

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

THE ACCELERATED SCHOOLS,

v.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2024030887

DECISION

JULY 16, 2024

On March 25, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from The Accelerated Schools naming Student. The matter was continued on April 8, 2024. Administrative Law Judge Thanayi Lindsey heard this matter in Los Angeles on April 30, 2024, May 1, 2024, and May 2, 2024.

Attorney Karen Gilyard represented The Accelerated Schools. Lenita Lugo, School Administrator, attended all hearing days on behalf of The Accelerated Schools. Parent represented Student and attended all hearing days on Student's behalf.

At the parties' request, the matter was continued to June 17, 2024 for written closing briefs. The record was closed, and the matter was submitted, on June 17, 2024.

## ISSUE

1. Did the November 14, 2023 Individualized Education Program for Student, called an IEP, as continued on January 18, 2024, offer Student a free and appropriate public education, called a FAPE, in the least restrictive environment appropriate for Student, such that it may be implemented over Parent's objection?

## JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision

of a free appropriate public education, referred to as 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).) The Accelerated Schools had the burden of proof.

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

Student was 13 years old and in seventh grade at the time of hearing. Student resided within the Los Angeles Unified School District's geographic boundaries at all relevant times. Student was enrolled in The Accelerated Schools, a charter school operated by The Accelerated Schools and authorized by the Los Angeles Unified School District. Student was eligible for special education under the primary eligibility category of Emotional Disturbance. Emotional Disturbance was referred to as ED.

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## ISSUE 1: DID THE NOVEMBER 14, 2023 IEP, AS CONTINUED ON JANUARY 18, 2024, OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT APPROPRIATE FOR STUDENT, SUCH THAT IT MAY BE IMPLEMENTED OVER PARENT'S OBJECTION?

The Accelerated Schools, referred to as TAS, contends Student's November 14, 2023 IEP, as continued on January 18, 2024, offered Student a FAPE in the least restrictive environment appropriate for Student. The offer of placement for Student in the IEP proposed a placement from TAS to Slauson Learning Center. Slauson Learning Center was called SLC. TAS contends it could no longer provide the services and supports needed for Student to access and participate in the curriculum in an educational setting due to Student's escalated aggressions against staff and peers, attempts to elope during instructional class time, and poor attendance.

Student contends the IEP team unfairly tracked only Student's bad behavior without also tracking Student's good behavior. Student opposes the November 14, 2023 and January 18, 2024 offers of FAPE because TAS did not put forth the necessary efforts to work with Student's deficiencies in reading.

## RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop

an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

A child eligible for special education must be provided access to specialized instruction and related services individually designed to provide educational benefit. This is done 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, 1002] (*Endrew F.*))

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

An IEP is a written statement developed by parents and school personnel using the IDEA's procedures. The IEP describes the child's present levels of performance, educational needs, and academic and functional goals related to those needs. It also provides a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to work towards the stated goals, make progress in the regular education curriculum, and participate in

education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14) and (26), 1414(d)(1)(A); Ed. Code, §§ 56031, 56032, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.17, 300.34, 300.39; Cal. Code Regs., tit. 5, § 3001, subd. (p).)

## TAS'S COMPLAINT

If a school district believes a child is not receiving a FAPE, Education Code, section 56346, subdivision (f), requires the school district to “act with reasonable promptness to correct that problem by adjudicating the differences with the parent.” (*I.R. v. L.A. Unified Sch. Dist.* (9th Cir. 2015) 805 F.3d 1164, 1170.) If a parent refuses consent to components of an IEP that the school district determines are necessary to provide a FAPE to the child, the school district must initiate a due process hearing to prove that its IEP offers the child a FAPE. (Ed. Code, § 56346, subd. (f).)

Student attended general education classes at TAS from kindergarten in 2016-2017 through the seventh grade in 2023-2024. Beginning in first grade, Student exhibited difficulties adapting to changes in routine as well as controlling impulses, and engaged in rule-breaking behavior. Due to concerns regarding their behavior, Student was initially assessed for special education in first grade, Spring 2018, and was found eligible under the category of other health impairment. Other health impairment was called OHI. Student’s 2018 IEP offered the behavioral goals supported by counseling and behavior intervention development and implementation services. Behavior intervention development was called BID. Behavior intervention implementation services was called BII. Since that initial IEP, Student’s subsequent IEPs all offered the same counseling and BID and BII services. However, Student did not meet the behavioral goals.

Student's behavior concerns continued which included

- rolling on the floor,
- requiring constant supervision to stay on task,
- having difficulties with change,
- wanting to do things their way,
- exhibiting maladaptive behaviors,
- struggling to remain in the classroom, and
- needing adult supervision on the schoolyard.

In June 2021, following Student's triennial evaluation, Student's IEP team changed the eligibility category to ED.

To address Student's escalating behaviors of eloping from class and physical aggression towards staff and other students, Student's sixth-grade IEP dated May 23, 2023 offered to change Student's placement to a nonpublic school. However, Parent did not consent to the proposed change of placement. In seventh grade, TAS repeated the offer of a nonpublic school placement in the IEPs dated October 26, 2023 and November 14, 2023. On January 10, 2024, TAS received Parent's signature to the November 14, 2023 IEP. Shortly thereafter, Parent asserted the signature was allegedly forged by a member of TAS's staff. TAS scheduled an IEP team meeting on January 18, 2024. Parent attended the meeting and objected to the offer of placement at a nonpublic school. After several attempts to seek a resolution of the signature issue without success, TAS filed its due process hearing request two months later.

## TAS'S BURDEN OF PROOF

There are two parts to a school district's proof it complied with the IDEA in developing a student's IEP. First, the district must prove it complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the district must prove the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the student to make progress appropriate in light of the child's circumstances. (*Ibid*; *Endrew F., supra*, 580 U.S. at p. 403.)

The IDEA and Education Code do not provide the district means for obtaining a limited decision that the particular IEP components at issue are appropriate and may be implemented without the parents' consent. Instead, Education Code section 56346 requires the district to expeditiously initiate a due process hearing "in accordance with Section 1415(f) of Title 20 of the United States Code." (Ed. Code, § 56346, subd. (f); (*E.N. v. Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1169).) Section 1415(f) provides that "a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education." (20 U.S.C. § 1415(f)(3)(E)(i).) A determination that one or more components of an IEP were necessary to provide a FAPE would not satisfy this requirement – the district must prove the IEP, in its entirety, offered a FAPE.

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## STUDENT'S EDUCATIONAL BACKGROUND

### COGNITIVE AND ACADEMIC SCORES AND RESULTS FROM THE ASSESSMENT DATED NOVEMBER 10, 2023

Ms. Lopez was employed by Cross-Country Education and was assigned to provide services as a school psychologist at TAS. Her job duties were to conduct bilingual and monolingual psychoeducational assessments, present the assessment findings at the IEP meetings, and work as a school's psychologist with students from grades TK through 12. Ms. Lopez earned a Bachelor of Science degree in child development and a Master of Science degree in school psychology with pupil personnel services credential. Based on the education, credentials, and years of work experience, Ms. Lopez was qualified to conduct the assessment. The November 10, 2023 report was not at issue in the case. Therefore, no findings were made regarding the legal compliance of this assessment.

The purpose of the 2023 assessment was to help Student's manifestation determination review team to determine whether Student's aggressive conduct was a manifestation of their disability of ED, and to consider eligibility, services, and/or placement considerations to meet Student's educational needs arising from ED. Ms. Lopez's assessment was entitled, "Re-Evaluation Psycho-Educational Assessment Record Review" dated November 10, 2023. The November 2023 assessment included the initial psychoeducation report dated May 18, 2018, the triennial report dated May 11, 2021, social emotional report from the BID, and school records. The evaluation was based on a review of Student's prior assessments and other educational records, a

brief interview of Student regarding social emotional/behavior status, and rating scales from Student's math and history teachers. Parent did not participate in the assessment process. Student was not formally assessed due to excessive absences. However, the assessor noted in the report, that Student's family history was "significant for learning disabilities." The report noted that Student was receiving counseling, BID, and BII services. Aside from the behavior scale results listed below, there were no new standardized assessments completed on Student for the November 2023 report.

Per the November 2023 assessment report, Student made little to no progress academically at least since 2021. As a summary of the testing completed in 2021, Student had significant weaknesses in the following six general cognitive areas:

- developing and using strategies to solve visual motor simultaneous and sequential related problems,
- attention and successive reasoning,
- understanding relationships among words, figures, and ideas,
- word discrimination, phonological deletion, and phonological blending,
- listening comprehension which affects his ability to understand text read aloud, oral directions, inferential and figurative language, and
- visual motor integration.

The triennial assessor recommended that Student's eligibility category changed to ED. The initial psychoeducational assessment and the triennial assessment reports were not entered into evidence, but rather were summarized in the November 2023 assessment report.

In 2021, Student had a full-scale cognitive score of only 52, which was well below average. The 2023 assessment report stated Student made partial progress regarding the functional reading goal, and no progress regarding reading, writing, and math goals. The report also concluded that Student did not make progress meeting the IEP goals due to excessive absences, refusing supports, and/or not engaging with the service providers.

For 2022, Student continued to perform below grade level. Student's 2022 academic achievement scores for reading and writing fell in the "below average" range of 40. Student's math standard scores ranged from 66 or the "well below average" range to 75 or the "below average" range.

As of October 2023, Student's reading strengths were:

- Pointing to and identifying the letters D, E, S, G, d, and a,
- Saying the letter sounds for A, c, e, and D,
- Identifying the printed words for dog, mat, and see, and
- Read and say the words to, can, one, and like.

Student's writing strengths were:

- Draw a straight line, circle, and copy the letter S,
- When instructed, Student was able to write the letters O, C, U and E, capital B, and lowercase i, correctly,
- Student was able to write their first name, and
- When shown a cat and asked to complete the sentence "This is a --- ----", student can write the word "cat".

Student's math strengths were in the following areas:

- Student was able to show one finger, two hands, and count the number of items in the presented images,
- Student was able to write the single digit and some double-digit numbers,
- Student was able to add single digit whole numbers such as " $2+2$ ", " $2+1$ ", " $3+0$ ", " $5+1$ ", " $4+4$ ", and " $8+5$ ", for examples,
- Student correctly solved the subtraction equations for whole digit numbers such as " $1-0$ ", " $7-3$ ", " $4-3$ ", and etc.,
- Student solved multi-digit subtraction equations that do not involve regrouping such as " $89-25$ ",
- Student solved some multiplication problems such as " $4 \times 2$ ",
- Student used a calculator to solve multi-digit addition and subtraction problems that required regrouping, and
- Student was able to solve one-step word problems with extensive adult modeling and prompting.

The November 2023 assessment report stated as of October 2023, Student struggled with decoding consonant-verb-consonant words ending in the letter "e", consonant-verb-verb-consonant words, and summarizing orally or in writing the two or more main ideas of the informational text. The writing struggles included writing one paragraph stating an opinion about the topic or text and support it with three or more reasons, facts, and/or details. Student's math struggles were described as subtracting fluently whole numbers using the standard algorithm and strategies based on place value and manipulatives.

The November 2023 assessment report and testimony from Ms. Lopez did not include any analysis of Student's IQ score and their cognitive deficits. TAS relied on statements from the 2022 re-evaluation assessment that compounding outside factors such as low school attendance and the lack of consistent educational exposure caused Student to struggle academically and for not making progress with goals. While the testing results in this report were given due weight, no weight was given to TAS's reliance on the statements that the excessive number of tardies, the number of absences, and the avoidance behaviors were reasons for Student to struggle academically and with the ability to make progress.

## STUDENT'S BEHAVIOR

Per the November 2023 records review, the initial psychoeducational assessment used the BASC-3 teacher rating. The rating indicated Student had difficulty controlling impulses, was argumentative, defiant and/or threatening to others. The assessor noted that Student exhibited difficulties with adapting to changes in the routine as well as controlling impulses, and engaged in rule-breaking behavior. Additionally, a functional behavior assessment was conducted but Ms. Lopez did not include the results; but only noted the recommendations.

For the triennial assessment in 2021, three teacher ratings were used. First, the Conners Clinical Index for teacher scale reported that Student fell in the "very elevated" range on the

- disruptive behavior disorders,
- learning and language disorders,
- mood disorders,

- anxiety disorders, and
- attention-deficit/hyperactivity disorder (ADHD) scales.

The Scales for Assessing Emotional Disturbance 2, the teacher scale reported Student in the highly indicative range for emotional disturbance on the “inappropriate behaviors” subscale. The Behavioral and Emotional Screening System Teacher, noted Student had a total score of 84 which fell in the extremely elevated risk range regarding the behavioral and emotional risk index, externalizing risk index, internalizing risk index, and adaptive skills risk index. The assessor reported that the findings were a significant area of concern that adversely impacted the educational performance and limited access to the curriculum.

Parents completed three ratings for the triennial assessment. First, according to the Behavioral and Emotional Screening System Parent, Student’s total score of 61 fell in the elevated risk range. Student fell in the “elevated risk” range on the behavioral and emotional risk and internalizing risk indices. Student fell in the “normal risk” range regarding adaptive skills risk index. For the Child Rating Scale 3 Parent, Student reported in the “very elevated” range regarding inattention, executive functioning, defiance/aggression, and peer relations scales. Student fell in the elevated” range on hyperactivity/impulsivity scales and in the “high average” range on the learning problems scales. According to the Conners Clinical Index Parent rating, Student fell in the “very elevated” range for

- disruptive behavior disorders,
- learning and language disorders,

- mood disorders,
- anxiety disorders, and
- attention-deficit/hyperactivity disorder (ADHD) scales.

Student's post-triennial assessment in 2022 reported Student's strengths in the area of social emotional were having friends and being sociable. However, Student struggled with working in small groups, and had difficulties communicating with others. Student's academic performance fell within the "well below average" range regarding word reading, math calculations, and spelling skills. According to the records review performed for the November 3, 2023 assessment, in 2022, the former assessor found that Student met the eligibility criteria of Specific Learning Disability, Other Health Impairment, and Emotional Disturbance. Specific Learning Disability was referred to as SLD. However, TAS did not include SLD as an eligibility category due to the assessor's analysis that external factors such as poor school attendance, the lack of curricular consistency, and the lack of recent regular school experience compounded Student's suspected learning difficulties. TAS accepted the 2022 triennial assessor's analysis that sporadic school attendance, the lack of curricular consistency, and incidents of emotional disturbances were exclusionary factors that compounded Student's suspected disabilities. No weight was given to the exclusionary factors or the analysis that Student's suspected disabilities were compounded by outside factors. More weight was given to Student's cognitive scores and the assessment data from 2021 and 2022 regarding Student's academic performance.

For the November 2023 assessment, Ms. Lopez used the Behavioral and Emotional Screening System, called BASC-3 BESS. This assessment measured the behavioral and emotional strengths and weaknesses in children, adolescents, and

young adults. The scope of the assessment ranged from response pattern index, and consistency index. The overall results were classified as normal risk, elevated risk, and extremely elevated risk. Student's math teacher, Mr. Wang and history teacher, Ms. Kelly, completed the teacher rating scale for BASC-3 BESS. Based on Mr. Wang's rating, Student's T-score of 77 fell in the "extremely elevated risk." A student who scored in this range had poor self-control often, gets in trouble almost always, annoys others on purpose often, defies teachers sometimes, disrupts other student's activities almost always, and disobeys almost always.

Based on Ms. Kelly's rating, Student's T-score of 82 fell in the "extremely elevated risk" as well. A student who scored in this range

- had poor self-control almost always,
- got in trouble almost always,
- annoyed others on purpose almost always,
- defied teachers almost always,
- disrupted other student's activities almost always, and
- disobeyed almost always.

Both teachers rated student's internalizing risk index in the "normal risk" range.

However, the teachers differed in the adaptive risk range. Mr. Wang rated Student in the "elevated risk" range, while Ms. Kelly rated Student in the "extremely elevated risk" range for the same category index.

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The assessor used the Scales for Assessing Emotional Disturbance, Third Edition, teacher scale, referred to as SAED-3. The objective of the SAED-3 was to assess Emotional Disturbance in children and adolescents. This assessment focused on five qualifying characteristics of ED:

- Inability to learn
- Relationship problems
- Inappropriate behavior
- Unhappiness or depression, and
- Physical symptoms or fears.

Student was qualified for ED under the inappropriate behavior characteristics.

Prior to the November 14, 2023 IEP team meeting, Student received nine disciplinary actions from November 9, 2021 to November 2, 2023. The last five suspensions involved physical aggressions towards staff or peers. Student was not expelled because a manifest determination IEP held that the escalated aggressive behaviors were a manifestation of Student's disability.

## PROCEDURAL REQUIREMENTS

Procedural compliance is closely scrutinized. "Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation" at every step "as it did upon the measurement of the resulting IEP." (*W.G. v. Board of Trustees of Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, 1485 (*Target Range*), quoting *Rowley, supra*, 458 U.S. at pp. 205–06.)

A district seeking a determination that its IEP offered a FAPE must prove it satisfied all procedural requirements in developing the IEP. The provisions of IDEA Section 1415(f)(3)(E)(ii) and Education Code section 56505, subdivision (f)(2) that allow a hearing officer to find that a child did not receive a FAPE based on procedural violations only if the procedural violations: (i) impeded the child's right to a free appropriate public education; (ii) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or (iii) caused a deprivation of educational benefits, do not apply in a district-filed case. These provisions specifically apply only "in matters alleging a procedural violation," which a district-filed case does not. Although an IEP might pass review despite an inconsequential procedural violation – for example, a required IEP team member arriving slightly late to an IEP team meeting – any material failure to follow the required procedures of the IDEA and Education Code for developing an IEP was fatal.

TAS DID NOT VIOLATE STUDENT'S PROCEDURAL RIGHTS  
REGARDING RECEIVING PARENT'S CONSENT DATED  
JANUARY 10, 2024

Dr. Caprice Wade, a program specialist for special education, was employed by TAS from 2022 to April 2024. Dr. Wade earned several master's degrees in special education, a juris doctor degree, as well as a doctorate degree in psychology. Dr. Wade's testimony included several details such as dates, names, and the procedure TAS used to

obtain Parent's signature. Dr. Wade was familiar with Parent's signature because of past IEP consent forms. Dr. Wade's testimony was convincing that parent signed the consent form in January 2024.

Subsequently, Parent alleged that the signature was forged and rescinded their written consent. Parent's testimony regarding the allegation that TAS's staff forged their signature was given less weight. Parent testified in general terms and did not explain with specific facts as to how the signature could have been forged. Overall, more weight was given to Dr. Wade's testimony. Therefore, Dr. Wade's testimony proved TAS did not violate Student's rights regarding obtaining Parent's signature on January 10, 2024. Moreover, Dr. Wade's testimony was convincing that TAS engaged in good faith efforts to treat Parent's withdrawn consent as a rescission. Dr. Wade's testimony further proved TAS made affirmative steps to include Parent regarding the subsequent IEP meeting on January 18, 2024. Therefore, TAS did not violate Student's procedural rights regarding the January 10, 2024 parental consent and the decision to continue the IEP team meeting on January 18, 2024.

## TAS DID NOT MEET ITS BURDEN OF PROOF THAT THE JANUARY 18, 2024 IEP IDENTIFIED ALL AREAS OF NEED FOR STUDENT AND OFFERED LEGALLY COMPLIANT GOALS

In developing an IEP, the IEP team must consider

- the strengths of the child,
- the concerns of the parents for enhancing the child's education,

- the results of the most recent evaluations of the child, and
- the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324 (a).)

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

A child’s unique needs are to be broadly construed to include the child’s

- academic,
- social,
- health,
- emotional,
- communicative,
- physical and
- vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500.

An IEP must include a student’s present levels of performance. The present levels of academic achievement and functional performance must include 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(a)(1); Ed. Code, § 56345, subd. (a)(1).)

An IEP must contain a statement of measurable annual goals for the child designed to enable the child to be involved in and make progress in the general education curriculum and meet each of the other educational needs. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).)

Annual goals should describe what a student with a disability can reasonably be expected to accomplish within a 12-month period. (Ed. Code, § 56344; *Letter to Butler* (Office of Special Education and Rehabilitative Services, Mar. 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The purpose of goals is to assist the IEP team in determining whether a student is making progress in all areas of need. (Ed. Code, § 56345, subd. (a)(3).)

The IEP must also describe how progress towards the goals will be measured and reported. (20 U.S.C. § 1414(d)(1)(A)(viii); 34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the special education services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

An IEP is a written document that states the

- child's present levels of academic achievement and functional performance,
- creates measurable annual goals for the child,
- describes the child's progress toward meeting the annual goals and
- explains the services that will be provided to the child to help him advance toward attaining his goals. (*Timothy O. v. Paso Robles Unified School Dist.*, (9th Cir. 2016) 822 F.3d. 1105, 1111.)

The IEP must comprehensively describe the child's educational needs and the corresponding special education and related services that meet those needs. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996])

(Burlington).) The IEP must identify the special education and related services and supplementary aids and services, including program modification or supports. (Id., 471 U.S. at 368; 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.324(a)(2)(iv); Ed. Code, § 56345, subd. (a)(4).)

At hearing, TAS referenced the November 14, 2023 and the January 18, 2024 IEP. For purposes of this analysis, only the January 18, 2024 IEP was analyzed, the most recent IEP. The evidence in TAS's own assessment reports showed that Student had needs in the following areas:

- Attendance,
- Getting to school on time,
- Aggressive behavior,
- Behavior regulation,
- Disrupting other students,
- Work completion,
- Social skills,
- Communication,
- On-Task behaviors,
- Letter identification,
- Reading,
- Reading comprehension,
- Math calculation,
- Math analysis,
- Handwriting, and
- Writing.

However, TAS did not identify handwriting or communication as areas of need. These areas of need were identified by TAS's own assessors and teachers. Therefore, the November 14, 2023 and January 18, 2024 IEPs did not offer Student a FAPE for failing to address these areas of need. Although the analysis of this IEP could stop here, this decision will continue to analyze the remaining areas of the January 18, 2024 IEP.

Section D of the January 18, 2024 IEP outlined the headings for each goal. The outline and the details about each goal in Section G did not correspond to the headings in Section D. For purposes of analyzing the goals, the goal numbers and headings as described in Section G were used for the discussion below. Student had goals in the following areas:

1. Social Emotional – When asked to describe a reflection on a stressful moment at school (e.g. taking a test, following instruction, peer sportsmanship) given a menu of familiar signs of stress, Student will identify one physical reaction (increased heartrate, sweaty palms) experienced due to stress, for (four out of five) opportunities, as measured by the counselor using progress monitoring assessment.
2. Math – The IEP document skipped number two. However, the math goal was listed as goal number six in Section G.
3. Behavioral, Behavior Intervention Category – By May 2024, Student will tolerate remaining on task for an average duration of five minutes, across 80% of opportunities, across 10 consecutive days.

4. Behavioral, Behavior Intervention Category – By May 2024, Student will use effective coping strategies to tolerate aversive situations (presentation of task demand or peer negative interactions) in lieu of maladaptive behaviors (elopement, verbal, and physical aggression) as evidenced by engaging in zero instances per day, across 10 consecutive days.
5. Behavioral Support, Behavior Intervention Category – By May 2024, Student will attend school on 80% of opportunities across eight consecutive school weeks.
6. Math – When presented with 15 problems, Student will fluently subtract whole numbers up to the hundreds place using the standard algorithm, strategies based on place value and manipulative with fading support as measured by work samples, informal assessment, and curriculum-based measures four out of five trials with 80% accuracy with modeling of strategies, graphic organizers, calculator, as needed, and no more than four prompts from staff.
7. Writing – When presented with a topic or text, Student will write at least one paragraph stating an opinion about the topic or text and support it with three or more reasons, facts, and/or details, with guidance and support from adults and peers as measured by work samples and informal assessment in two out of three trials with 70% accuracy with the support of a graphic organizer, word bank (as needed), and no more than four prompts by staff.



8. Functional Reading – Student will decode 10 consonant-verb-consonant words containing long A-I-O or U vowels with no more than three prompts as measured by teacher observations, and information assessments in four out of five trials with 80% accuracy with no more than four prompts from staff.
9. Reading Comprehension – This goal was noted as goal eight in Section D of the IEP document, but was described as goal nine in Section G.
10. Reading – When presented with a text that was read aloud, Student will summarize orally the main idea of the informational text and two key details with finding support as measured by teacher observations, and information assessments as measured in four out of five trials with 80% accuracy with no more than four prompts from staff.

As noted above, the January 18, 2024 IEP team excluded goals for handwriting and communication as areas of need. Therefore, TAS failed to meet the burden to show the January 18, 2024 IEP was appropriate for Student. However, for purposes of the analyzing FAPE, further analysis of each goal was included herein.

Dr. Wade gave credible testimony that Student's present level of performance in math, writing, functional reading, and reading were at the kindergarten or early first-grade levels. Student's goals for math, writing, functional reading, and reading were incongruent with the present level of performance in these areas. The IEP identified the annual math goal as annual goal number six. However, the math goal was overly ambitious as Student struggled subtracting two digits using the standard algorithm

and strategies based on place value, and manipulatives. Student was already able to complete the proposed goal with use of a calculator, as referenced in the present level section of the IEP. The goal was for Student to subtract whole numbers to the hundreds place. However, Student's current ability to subtract was two-digit equations and there was no evidence that Student could subtract higher than the number 10. Further, there was no evidence that Student understood one-to-one correspondence or recognized numbers up to 100. Overall, annual goal number six was not appropriate. This annual goal was too ambitious for Student to achieve progress considering Student's unique academic performance levels.

Annual goal number seven, the writing goal, was for Student to write at least one paragraph stating an opinion about the topic or text and support the opinion with three or more reasons, facts, and/or detail. This goal was incompatible with Student's present level of performance and TAS failed to show at hearing that this goal was appropriate for Student. This goal was overly ambitious, because Student's writing skills were limited to drawing lines, circles, and copying various upper-and lower-case letters. Further, TAS presented no evidence that Student understood what a topic was, or that identified reasons, facts or details.

Student's present level for reading included pointing and identifying various letters of the alphabets, sight words or printed words, three-letter words such as dog, mat, and see. Goal eight stated that Student would be able to decode 10 consonant-verb-consonant words that contained the long consonant vowels, A, E, I, O, or U by May 2024 with no more than three prompts with 80% accuracy. However, Student struggled to identify all of the letters of the alphabet and their letter sounds other than the noted vowel sounds. Goal nine stated Student was to read and summarize only the main idea

and two key details to support their findings. TAS did not meet its burden to prove Student's reading goals were appropriate considering Student's unique academic performance levels.

The IEP's second annual reading goal, goal number nine, stated Student would summarize orally the main idea of the informational text and identify two key details with 40% accuracy during the first incremental objective and with 60% accuracy for the second incremental objective. This goal addressed reading comprehension skills. The PLOP for the reading goal, page six of the January 18, 2024 IEP, described Student's reading comprehension as a struggle. According to the WJ-III Reading, Student's passage comprehension fell in the "well below average" range. Student's cognitive score of 52. TAS presented no evidence that Student, who was able to read a limited number of words and who struggled summarizing the main idea would have had the ability to read a written paragraph, summarize the main idea, and identify key details within a year. Overall, goal number nine was inappropriate as it was too ambitious considering Student's unique academic performance levels and too ambitious for Student to make progress.

The weight of the evidence proved that goals six, seven, eight, and nine were not achievable based on Student's weaknesses in reading, writing, comprehension, expression, and mathematics. Overall, the reading, writing, and mathematic goals did not consider Student's academic, developmental, and functional needs and were not appropriate to meet Student's unique needs. Therefore, TAS did not meet its burden to show that the IEPs at issue provide Student a FAPE.

## STUDENT'S BEHAVIOR PLAN AND BEHAVIOR GOALS WERE NOT APPROPRIATE

TAS did not show that the behavior intervention plan developed for Student was appropriate. Behavior intervention plan was called BIP. TAS did not make the necessary adjustments in the addendum January 18, 2024 IEP meeting regarding the BIP. TAS presented several witnesses as evidence that Student's behavior escalated prior to January 18, 2024 to a level that possibly posed a concern for the safety of Student and staff. Ms. Santacruz, the Behavior Intervention Developer, referred to as BID, was employed by a third-party company who was assigned to provide services at TAS. Ms. Santacruz's job duties were to provide functional behavior assessments, called FBA, and to write a behavior intervention plan, called BIP. Ms. Santacruz testified competently that the BIP plan included in the 2023 and 2024 IEPs was not working and that an interim behavior response plan, referred to as IBRP, was designed in its place.

At hearing, Dr. Wade testified about the present level of performance regarding Student's behavior. Dr. Wade relied on the January 18, 2024 IEP for her testimony. However, Ms. Santacruz's testimony was more credible than Dr. Wade regarding Student's present level of performance for behavioral concerns. Ms. Santacruz answered questions concerning Student's present levels in a forthright manner and without hesitations. In particular, Ms. Santacruz testified that Student's BIP was not effective due to the escalations in Student's behaviors. Student exhibited heightened levels of aggression and physical interactions that posed potential safety concerns for Student, staff, and other students at TAS.

Ms. Santacruz indicated the BIP was not working because Student was not at school. However, this portion of Ms. Santacruz's testimony was given very little weight. The weight of the evidence from Ms. Jackson's testimony as well as Ms. Santacruz's testimony that Student's behavior included the destruction of school property, the physical altercations with the BII and the BID, as well as the verbal assaults that were racially and sexually offensive in nature proved Student's behaviors escalated in frequency and aggressions. Ms. Santacruz's testimony that most of these actions occurred in October 2023, when the IBRP was created, was given more weight. Overall, the November 2023 and January 2024 IEPs behavior goals did not reflect the changes in Student's behavior.

The IEPs, as noted above, identified the behavioral intervention plan with goal numbers three, four, and five. Ms. Santacruz testified convincingly that the BIP as noted in the January 18, 2024 IEP was no longer working and had to design the IBRP. The IBRP plan identified six areas of behavior that were unique to Student's behavior at school. The six areas were described as

1. calm,
2. trigger,
3. agitation,
4. acceleration,
5. peak, and
6. de-escalation.

The IBRP was broad and flexible in that the response changed and adjusted as the Student's behavior changed.

The IEP team had an opportunity to update the present levels of performances and goals to reflect Student's behavior and Staff's response as noted in the IBRP. Student's behavior escalated to a degree that the BIP was no longer feasible for implementation. However, TAS did not develop the necessary behavioral updates for the BIP in the January 18, 2024 IEP. Overall, TAS's election to recycle the annual behavioral goals three, four, and five from Student's May 23, 2023 IEP, and update the goal by adding dates such as January 2024 to the incremental objective number one and April 2024 to the incremental objective number two was not a prudent decision to exercise in light of Student's increased challenging and unsafe behaviors. Therefore, the behavioral and BIP goals were inappropriately developed to meet Student's behavioral needs.

#### TAS DID NOT SHOW THAT THE ACCOMMODATIONS IN THE JANUARY 18, 2024 IEP WERE APPROPRIATE FOR STUDENT

The January 18, 2024 IEP offered the following accommodations:

- preferential seating close to instructor and away from distractions,
- use of a study carrel,
- frequent positive reinforcement of on-task behavior,
- frequent checks to reinforce progress on assignments/assessments,
- provide flexibility regarding student's response to assignments regarding the median for the media views display type illustrations mode models,
- oral versus written presentations,
- increase on-task behavior by teaching and requiring work for small increments of time with the use of a timer,

- provide visual graphic organizers and vary method of lesson presentation,
- allow the use of manipulatives,
- allow extended time to complete assignments/assessments,
- shortened assignments/assessments,
- reduced number of answer choices on multiple-choice and matching assignments/assessments,
- provide word banks for filling the blank responses,
- provide frequent and specific positive praise,
- model desired behavior,
- use student as an exemplar whenever possible,
- clarify and review classroom rules and expectations,
- repeat directions,
- give one direction at a time,
- allow for frequent breaks both within and outside of the classroom,
- assign classroom job or responsibility,
- provide a break area inside or outside of the classroom,
- allow student to request a break in designated area,
- movement breaks,
- read aloud assignments and assessments above student's independent reading level,
- emphasize accuracy over speed,
- break tasks down into component parts,
- ease transition between activities by providing clear directions and cues such as five-minute warning prior to transitions,

- visually represent expectations/rules in the classroom,
- allow Student to stand if desired in the designated area,
- establish a non-verbal cue with student to provide with feedback regarding on-task behavior,
- turn-taking,
- level of movement,
- calculators as needed,
- multiplication chart,
- highlighted information, and
- copy of notes.

Student's cognitive score of 52 and present levels of performances in the noted areas in the January 18, 2024 IEP were inconsistent with many of the accommodations and modifications offered. For instance, TAS's 2021 and 2022 assessment results showed that Student cannot read more than five or six selected words and cannot identify all of the letters of the alphabet. However, TAS offered accommodations that reduced the number of answer choices on multiple-choice and matching assignments/assessments, or provided word banks for filling the blank responses, or copied notes. All of these proposed accommodations required a level of reading much higher than Student was capable. This analysis was not an exhaustive list of inappropriate accommodations. The list illustrated TAS's failure to meet the burden to show that these were appropriate accommodations for Student.



## TAS FAILED TO SHOW THAT THE SERVICES ON THE IEP WERE APPROPRIATE FOR STUDENT

The IEPs in question offered the following special education services:

- 180 minutes per week of BID services in a collaborative behavior service model,
- 60 minutes per week of direct services pull-out counseling and guidance services,
- 2005 minutes per week of BII services in a collaborative behavior service model,
- 1400 minutes per week for special education for all his goals, and
- There was also an offer of extended year services but there was no delineation as to what that service offer looked like.

Student had significant weaknesses in reading, writing, and mathematics who functioned at the kindergarten or first-grade levels in all academic areas despite being in seventh grade. Given Student's issues with writing and language, as indicated in the 2021 and 2022 assessment results, no assessment was entered into evidence determining whether Student may need assistive technology, occupational therapy or speech and language services. TAS did not meet its burden to show that Student did not need services in the areas of speech and language, assistive technology, and occupational therapy. The weight of the evidence shows Student needed additional services due to the academic, developmental, and functional struggles. Additionally, TAS also did not meet its burden to show what appropriate services were provided during the extended year.

## THE OFFER OF 1,400 WEEKLY MINUTES OF SPECIAL DAY CLASSES WAS NOT LEGALLY COMPLIANT WITH STATE LAW

The California Education Code required TAS, as a charter school, to offer a seventh grade Student a minimum of 54,000 minutes of instruction in the school year. (Ed. Code, §§46207 subd. (a), 47612, subd. (a).)

TAS offered to place Student at SLC Elementary, a nonpublic school. Nonpublic school was called an NPS. TAS offered student the following services of general education curriculum in a special education setting with 1,400 minutes per week of special day classes. There was no offer of general education placement for the balance of the school day. Dr. Wade testified that SLC was a proper placement because of the small classroom, the ability to provide a therapeutic room to assist with Student's impulsive and emotional outbursts, a teacher, and one teacher assistant who were trained in crisis intervention. SLC offered transportation and sport opportunities through a charter school league for Student to participate. While the accommodations stated in the January 18, 2024 IEP did not pose an issue for implementation at SLC, the offer of 1,400 weekly minutes of special day classes posed a legal issue of classroom time.

As a charter school, TAS was required to provide 54,000 annual minutes per 175 days per year of instructional time or six hours of instructional time per day for grades four to eight. The 1,400 weekly minutes of special day class that were offered in the IEP were equivalent to 23 hours per week or 4.6 hours per day of instructional time. This aspect of the offer deprived Student of seven hours per week of instructional time. The offer for SAI minutes did not comply with the legal requirement for instructional time.

Therefore, TAS did not meet its burden of proof that the November 14, 2023 and the January 18, 2024 IEPs were FAPE because of the failure to offer the legally required number of instructional minutes for Student.

### TAS DID NOT MEET ITS BURDEN TO SHOW THAT THE SLAUSON LEARNING CENTER WAS AN APPROPRIATE PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

Both federal and state law require a school district to provide special education in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2006); Ed. Code, § 56040.1.) This means that a school district must educate a special needs pupil with nondisabled peers to the maximum extent appropriate, and the pupil may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii)(2006); Ed. Code, § 56040.1; see *Sacramento City Unified Sch. Dist. v. Rachel H.* (1994) 14 F.3d 1398, 1403; *Ms. S. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1136-1137.)

Placement in the most inclusive environment is not an absolute. Mainstreaming "is a policy which must be balanced with the primary objective of providing handicapped children with an 'appropriate' education." (*Wilson v. Marana Unified Sch. Dist.* (9th Cir. 1984) 735 F.2d 1178, 1183 [citation omitted].) The IDEA does not require mainstreaming to the maximum extent possible or conceivable. In an appropriate case, it must yield to the necessity that a student receives a FAPE. Education among nondisabled peers is an important element of education for disabled children, but the IDEA does not permit, let

alone require, a school district to mainstream a student when the student is unlikely to make significant educational and non-academic progress. (*D.F. v. Western Sch. Corp.* (S.D.Ind. 1996) 921 F.Supp. 559, 571 [citation omitted].)

In *Sacramento City Unified Sch. Dist. v. Rachel H.*, *supra*, 14 F.3d 1398, the Ninth Circuit set forth four factors that must be evaluated and balanced to determine whether a student is placed in the least restrictive environment:

1. the educational benefits of full-time placement in a regular classroom;
2. the non-academic benefits of full-time placement in a regular classroom;
3. the effects the presence of the child with a disability has on the teacher and children in a regular classroom; and
4. the cost of placing the child with a disability full-time in a regular classroom. (*Id.*, 14 F.3d at p. 1404.)

When considering a child's educational placement, school districts must educate the child in the least restrictive environment, which means to the maximum extent appropriate, children with disabilities are educated with nondisabled peers. Special classes or separate schooling must occur only if the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a).) The IEP must include an explanation of any extent to which the student will not participate with nondisabled students in the regular class and extracurricular and non-academic activities. (20 U.S.C. § 1414(d)(1)(A)(i)(V); 34 C.F.R. § 300.320(a)(5).)

The continuum of program options includes, but is "not necessarily" limited to, in increasing order of restrictiveness:

- regular education;
- resource specialist programs;
- designated instruction and services;
- special classes;
- nonpublic, nonsectarian schools;
- state special schools;
- specially designed instruction in settings other than classrooms;
- itinerant instruction in settings other than classrooms; and
- instruction using telecommunication, and instruction in the home, in hospitals, or other institutions.

Under the LRE requirement of the IDEA, students with disabilities must not be placed in special classes or separate schools or otherwise removed from the regular education environment unless "the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 CFR 300.114 (a).

In this case, the IEP did not identify all of Student's needs, the goals were not appropriate, the accommodations were not appropriate, and the services were not appropriate for Student. Therefore, the placement itself cannot be evaluated, since the IEP's fatal flaws must be corrected prior to a determination on the placement being made.

## 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:

Did the November 14, 2023 IEP, as continued on January 18, 2024 IEP offer Student a FAPE, in the least restrictive environment appropriate for Student, such that it may be implemented over Parent's objection?

Student prevailed on Issue 1.

## ORDER

The Accelerated Schools's request for relief is denied.

## RIGHT TO APPEAL THIS DECISION

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

Thanayi Lindsey

Administrative Law Judge

Office of Administrative Hearings