. She opined that Orton-Gillingham based programs required two to five days per week

instruction, with a duration of 60 to 90 minutes per session, and students with more severe dyslexia require more hours. South Sutter denied Student a FAPE by failing to offer sufficient specialized academic instruction in the August 29, 2022, October 3, 2022, and November 18, 2022 IEP amendments.

### SOUTH SUTTER'S OFFER OF SPECIALIZED ACADEMIC INSTRUCTION FOR STUDENT'S MATH GOAL WAS APPROPRIATE

Student contends South Sutter denied him a FAPE by failing to offer a multisensory math intervention program such as Making Math Real. Student further contends South Sutter did not offer Student specialized academic instruction with sufficient frequency and duration to target his math fluency deficit.

South Sutter contends its offer of 30 minutes weekly specialized academic instruction was sufficient to target Student's math facts fluency goal, and it was not required to use any specific curriculum, such as Making Math Real. South Sutter further contends Student did not have a need for specialized academic instruction to target Student's math calculation skills.

A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit. (*Gregory K., supra*, 811 F.2d 1307, 1314.) Nor must an IEP conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139.)

Student did not prove the August 29, 2022, October 3, 2022, and November 18, 2022 IEP amendments failed to offer Student sufficient specialized academic instruction to address his math fluency. Frieze opined Student required multisensory, structured math

intervention to address his deficits in math calculation. Although she acknowledged Student's needs were less severe in math than reading and writing, she opined Student required two hours weekly math intervention. Frieze's opinion was not persuasive because she did not explain why Student required this frequency and duration of math intervention services to meet his math fluency goal. Frieze had not observed Student during specialized academic instruction for math, nor had she spoken with LaRose. She was unaware of what math interventions were used by South Sutter to address Student's math fluency deficit.

LaRose's testimony was more persuasive in explaining 30 minutes weekly specialized academic instruction was sufficient to meet Student's math fluency goal. LaRose worked with Student on his math goal following the October 3, 2022 IEP amendment. She delivered 30 minutes weekly specialized academic instruction in a small group setting. To target Student's math goal, LaRose used flash cards and math games, and regularly checked for progress. At the time of the November 18, 2022 IEP team meeting, Student knew his math facts through the number nine. LaRose offered convincing testimony that Student made progress on his math goal.

Although Parents preferred that South Sutter use a multisensory, math intervention program with Student, Student did not prove he required this intervention to make progress towards his math facts fluency goal. At hearing, Frieze and Skinner equated multisensory, structured math intervention with Structured Literacy. Although Frieze and Skinner were experienced and knowledgeable experts, their opinions were not without flaws. Neither witness offered compelling testimony supporting their recommendation that Student required two hours weekly math intervention.

In summary, Student proved South Sutter denied Student a FAPE by failing to offer specialized academic instruction using explicit, structured, evidence-based interventions to meet his reading and writing goals. South Sutter further denied Student a FAPE by failing to offer a sufficient frequency and duration of specialized academic instruction reasonably calculated for Student to make progress towards his IEP reading and writing goals. Student prevailed on Issue 3(c).

ISSUES 4(a) AND (b): DID SOUTH SUTTER DENY STUDENT A FAPE IN A MAY 4, 2023 IEP, AS AMENDED ON MAY 16, 2023, BY FAILING TO DEVELOP APPROPRIATE MEASURABLE GOALS IN WRITING, READING, AND MATH; AND BY FAILING TO OFFER ADEQUATE AND APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION?

Student contends South Sutter denied him a FAPE in developing his educational program for the 2023-2024 school year. Specifically, Student contends the May 4, 2023 IEP, as amended on May 16, 2023, denied Student a FAPE because it failed to offer Student appropriate measurable goals in writing, reading, and math. Student further contends South Sutter failed to offer evidence-based, multisensory, direct, explicit, structured, and sequential approach to address Student's dyslexia. South Sutter contends the May 4, 2023 IEP, as amended on May 16, 2023, offered Student a FAPE in the least restrictive environment.

Student's annual IEP team meeting was held on May 4, 2023, and continued to May 16, 2023. Parents and their advocate attended. South Sutter's IEP team members were Carr, Baker, LaRose, a speech and language pathologist, a mental health counselor, an occupational therapist, and an assistive technologist.

In preparation for the May 2023 IEP, Sindel Francis conducted a records review, which included a review of Frieze's May 2022 independent psychological evaluation. Sindel incorporated the results of Frieze's independent evaluation into her report. Sindel was familiar with Student because she conducted his October 2020 psychoeducational evaluation. Consistent with her 2020 evaluation, Sindel identified Student as having deficits in phonological and sensory-motor processing. Sindel determined Student continued to meet eligibility criteria for a specific learning disability in reading comprehension and written expression.

Special education teacher Sarah Feuerborn administered Student's academic achievement testing in April 2023. Feuerborn worked at South Sutter since 2021. She held a mild-to-moderate special education credential. She had over 20 years of experience as a special education teacher. Her role at South Sutter was to conduct academic assessments for students and collaborate with IEP teams to create IEPs.

Student's overall academic achievement was in the low average range compared to his same-aged peers. On the Woodcock Johnson, Fourth Edition, Student scored in the average range in

- reading,
- basic reading skills,
- reading comprehension,
- broad mathematics,
- academic skills, and
- academic applications.



Student scored in the low-average range in

- broad reading,
- math calculation,
- reading fluency,
- written language,
- sentence reading fluency, and
- math facts.

Student scored in the superior range for math problem solving and in the high-average range for mathematics. Student's instructional reading level was at third grade. Student's instructional math level was within the middle of fourth to middle of fifth grade range. Student's instructional writing level was at first grade. Feuerborn's academic report recommended reading instruction be presented at the third-grade level. She recommended targeted, intensive, systematic, and explicit math instruction at the mid-fourth to mid-fifth grade level, and writing instruction presented at the late-first to early-second grade level.

Parent reported Student's strengths included understanding conceptual math and making connections with stories. Parents continued to express concerns Student had not mastered his math facts, read below grade level, and struggled with writing.

LaRose reported Student could read unfamiliar, grade-level passages at 44 to 45 words per minute at 98 percent accuracy. He could answer related comprehension questions with 90 percent accuracy. In writing, Student understood the components of a paragraph and could present a central idea with relevant facts and explanations. Student could type one paragraph with supports, such as teacher scaffolding. Student

had difficulties in spelling. In the area of mathematics, Student could calculate his multiplication facts with nearly 100 percent accuracy at a rate of 12 problems per minute.

#### ISSUE 4(a): GOALS

The May 4, 2023 IEP stated that for Student to receive educational benefit, goals would be written to address Student's needs in

- speech and language,
- reading, writing,
- math,
- social/emotional, and
- occupational therapy.

Student did not challenge the spelling, speech and language, social/emotional, and occupational therapy goals. The May 4, 2023 IEP offered Student four academic goals in writing, reading, math, and spelling. Student proved South Sutter failed to offer Student appropriate, measurable academic goals, except for the math goal.

#### THE WRITING GOAL WAS INAPPROPRIATE

Goal one, a writing goal, required Student to compose three or more informative, narrative, or persuasive paragraphs of five or more sentences, without the use of Grammarly, and with the help of a graphic organizer and/or a paragraph frame and dictating the first draft. Grammarly was a software program that corrected grammar, spelling, and punctuation. To meet this goal, Student was required to score three out of four on a teacher or school writing rubric as measured by student work samples and

teacher charted data. Student's baseline showed Student understood the required content of a paragraph but required assistance with using precise language and complex sentence structure.

On standardized academic assessments, Student scored in the low range for written language and in the very low range for written expression and writing fluency. The goal's baseline reflected Student understood what elements were required in a paragraph, but required assistance with language, sentence variety, and complex sentence structure. According to an occupational therapy assessment, he was markedly fatigued after copying one sentence. Writing more than one paragraph was difficult for Student and he scored two out of four on South Sutter's writing rubric for writing multiple paragraphs.

At hearing, LaRose opined the goal was appropriate because Student understood the elements of a paragraph. However, her testimony on this issue was not persuasive given Student's significant struggles with writing.

Skinner offered a more persuasive and detailed critique of the goal. Specifically, Skinner opined the goal did not contain baseline information about Student's abilities in informative, narrative, or persuasive text, and therefore it was unclear whether Student understood and was able to write informative, narrative, or persuasive paragraphs. Skinner further opined the goal was deficient because it specifically precluded Student from using spelling and punctuation software, such as Grammarly. She explained students with dyslexia typically have difficulty seeing grammar and punctuation errors, and a grammar and spelling software program could assist Student in meeting his writing goal. Student proved the writing goal was inappropriate.

## THE READING FLUENCY GOAL WAS INAPPROPRIATE

Goal two, a reading fluency goal, required Student to read unfamiliar, grade level text with sufficient accuracy and fluency to support comprehension, reading at a rate of at least 133 words per minutes with 95 percent accuracy in three trials. This goal also required Student to answer related grade-level questions with at least 80 percent accuracy in three trials. Student's baseline showed Student could read unfamiliar grade level text at an average of 44 to 45 words per minute with at least 98 percent accuracy.

At hearing, LaRose opined this goal was appropriately ambitious because Student had made significant progress in reading fluency over the course of the year. She opined it was not overly ambitious for Student to improve from reading at a rate of 44 to 45 words per minute to 133 words per minute over the course of one year.

Skinner's opinion was more convincing on this issue. She opined the goal of reading 133 words per minute was not achievable based upon Student's significant deficits in reading fluency. This was consistent with South Sutter's May 2023 academic testing which showed Student's reading fluency rate was in the low range. Skinner also credibly explained that requiring 95 percent accuracy was incorrect, and the correct measure for determining a reading rate was based on 100 percent accuracy. Further, she opined the reading goal improperly combined reading fluency with reading comprehension instead of creating two separate goals. Skinner's opinion was more persuasive based upon her substantial experience teaching children with learning disabilities and her measured testimony. Student proved the reading fluency goal was inappropriate.

## THE MATH GOAL WAS APPROPRIATE

Goal three, a math goal, required Student to recall 50 multiplication facts using the 3's through the 12's when presented orally or visually. The goal required Student to answer 50 questions in one minute with 85 percent accuracy over three trials as measured by Student work samples and teacher monitoring.

Skinner opined the math goal was overly ambitious. Student's baseline reflected Student could correctly complete multiplication facts at a rate of 12 correct problems per minute. She opined the goal of answering 50 correct multiplication facts in one minute was overly ambitious.

At hearing, LaRose's testimony was more persuasive on this issue. LaRose and Parent worked together to develop the math goal. They agreed the goal of answering 50 correct multiplication facts in one minute was ambitious, but capable of achievement within one year. The evidence established Student knew his multiplication facts but required practice and repetition to increase automaticity and fluency required for higher level problems. Student failed to prove the math goal was inappropriate.

Student met his burden of proving South Sutter failed to offer appropriate measurable goals in writing and reading in the May 4, 2023 IEP. The failure to offer appropriate measurable goals to address Student's writing and reading needs impeded Student's right to a FAPE because he did not have goals to work on which were capable of being measured. The failure to offer appropriate writing and reading goals also denied Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. Student prevailed on Issue 4(a), except for the math goal.

## ISSUE 5(b): SPECIALIZED ACADEMIC INSTRUCTION

Student contends the May 4, 2023 IEP's offer of specialized academic instruction was insufficient to meet Student's deficits in reading, writing, and math. Specifically, Student contends he required a Structured Literacy program to meet his reading goals, and multisensory, intensive instruction to meet his math deficits. Student further contends he required four hours per week of specialized academic instruction to meet this reading goal, two hours per week to target his math goal, and one hour per week for his writing goal. South Sutter contends its offer of specialized academic instruction was sufficient and appropriate to meet Student's IEP goals.

Student proved the May 4, 2023 IEP's offer of specialized academic instruction was inappropriate to meet his reading and writing goals. The May 4, 2023 IEP offered Student 150 minutes specialized academic instruction in a group setting to address Student's academic goals. The 150 minutes weekly specialized academic instruction was as follows: 60 minutes per week for reading, 60 minutes per week for writing, and 30 minutes per week for math. Specialized academic instruction was offered for the regular and extended school year.

South Sutter did not change its offer of specialized academic instruction from the October 3, 2022 IEP amendment. Specifically, the May 4, 2023 IEP did not change the frequency or duration of the specialized academic instruction, nor describe the curriculum or methodology that would be used during specialized academic instruction. The May 4, 2023 IEP team also did not inform Parents that it used a Structured Literacy program consistent with the California Dyslexia Guidelines or describe any other intensive reading

intervention program or methodology. For the reasons discussed in in Issues 2(c) and 3(c), the offer of specialized academic instruction was not sufficient in frequency or duration to meet Student's needs in reading and writing.

Student proved South Sutter denied him a FAPE in the May 4, 2023 IEP, as amended on May 16, 2023, by failing to offer any specialized academic instruction using explicit, structured, evidence-based intervention. Further, the May 4, 2023 IEP's offer of 120 minutes per week of specialized academic instruction was not sufficient for Student to make meaningful progress towards his reading and writing goals.

## THE OFFER OF SPECIALIZED ACADEMIC INSTRUCTION FOR MATH WAS APPROPRIATE

At the time of the May 4, 2023 IEP, Student's overall score in mathematics was in the high-average range based on the Woodcock Johnson, Fourth Edition Test of Academic Abilities. Student scored in the superior range in problem-solving, analysis and reasoning. Student scored in the high average range in math problem solving and computational skills, and in the average range in problem solving, automaticity, and reasoning. Student's math calculation skills fell within the low average range.

At the time of the May 4, 2023 IEP, Student could calculate his multiplication facts with 100 percent accuracy at an average rate of 12 problems per minute. He struggled with memorizing math facts. On a recent i-Ready assessment, Student's math scores were at a mid-fifth grade level. This showed demonstrable improvement compared to Student's third-grade level math score on a May 2022 i-Ready assessment. On the 2022-2023 California Assessment of Student Performance Progress, Student's overall math score demonstrated he met grade level standards in mathematics.

Although Parents preferred Student to receive math instruction using an intensive, multisensory program, Student did not prove he required such a program to target his math fluency goal. Student also did not prove he required two hours weekly specialized academic instruction to work on math fluency. Student did not meet his burden of proof on this issue.

ISSUE 2(d): DID SOUTH SUTTER DENY STUDENT A FAPE IN A MAY 10, 2022 IEP BY FAILING TO OFFER ASSISTIVE TECHNOLOGY SERVICES?

ISSUE 3(d): DID SOUTH SUTTER DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO OFFER ASSISTIVE TECHNOLOGY SERVICES?

ISSUES 5(a) AND (b): DID SOUTH SUTTER DENY STUDENT A FAPE FROM SEPTEMBER 29, 2021, THROUGH OCTOBER 6, 2022, BY FAILING TO TIMELY ASSESS STUDENT IN OCCUPATIONAL THERAPY AND ASSISTIVE TECHNOLOGY?

Student contends in Issue 2(d) and 3(d) that South Sutter denied him a FAPE by failing to offer assistive technology services in the May 10, 2022, August 29, 2022, October 3, 2022, and November 18, 2022 IEPs. Student contends in Issue 5(a) that South Sutter denied him a FAPE by failing to timely conduct an occupational therapy assessment between September 29, 2021, the start of the statutory period, through September 12, 2022, the date South Sutter issued an assessment plan in occupational therapy. Student contends in Issue 5(b) that South Sutter denied him a FAPE by failing to conduct an assistive technology assessment during this same period. South Sutter



contends it was not required to assess Student for assistive technology or occupational therapy services during this period because it had no reason to suspect these were areas of need.

School district evaluations of students with disabilities under the IDEA serve two purposes: (1) identifying students who need specialized academic instruction and related services because of an IDEA-eligible disability, and (2) helping IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.) The first refers to the initial evaluation to determine if the child has a disability under the IDEA, while the latter refers to the follow-up or repeat evaluations that occur through the course of a student's educational career. (See 71 Fed. Reg. 46640 (Aug. 14, 2006).)

The IDEA provides for reevaluations to be conducted not more frequently than once a year unless the parent and school district agree otherwise, but at least once every three years unless the parent and school agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment must be conducted if the school district determines that the educational or related services needs, including improvement academic achievement and functional performance, of the student warrant a reassessment, or if the student's parent or teacher requests a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i) & (ii); 34 C.F.R. § 300.303(a)(1) and (2); Ed. Code, § 56381, subd. (a)(1).) After a student has been deemed eligible for special education, a reassessment shall be conducted if the district determines that the educational or related services needs of the student warrant a reassessment, or if the parent or teacher requests reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) In California, the term "assessment" has the same meaning as the term "evaluation" under the IDEA.

(Ed. Code, § 56302.5.) These terms are used interchangeably in this Decision. The school district must provide the parent a proposed assessment plan along with notice of the parent's rights within 15 days of a referral for assessment, not counting days between the student's regular school sessions. (Ed. Code, § 56321, subd. (a).) The assessment must be completed, and an IEP team meeting held within 60 days of receiving consent, exclusive of school vacation in excess of five days and other specified days. (20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c); Ed. Code, §§ 56043, subd. (f)(1), 56302.1, subd. (a), & 56344, subd. (a).)

### ISSUE 5(a): OCCUPATIONAL THERAPY ASSESSMENT

Related services include occupational therapy services as may be required to assist a child in benefitting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1527.)

Student did not prove South Sutter should have referred him for an occupational therapy assessment between September 29, 2021, through October 6, 2022. Here, Student's last three-year reevaluation was in May 2020. His next three-year reevaluation was due by May 17, 2023. Student did not and could not challenge the sufficiency of South Sutter's May 2020 three-year reevaluation, because of the two-year statute of limitations. (20 U.S.C. § 1415(f)(3)(C) and (D); Ed. Code, § 56505, subd. (I).)

As pled, Student's right to an occupational therapy assessment would be based on South Sutter's determination of the need to assess or a Parent or teacher request. Although a school district must honor a parent's request for a reevaluation if it has evaluated the student in the previous 12 months, this obligation hinges on the parent making such a request. (See *M.S. v. Lake Elsinore Unified School Dist.* (9th Cir. 2017) 678

F. Appx. 543, 544 (unpublished) (*M.S.*) [school district had no duty to conduct a reevaluation of the student because the school district did not determine that a reevaluation was necessary, the student's parents had not requested a reevaluation, the student's teacher had not requested a reevaluation, and fewer than three years had elapsed since the student's last evaluation].)

Student's three-year reevaluation was due by May 17, 2023. South Sutter had no duty to conduct an occupational therapy evaluation before then unless it determined an evaluation was necessary, Student's teacher requested an evaluation, or Parent requested an evaluation, because fewer than three years had elapsed since Student's last reevaluation in May 2020. (*M.S., supra*, 678 F. Appx. 543, 544.) South Sutter determined Student required an occupational therapy assessment and issued an assessment plan on September 12, 2022. Parent consented to the assessment plan on September 22, 2022. Prior to September 12, 2022, South Sutter did not determine that Student required additional assessment in occupational therapy. Nor did Student prove Parents or Student's teacher requested an occupational therapy assessment prior to that date. Accordingly, South Sutter was not required to assess Student for occupational therapy between September 29, 2021, and September 12, 2022; the date South Sutter issued an occupational therapy assessment plan. South Sutter prevailed on Issue 5(a).

#### ISSUE 2(d), 3(d), AND 5(b): ASSISTIVE TECHNOLOGY

When developing an IEP, the IEP team must consider whether the student requires assistive technology devices and services. (20 U.S.C. § 1414(d)(3)(B)(v); 34 C.F.R. § 300.324(a)(2)(v); Ed. Code, § 56341.1, subd. (b)(5).) A school district is required to provide any assistive technology device that is needed to provide a FAPE to a child with

a disability. (20 U.S.C. § 1412(a)(12)(B)(i); 34 C.F.R. § 300.324(a)(2)(v); Ed. Code, § 56341.1, subd. (b)(5).) An assistive technology device is defined as any item, piece of equipment, or product system, other than a medical device, that is used to increase, maintain, or improve functional capabilities of an individual with exceptional needs. (20 U.S.C. § 1401; 34 C.F.R. § 300.5; Ed. Code, § 56020.5.) Assistive technology services are any service that directly assists a student in the selection or use of an assistive technology device that is educationally necessary and performed by qualified personnel. (20 U.S.C. § 1401(2); 34 C.F.R. § 300.6; Cal. Code Regs., tit. 5, § 3051.19.) A school district's failure to assess a child may constitute a procedural violation of the IDEA. (*Park, supra*, 464 F.3d 1025, 1032.)

As discussed in Issue 5(a), Student's three-year reevaluation was due by May 17, 2023. South Sutter had no duty to conduct an assistive technology evaluation before then unless it determined an evaluation was necessary, Student's teacher requested an evaluation, or Parent requested an evaluation, because fewer than three years had elapsed since Student's last reevaluation in May 2020. (*M.S., supra*, 678 F. Appx. 543, 544.)

South Sutter issued an assessment plan on October 6, 2022, to conduct an assistive technology assessment. Parent consented to the assessment plan the same day. Student did not prove that South Sutter or Student's teacher determined before this time that Student required an occupational therapy assessment. Nor did Student prove Parents requested an assistive technology assessment prior to that date. Accordingly, South Sutter was not required to assess Student for assistive technology between September 29, 2021, and October 6, 2022.

In his closing brief, Student argued Student had an ongoing obligation to assess Student in all areas of disability, and it was on notice as early as 2020 that he had below average visual motor integration skills and fine motor deficits. This argument was not persuasive because South Sutter's obligation hinged on Parents making such a request because fewer than three years had elapsed since South Sutter's evaluation of Student in fall 2020. (See *M.S., supra*, 678 F. Appx. 543, 544.) Other than arguing South Sutter had an obligation to assess Student, Student did not meet his burden of proving what assistive technologies services, if any, should have been offered in the May 10, 2022, August 29, 2022, October 3, 2022, and November 18, 2022 IEPs. South Sutter prevailed on Issue 5(b).

ISSUE 6: DID SOUTH SUTTER'S MAY 4, 2023 IEP, AS AMENDED ON MAY 16, 2023, OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT, SUCH THAT SOUTH SUTTER MAY IMPLEMENT THE IEP WITHOUT PARENTAL CONSENT?

South Sutter contends it May 4, 2023 IEP, as amended on May 16, 2023, offered Student a FAPE in the least restrictive environment. Student contends the May 4, 2023 IEP, as amended on May 16, 2023, failed to offer appropriate measurable goals in writing, reading, and math, and failed to offer adequate and appropriate specialized academic instruction.

The elements of South Sutter's offer of placement and services in the May 4, 2023 IEP as amended on May 16, 2023, were discussed in detail in Issue 4 above. Student proved the May 4, 2023 IEP was not reasonably calculated to meet Student's educational needs. Specifically, the May 4, 2023 IEP did not offer appropriate goals in writing and

reading. Further, the IEP did not offer Student adequate and appropriate specialized academic instruction using explicit, structured, evidence-based interventions with sufficient frequency and duration to address his academic deficits. Therefore, South Sutter failed to prove the May 4, 2023 IEP, as amended on May 16, 2023, constituted a FAPE. Accordingly, South Sutter is not entitled to implement the May 4, 2023, as amended on May 16, 2023, without parental consent. Student prevailed on Issue 6.

## CONCLUSIONS AND PREVAILING PARTY

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

### ISSUE 1:

South Sutter denied Student a FAPE during the 2021-2022 school year, beginning September 29, 2021, by failing to convene an IEP team meeting when Student did not make anticipated progress towards his May 11, 2021 IEP goals.

Student prevailed on Issue 1.

### ISSUE 2(a) AND 2(b):

South Sutter denied student FAPE in a May 10, 2022 IEP, by failing to develop appropriate measurable goals in

- written expression,
- reading decoding,
- spelling,

- reading fluency,
- reading comprehension and
- math.

Student prevailed on Issue 2(a) and (b).

#### ISSUE 2(c):

South Sutter denied student FAPE in a May 10, 2022 IEP, by failing to offer adequate and appropriate specialized academic instruction.

Student prevailed on Issue 2(c).

#### ISSUE 2(d):

South Sutter did not deny Student FAPE in a May 10, 2022 IEP, by failing to offer assistive technology services.

South Sutter prevailed on Issue 2(d).

#### ISSUE 2(e):

South Sutter did not deny Student FAPE in a May 10, 2022 IEP, by failing to offer extended school year services.

South Sutter prevailed on Issue 2(e).

#### ISSUE 3(a) AND 3(b):

South Sutter denied Student FAPE during the 2022-2023 school year by failing to make an adequate offer of goals and services at IEP team meetings held

on August 29, 2022, October 3, 2022, and November 18, 2022, and by failing to develop appropriate measurable goals in written expression, reading decoding, spelling, and reading fluency. South Sutter did not deny Student a FAPE by failing to offer a math fluency goal.

Student partially prevailed on Issue 3(a), and Student prevailed on Issue 3(b).

#### ISSUE 3(c):

South Sutter denied Student FAPE during the 2022-2023 school year by failing to make an adequate and appropriate offer of specialized academic instruction at IEP team meetings held on August 29, 2022, October 3, 2022, and November 18, 2022.

Student prevailed on Issue 3(c).

#### ISSUE 3(d):

South Sutter did not deny Student FAPE during the 2022-2023 school year by failing to offer assistive technology services at IEP team meetings held on August 29, 2022, October 3, 2022, and November 18, 2022.

South Sutter prevailed on Issue 3(d).



#### ISSUE 4(a):

South Sutter denied Student a FAPE in a May 4, 2023 IEP, as amended on May 16, 2023, by failing to develop appropriate measurable goals in writing and reading. South Sutter did not deny Student a FAPE by failing to offer an appropriate math fluency goal.

Student partially prevailed on Issue 4(a)

#### ISSUE 4(b):

South Sutter denied Student a FAPE in a May 4, 2023 IEP, as amended on May 16, 2023, by failing to offer adequate and appropriate specialized academic instruction.

Student prevailed on Issue 4(b).

#### ISSUE 5(a):

South Sutter did not deny Student a FAPE from September 29, 2021, through October 6, 2022, by failing to timely assess Student in occupational therapy.

South Sutter prevailed on Issue 5(a).

#### ISSUE 5(b):

South Sutter did not deny Student a FAPE from September 29, 2021, through October 6, 2022, by failing to timely assess Student in assistive technology.

South Sutter prevailed on Issue 5(b).

#### ISSUE 6:

South Sutter's May 4, 2023 IEP, as amended on May 16, 2023, did not offer Student a FAPE in the least restrictive environment such that South Sutter may implement the IEP without parental consent.

Student prevailed on Issue 6.

#### REMEDIES

Student prevailed on Student's Issue 1, Issue 2(a), (b), and (c), Issue 3(b) and (c), and Issue 4(b), and partially prevailed on Issue 3(a) and 4(b). South Sutter prevailed on Issue 2(d) and (e), 3(d), and 5(a) and (b). Student proved by a preponderance of the evidence that South Sutter denied him a FAPE during the 2021-2022 school year by failing to convene an IEP team meeting when Student did not make anticipated progress towards his May 11, 2021 IEP goals. South Sutter further denied Student in IEPs dated May 10, 2022, August 29, 2022, October 3, 2022, November 18, 2022, and May 4, 2023, as amended on May 16, 2023, by failing to offer appropriate measurable goals in Student's areas of need in the August 29, 2022, and May 4, 2023 IEPs, except for math fluency. South Sutter's offers of specialized academic instruction these in IEPs

were insufficient to address Student's dyslexia-related academic deficits in reading and writing because they did not offer an evidence-based, multisensory, direct, explicit, structured, and sequential approach to instruction with sufficient frequency and duration. Student did not prove South Sutter denied him a FAPE by failing to offer assistive technology, occupational therapy, and extended school year services as Student contended in Issue 2(d) and (e), Issue 3(d), and Issue 5(a) and (b).

In Issue 6, South Sutter failed to prove its May 4, 2023, IEP, as amended on May 16, 2023, offered Student a FAPE in the least restrictive environment.

As remedies for South Sutter's FAPE denials, Student requests reimbursement of \$17,685 for expenses paid to READ Learning Center for intensive reading, writing, and math tutoring services between October 4, 2022, through November 30, 2023. Student further requests an award of compensatory education sufficient to fund the costs for Student to attend READ Learning Center for the entire 2023-2024 school year, including extended school year, together with mileage reimbursement. Student requests South Sutter convene an IEP team meeting to develop appropriate, measurable goals in all areas of need and offer specialized academic instruction using a Structured Literacy program. Student requests that South Sutter be ordered to pay for the costs for Frieze to attend.

South Sutter contends it did not deny Student a FAPE and requests that Student not be awarded any remedy. It further requests a finding that the May 4, 2023 IEP, as amended on May 16, 2023, offered Student a FAPE such that South Sutter may implement it without parental consent.

Courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd.

(g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable power extends to administrative law judges who hear and decide special education administrative due process matters. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

In remedying a FAPE denial, the student is entitled to relief that is appropriate in consideration of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3).) Appropriate relief means “relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” (*Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496-97 (*Puyallup*).)

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Park, supra*, 464 F.3d 1025, 1033; *Puyallup, supra*, 31 F.3d 1489, 1496.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531F.Supp.2d 245, 265; *Orange Unified School Dist. v. C.K.* (C.D.Cal. June 4, 2012, No. SACV 11-1253 JVS(MLGx) 2012 WL 247839, \*12.) Compensatory education is an equitable remedy that depends upon a fact-specific and individualized assessment of a student’s current needs. (*Puyallup, supra*, 31 F.3d 1489, 1496.; *Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Reid, supra*, at p. 524.) However, hour-for-hour relief for a denial of FAPE is not required by law. (*Puyallup, supra*, 31 F.3d at p. 1497.) “[E]quitable considerations are

relevant in fashioning relief." (*Burlington, supra*, 471 U.S. 359, 374.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Puyallup, supra*, 31 F.3d at pp. 1496-1497.)

Parents may also be entitled to reimbursement for costs of placement of services they independently obtained for their child when the school district failed to provide a FAPE. (*Burlington, supra*, 471 U.S. at p. 374.) Reimbursement is not a damage remedy, but merely requires a school district to pay expenses 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 agreement of the 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); *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 found reimbursable where the placement substantially complied with the IDEA by conducting quarterly evaluations of the student, had 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 to provide all services that a child with exceptional needs requires as a condition to full reimbursement. (*C.B. v. Garden Grove Unified School Dist.* (9th Cir. 2011) 635 F.3d 1155, 1158-1159.) Parents need only 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 the instruction. (*Ibid.* at p. 1159; see also *S.L. v. Upland Unified School Dist.* (9th Cir. 2014) 747 F.3d 1155, 1159; *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1048.)

## READING, WRITING, AND MATHEMATICS INTERVENTIONS THROUGH READ LEARNING CENTER

Student established he made progress in reading, writing, and math after attending READ Learning Center starting October 4, 2022. Student attended in person four days per week through the end of the 2022-2023 regular school year, and during summer 2023. Student received one-to-one reading intervention services four times weekly, for 60 minutes per session. Student received math intervention services two times weekly, for 60 minutes per session. Beginning in September 2023, Student received 50 minutes weekly intensive writing instruction from READ Learning Center using the Institute for Writing Excellence, an evidence-based program to teach children to write.

Student benefitted from READ Learning Center's educational instruction specially designed to meet Student's unique academic needs. Upon his enrollment, Student was administered a placement assessment for the Barton Reading System. Student started at level three of the Barton program, which focused on closed syllables. Student progressed through the first six books of the Barton program and was on book seven

out of 12 at the time of hearing. Skinner opined Student moved at a slower than average pace through Barton program due to his reading fluency deficits. On average, he completed about one and one-half lessons per week. Skinner opined Student was expected to complete the Barton program in summer 2024, provided he attended four times weekly. She opined that upon completion, Student could be at grade level.

Student also took a math placement assessment. Student had deficits in multiplying double digits. He could multiple single digits by twos and fives but could not multiply other digits. Student focused on math facts fluency using Making Math Real, a multisensory, structured, sequential, and research-based program.

The remedy granted in this Decision is based on the substantial FAPE denials by South Sutter and consideration of the importance of early interventions for students with specific learning disabilities and the objective of avoiding disruption of Student's reading and writing progress. Here, Student is entitled to compensatory education for the 353 school days from September 29, 2021, the start of the statutory period, to the filing of the complaint on September 29, 2023, during which time South Sutter failed to convene an IEP team meeting when Student was not making progress towards his May 11, 2021 IEP goals, and failed to offer appropriate goals and specialized academic instruction to address Student's dyslexia-related needs. In view of Student's inadequate progress despite the reading and writing interventions provided by South Sutter, Parents' retention of READ Learning Center on October 4, 2022, was a reasonable attempt to obtain interventions different from those provided by South Sutter in hopes they might prove more effective.

As compensatory education for South Sutter's FAPE denials, Parents are entitled to two remedies. First, Parents are entitled to reimbursement in the amount of \$14,915

for costs paid to READ Learning Center between October 4, 2022, the date Student began receiving services at READ Learning Center, and September 29, 2023, the date the complaint was filed, together with \$1,170 for mileage costs for 145 trips to take Student 12 miles between home and READ Learning Center for this period, as documented in the record. Second, South Sutter is ordered to fund Student's placement at READ Learning Center for up to four hours weekly for 31 school weeks between October 1, 2023, and May 24, 2024, the end of South Sutter's regular school year, in an amount not to exceed \$8,680. Reimbursement for Student's placement at READ Learning Center, or a non-public agency of Parents' choosing, shall not exceed \$70 per hour, which rate was established at hearing. Student did not establish he required two hours weekly math intervention services as he was performing in the low average range in math calculation compared to his same aged peers at the time of the May 4, 2023 IEP. Student also did not prove he required intensive writing interventions through READ Learning Center.

Parents are entitled to reimbursement for mileage in an amount not to exceed \$1,138 for the period October 1, 2023, through May 24, 2024. South Sutter shall reimburse Parents within 30 days of submission by Parents of a written summary of the number of times they drove Student to READ Learning Center, and the distance per trip, and supporting written documentation from READ Learning Center confirming the number of Student's days of attendance at READ Learning Center.

Staff training is ordered because South Sutter's staff departed significantly from the procedural requirements of the IDEA and showed a lack of understanding of the type and structure of academic interventions needed for students with learning disabilities and the requirement of developing adequate, measurable goals. In an appropriate case, training of district staff may be ordered. (*Park, supra*, 464 F.3d 1149, 1156-1157.)



## ORDER

1. As compensatory education for the 353 days South Sutter denied Student a FAPE between September 29, 2021, and September 29, 2023, within 45 calendar days from the date of this Order, South Sutter shall reimburse Parents the amount of \$14,915 for amounts paid to READ Learning Center from October 4, 2022, through September 29, 2023, plus \$1,740 for travel expenses. South Sutter shall also reimburse Parents for the costs of Student's attendance at READ Learning Center for up to four hours per week for the 31 school weeks between October 1, 2023, and May 24, 2024, the end of the 2023-2024 school year, at an hourly rate of \$70. Reimbursement for Student's placement at READ Learning Center for the period October 1, 2023, through May 24, 2024, shall not exceed \$8,680. South Sutter shall reimburse Parents within 30 days of written proof of Student's attendance at READ Learning Center, billing by READ Learning Center, and payment by Parents.
2. South Sutter shall reimburse Parents travel expenses in an amount not to exceed \$1,138 for a maximum of 146 round trips of 12 miles between home and READ Learning Center between October 1, 2023, and May 24, 2024, at \$0.65 per mile. Reimbursement shall be made within 30 days of Parents' submission of a written summary of the number of times they drove to READ Learning Center during the period for which they are seeking reimbursement, the distance per trip, and supporting documentation from READ Learning Center confirming the number of days of Student's attendance at READ Learning Center.

3. Within 30 calendar days of the date of this Decision, South Sutter shall convene an IEP team meeting for Student. The purpose of the IEP team meeting shall be to propose a new FAPE offer for Student that specifies how Student's specialized academic instruction will be delivered to meet his reading and writing goals, and to confirm the curriculum and methodology used is consistent with Education Code section 56335, subdivision (a), and the California Dyslexia Guidelines. South Sutter shall pay for Student's expert Dr. Erika Frieze to attend the IEP team meeting, for a maximum of two hours.
4. Within 60 days of this Decision, South Sutter shall contract with a non-public agency or a law firm who specializes in special education law, to provide at least four hours training to all of South Sutter's special education department, including the Senior Director, any other directors, program specialists, special education teachers, and case managers, in providing students with specific learning disabilities, including dyslexia, educational services that are evidence-based, multisensory, direct, explicit, structured, and sequential, and best practices for developing appropriate IEP goals. The training shall be consistent with Education Code section 56335, subdivision (a) and the California Dyslexia Guidelines. The training shall be completed by August 31, 2024. South Sutter shall notify Parents in writing within 10 days of the date South Sutter has completed such training.
5. A written agreement between the Parties may alter the terms of this Order. An IEP, consented to by Parents, can constitute such an agreement.

6. South Sutter shall not implement the May 4, 2023 IEP, as amended on May 16, 2023, without parental consent.
7. All other requests for relief by the parties are denied.

## RIGHT TO APPEAL THIS DECISION

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

Jennifer Kelly  
Administrative Law Judge  
Office of Administrative Hearings