

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

THE CONSOLIDATED MATTERS INVOLVING:
PARENT ON BEHALF OF STUDENT, AND
TWIN RIVERS UNIFIED SCHOOL DISTRICT.

CASE NO. 2024040199

CASE NO. 2024030829

DECISION

AUGUST 09, 2024

On March 22, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Twin Rivers Unified School District, naming Student as respondent in OAH Case number 2024030829. On April 3, 2024, OAH received a due process hearing request from Student, naming Twin Rivers as respondent in OAH Case number 2024040199. On April 5, 2024, OAH granted Student's unopposed motion to consolidate the two cases, making Student's Case number 2024040199 the primary case for determining statutory timelines. On April 30, 2024, OAH granted the parties request to continue the hearing.

Administrative Law Judge Robert G. Martin heard this matter by videoconference over 12 days of hearing on May 29, 30, and 31, 2024, and June 4, 5, 6, 7, 10, 11, 12, 13, and 14, 2024.

Attorneys Colleen Snyder and Julia Baker represented Student. Student's Mother attended the hearing. Attorneys Marcella Gutierrez and Tilman Heyer represented Twin Rivers. Kathleen Walker, Twin Rivers' Executive Director, Special Education & Special Education Local Plan Area, and Joy Davis, Twin Rivers' Director of Special Education, attended the hearing as Twin Rivers' representative.

At the parties' request, the matter was continued to July 9, 2024, for written closing briefs. The parties submitted timely closing briefs. The record was closed, and the matter was submitted on July 9, 2024.

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ISSUES

STUDENT'S ISSUES

In this Decision, a free appropriate public education is called a FAPE. An individualized education program is called an IEP.

At the start of hearing, Student withdrew Student's issue 1.f., concerning Twin Rivers' alleged failure to provide Student counseling services, from the issues for hearing as determined at the prehearing conference. Students' issues for hearing were renumbered as follows:

1. During the 2023-2024 school year, did Twin Rivers deny Student a FAPE from January 11, 2024, through the filing of Student's complaint on April 3, 2024, by:
 - A. Failing to make a clear written offer of FAPE with respect to the amount of time Student would be in the regular education setting versus a special day class?
 - B. Failing to offer Student appropriate, measurable goals in reading comprehension, written expression, math, phonemic awareness, and spelling?
 - C. Failing to offer Student any goals in the areas of math facts and listening comprehension?
 - D. Failing to offer Student appropriate specialized academic instruction in the areas of reading, written expression, and math?

- E. Failing to offer Student adequate speech and language services?
- F. Failing to offer Student appropriate assistive technology devices, programs, and services?

DISTRICT'S ISSUE

1. Does Twin Rivers' January 11, 2024 IEP offer Student a FAPE, such that the Twin Rivers can implement it without parent consent?

JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the 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] (*Schaffer*); and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this matter, Student had the burden of proof on Student's issues, and Twin Rivers had the burden of proof on its issue.

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

Student was 15 years old and completing her ninth-grade school year at the time of hearing. Student resided within Twin Rivers' geographic boundaries at all relevant times. Student was eligible for special education under the primary category of specific learning disability, and the secondary category of speech or language impairment.

BACKGROUND

Student has lived within the boundaries of Twin Rivers since birth. She attended Twin Rivers schools from preschool through the first semester of seventh grade, leaving a district affiliated charter school in January 2022 to attend an independent charter school outside the district. Since August 2022, Parent has privately placed Student at READ Academy, a private school in Sacramento for students with dyslexia and related learning disorders.

Student began exhibiting learning difficulties in kindergarten. Twin Rivers initially evaluated Student in first grade, and found her eligible for special education in February 2016 under the category of speech and language impairment. Shortly after, Twin Rivers found her also eligible under the category of specific learning disability. Student has remained eligible for special education under those categories through all her school years.

Twin Rivers' evaluations showed Student to be of average cognitive ability, with no significant behavior or social issues, but deeply affected by specific learning disabilities impacting her academic skills in math, written expression, and, especially, reading. Student's eighth-grade triennial reevaluation in March 2023 found Student's broad math skills, scored as a grade equivalent, corresponded to the average score achieved by child in the second month of third grade, her broad writing skills to those of a child in the first month of second grade, and her broad reading scores to those of a child in the fifth month of first grade. Tests of Student's cognitive processing skills associated with reading showed she had significant deficits in the areas of both phonological awareness – the ability to recognize and manipulate the sound structure of written words, and rapid naming – the ability to name familiar letters, symbols, words, or objects quickly and automatically. Deficits in either of these areas are associated with the specific learning disability of dyslexia, and Student's "double-deficit dyslexia" in both areas was identified in her January 2023 IEP – the earliest IEP offered in evidence – and consistent with her extreme difficulties learning to read.

In January 2022, Parent's concerns about the lack of an effective reading program for Student, and dissatisfaction with Twin Rivers' proposed annual IEP for Student, led Parent to withdraw Student from District, and ultimately privately place her at READ Academy for the 2022-2023 school year. In October 2022, Student filed a due process

hearing request alleging Twin Rivers had denied Student a FAPE in the 2020-2021 and 2021-2022 school years. In November 2022, Student and Twin Rivers and Student reached a settlement in which Twin Rivers agreed to provide Student a fund sufficient to cover Student's tuition and costs at READ Academy for Student's eighth-grade 2022-2023 school year.

During eighth grade, Twin Rivers conducted a triennial evaluation of Student and developed a new proposed annual IEP. Parent did not consent to the IEP dated January 18, 2023, as continued on May 8, 2023, and Student remained at READ Academy for the remainder of the 2023-2024 school year.

In August 2023, Student resumed classes at READ Academy as a ninth grader. Student filed a due process hearing request in September 2023, alleging the May 2023 IEP failed to offer Student a FAPE.

While Student's September 2023 due process hearing request was pending, Twin Rivers contacted Parent in November 2023 about preparations for Student's ninth grade annual IEP, due in January 2024. Parent brought Student to Twin Rivers in December 2023 for a speech and language assessment and an academic assessment. Twin Rivers held Student's IEP on January 11, 2024. Parent did not consent to the proposed IEP.

On January 29, 2024, Student and Twin Rivers reached a second settlement, effective upon Twin Rivers' board approval on or about February 27, 2024, that resolved all claims arising from or related to Student's educational program through January 10, 2024. The parties did not settle any potential claims arising from the January 11, 2024 IEP.

STUDENT'S ISSUE 1.A.: DURING THE 2023-2024 SCHOOL YEAR, DID TWIN RIVERS DENY STUDENT A FAPE FROM JANUARY 11, 2024, THROUGH THE FILING OF STUDENT'S COMPLAINT ON APRIL 3, 2024, BY FAILING TO MAKE A CLEAR WRITTEN OFFER OF FAPE WITH RESPECT TO THE AMOUNT OF TIME STUDENT WOULD BE IN THE REGULAR EDUCATION SETTING VERSUS A SPECIAL DAY CLASS?

Student contends Twin Rivers' January 11, 2024 IEP denied Student a FAPE by inconsistently stating the number of class periods per day Student would spend in a special day class, versus time spent in general education classes and activities, which confused Parent and impeded Parent's ability to participate in the decision-making process regarding the formation of the IEP.

Twin Rivers contends the January 11, 2024 IEP satisfied IDEA and Education Code requirements by accurately stating the amount of time and percentage of her day Student was offered special education in a special day class. Twin Rivers argues the minor error of stating that Student would be in a special day class for five periods instead of four did not deny Student a FAPE because it did not significantly impede Parent's opportunity to participate in the decision-making process regarding the IEP.

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.)

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, 402 [137 S.Ct. 988, 1000] (*Endrew*).)

The IDEA requires a school district to make a clear written FAPE offer. (*Union v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526, cert. denied (1994) 513 U.S. 965.) The school district must offer a single, specific program, in the form of a clear, coherent offer which parents can reasonably evaluate and decide whether to accept or reject. (*Glendale Unified School Dist. v. Almasi* (C.D. Cal. 2000) 122 F.Supp.2d 1093, 1107-1108.) This formal requirement "has an important purpose ... and should be enforced rigorously" as it creates a clear record to help eliminate future factual disputes. (*Union v. Smith, supra*, 15 F.3d at p. 1526.) It also assists the parents in presenting complaints with respect to any matter relating to the educational placement of the child. (*Ibid.*; *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 459-460.)

The IEP must comprehensively describe the child's educational needs and the corresponding special education and related services that meet them. (*School Comm. Of Burlington v. Dept. of Ed.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996] (*Burlington*).) The frequency and duration of a related service must be included in the school district's specific written offer of FAPE. (20 U.S.C. § 1414(d)(1)(A)(VII); 34 C.F.R. § 300.320(a)(7) (2006); Ed. Code, § 56345, subd. (a)(7).) There is no requirement that required information be located in any particular section of the IEP. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2); Ed. Code, § 56345, subd. (h).)

The IEP must contain an explanation of the extent to which the child will not participate with nondisabled children while in the regular class and while receiving related services. (20 U.S.C. § 1414(d)(1)(A)(i)(V); 34 C.F.R. § 300.320(a)(4)&(a)(5); Ed. Code, § 56345, subd. (a)(5).) The IEP must specify the anticipated frequency, duration, and location of special education services, and the amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in a manner that is clear to all who are involved. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 953 (*Mercer Island*), citing 20 U.S.C. § 1414(d)(1)(A)(vi) (1998), and 64 Fed.Reg. 12,479 (March 12, 1999); see also 34 C.F.R. § 300.320(a)(4) and (a)(7) and 71 Fed.Reg. 46591, 46667 (Aug. 14, 2006).)

An offer of a service that is necessarily vague as to frequency, duration, or location due to the nature of the service is not a denial of FAPE, when the parents and IEP team understand the offer. (*Mercer Island, supra*, 592 F.3d at pp. 953-954.) In *Mercer Island*, the IEP offered the student 972 minutes per week access to a list of accommodations such as books on tape, access to a peer note taker and word processing software, but did not specify the number of minutes allocated to each. The court found that allocating a specific number of minutes to any of the individual accommodations would have made no sense, because all the modifications were access-based, and the student presumably had unlimited access to all of them. (*Id.*) Even if the failure to specify minutes was a procedural violation, the court reasoned, there was no harm to the student, and no interference with the parents' ability to participate in the IEP formulation process, as everyone involved in the IEP team – including the parents – knew of the amounts. (*Id.*)

A school district's failure to make a sufficiently clear offer of placement and services is a procedural violation of the IDEA. (*Union v. Smith, supra*, 15 F.3d at p. 1527; 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320(a).) However, a procedural error does not automatically require a finding that a FAPE was denied. A due process decision on a case brought by a student must be based on substantive grounds when determining whether a child has been offered a FAPE. (Ed. Code, § 56505, subds. (f)(1) & (j).) A due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following:

- Impeded the right of the child to a FAPE.
- Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child.
- Caused a deprivation of educational benefits.
- Resulted in the loss of an educational opportunity to the pupil.
- Interfered with the opportunity of the parent to participate in the formulation process of the IEP. (Ed. Code, § 56505, subds. (f)(2) & (j).)

In *Los Angeles Unified School Dist. v. A.O.* (9th Cir. 2024) 92 F.4th 1159, 1169-1170 (*Los Angeles v. A.O.*), the court found the district's failure to clearly specify the frequency and duration of offered related services denied the student a FAPE. (*Id.* at p. 1172.) The district offered student one to 10 sessions of speech therapy per week totaling 30 minutes, and one to five sessions of audiology services per month totaling 20 minutes. The court found that offering the broad ranges of frequency was

a procedural violation of the IDEA that rendered the proposed program unclear. (*Id.*) The court rejected the district's argument that the violation was harmless because the parents could have asked questions to clarify the offer, stating,

"We also do not see a limiting principle in the dissenting opinion's suggestion that parents should be obliged to ask follow-up questions until all terms of the IEP are reasonably clear, and that parents' failure to do so means they have not been denied an opportunity to participate. The statute and implementing regulations make clear that the burden is on the school district, not the parents, to ensure that parents are afforded an opportunity to participate." (*Id.* at p. 1171, fn.2.)

The court concluded, "The ambiguities in this IEP meant that the school district did not ensure A.O.'s parents were fully informed of the contents of the proposed plan and therefore the school district impeded their opportunity to participate." (*Id.* at p. 1172, fn.3.)

Twin Rivers' January 11, 2024 IEP did not make a clear offer of specialized academic instruction, or explanation of the extent to which Student would not be participating with nondisabled children while in the regular class and while receiving related services. It was only at hearing that it became clear that the offer was intended to include 1,100 minutes per week of specialized academic instruction, in three special day classes teaching core academic subjects, and one special day class offering academic intervention in the areas of reading and math.

The IEP itself contained two statements that both offered Student 1,100 minutes weekly of specialized academic instruction. It also contained one statement that Student would spend 44 percent of her time in a setting with non-disabled students, and 56 percent of her time in a setting that did not include non-disabled students.

However, it was impossible to confirm that calculation from the other information in the IEP, because it contained varying, inconsistent descriptions of the number of classes in the school day, how many special day classes in which Student would receive specialized academic instruction, and what subjects Student would be taught. Student was offered instruction in the general education curriculum, with the goal of receiving a high school diploma. All of her core curriculum subjects were offered in special day classes identified as "Essentials" classes. The IEP contained the following statements regarding her specialized academic instruction and time spent in special education and general education environments:

- At page 4 of 44, the IEP's Individual Transition Plan for Student described her ninth and 10th-grade Student Course of Study to achieve her post-secondary goal as a six-period school day that included three special day classes in ninth grade, and four or five in 10th grade:
 - Ninth Grade:
 - English Language Arts 9 Essentials
 - Integrated Math 91A Essentials
 - Academic Intervention Essentials
 - Health

- PE
- Elective
- 10th grade:
 - English Language Arts 10 Essentials
 - Integrated Math10 Essentials
 - Science Essentials
 - World History Essentials
 - Academic Intervention Essentials or Elective
 - Foreign Language/Art/ Drama/Music or Elective
- At page 30, the IEP's offer of Special Education and Related Services stated she would receive specialized academic instruction for 1,100 minutes per week, in the location of a separate classroom in a public integrated facility. The service was described as 1,100 minutes per week in four periods of core academic classes in a mild moderate special day class, and one period per day in an elective academic intervention class for reading intervention.
- At page 32, the IEP's description of Student's Program Setting stated she would spend 56 percent of her time outside the regular class setting and extracurricular and non-academic activities, and 44 percent of her time in the regular class setting and extracurricular and non-academic activities.

- At page 41, the IEP notes described the maximum and typical class sizes for the special day classes at Student's school of residence and proposed placement, Foothill High School, and noted, "in this setting, [Student] would be in a special education setting 5 out of 6 periods a day."
- At page 42, the IEP notes described a possible sample schedule for the special day class program based on a five-period school day with one period in a general education physical education class, and four periods of special education, in English, math, science and reading intervention support based on the READ 180 reading curriculum.
- At page 43, the IEP notes state Twin Rivers "offers FAPE as follows: Specialized Academic Instruction 1,100 minutes per week, group, in a separate setting (five periods a day).

The January 11, 2024 IEP described a five or six-period school day, and offered Student specialized academic instruction in as few as three subjects to as many as five. Further, as discussed later regarding the issue of whether Twin Rivers offered appropriate reading instruction, Parent did not learn until the hearing that the Academic Intervention Essentials class was not devoted solely to reading intervention, but was split half and half between reading intervention and math. It would not be possible for anyone to confirm from the inconsistent descriptions of the number of class periods that the offer of 1,100 minutes per week of specialized academic instruction

corresponded to the number of special day classes offered, or that Student would spend 44 percent of her school day in a general education setting. Unlike the situation in *Mercer Island*, supra, there was no logical reason for the lack of clarity. Parent was understandably confused by the inconsistent descriptions of the number of classes in the school day, the number of special education classes, and the subjects in which special education was being offered.

Twin Rivers' offer of specialized academic instruction in the January 11, 2024 IEP does not satisfy the standards for a clear written offer described in *Union v. Smith*, *Los Angeles v. A.O.*, and *Mercer Island*, supra. Student proved Twin Rivers committed a procedural violation by failing to make a clear written offer FAPE with respect to the amount of time Student would be in the regular education setting versus a special day class. The lack of a clear, enforceable offer impeded Student's right to a FAPE and interfered with the opportunity of the parent to participate in the formulation process of the IEP.

Student prevailed on Issue 1.A.

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STUDENT'S ISSUE 1.B.: DURING THE 2023-2024 SCHOOL YEAR, DID TWIN RIVERS DENY STUDENT A FAPE FROM JANUARY 11, 2024, THROUGH THE FILING OF STUDENT'S COMPLAINT ON APRIL 3, 2024, BY FAILING TO OFFER STUDENT APPROPRIATE, MEASURABLE GOALS IN READING COMPREHENSION, WRITTEN EXPRESSION, MATH, PHONEMIC AWARENESS, AND SPELLING?

The January 11, 2024 IEP offered Student a total of eight annual goals to be completed by January 2025, to address Student's needs in the areas of

1. phonemic awareness/blending,
2. reading comprehension,
3. mathematics/word problems,
4. spelling,
5. written expression/paragraph writing,
6. receptive language/auditory comprehension,
7. phonological awareness, and
8. transition.

Student contends the goals Twin Rivers offered in the areas of reading comprehension, written expression, math, phonemic awareness, and spelling denied Student a FAPE because they were not appropriately challenging or measurable. Twin Rivers contends its goals in those areas were both appropriate and measurable.

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An IEP must include a statement of measurable annual goals, including academic and functional goals designed to: (1) 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 (2) meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) Additionally, the IEP must contain statements of how the child's goals will be measured and the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3), (4).) The description of annual goals should be specific enough to allow the district to determine whether the student made progress and also make clear which specific skills will be required to achieve those goals. (64 Fed. Reg. 12,471 (1999).)

The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) 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).)

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 must show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.) 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).)

The IEP team does not need to draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. In *Capistrano Unified School Dist. v. S.W., et al.* (9th Cir. 2021) 21 F.4th 1125, 1133 (*Capistrano*), the court stated the IDEA required IEP goals to target a student's needs, but the IDEA did not require an IEP to contain every goal from which a student might benefit. Also, a district is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (Fed. Regs., Appendix A, Part 300 - 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).)

A failure to offer appropriate IEP goals is a procedural violation of the IDEA. (See, e.g., *Adam J. v. Keller Independent School Dist.* (5th Cir. 2003) 328 F.3d 804, 811.)

In resolving the question of whether a local educational agency has offered a FAPE, the focus is on the adequacy of the local educational agency's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) It must be

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assessed in terms of what was objectively reasonable when the IEP was developed. (*Fuhrmann*, *supra*, 993 F.2d at p. 1031.) An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*)).

INFORMATION FROM READ ACADEMY ON STUDENT'S PRESENT LEVELS OF PERFORMANCE

Student contends that several of the January 11, 2024 IEP goals offered Student were inappropriate because the baseline data on Student's present levels of performance underestimated the abilities Student was demonstrating in her private placement at READ Academy. However, the evidence shows that information on Student's present levels of performance was not reasonably available to Twin Rivers from READ Academy for the January 11, 2024 IEP, and should not be considered when evaluating the appropriateness of the goals it offered.

The relevant evidence shows Parent privately-placed Student at READ Academy in August 2022, and in October 2022 filed a due process hearing request against Twin Rivers. As part of the November 2022 settlement of Student's claims, Twin Rivers agreed to develop a new IEP for Student by May 2023, and Parent agreed to sign a release of information allowing Twin Rivers and READ Academy to share information relating to Student through the last day of the extended school year in 2023.

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Parent did not consent to Twin Rivers' May 2023 IEP, and the settlement agreement's contractual obligation for a release of information expired at the end of the 2023 extended school year. In August 2023, Student resumed classes at READ Academy. In September 2023, Student filed a due process hearing request alleging the May 2023 IEP failed to offer Student a FAPE.

While Student's September 2023 due process hearing request was pending, Twin Rivers contacted Parent in November 2023 about preparing for Student's ninth-grade annual IEP, due by January 17, 2024. On November 13, 2023, Special Education Director Davis also emailed Leah Skinner, the owner and administrator of READ Academy, sending a release of information form between Twin Rivers and READ Academy, signed by Parent and effective through January 18, 2024. Davis requested updated information on Student to help develop the upcoming IEP, and Read's assistance arranging for Twin Rivers staff to observe Student at READ Academy before the end of 2023.

Skinner responded November 28, 2023, stating that Parent had told READ Academy that she did not consent to READ Academy releasing any data to Twin Rivers. On December 5, 2023, Davis emailed Parent, asking Parent to schedule some assessments of Student by Twin Rivers staff to get data to update Student's current goals and draft new goals, and to authorize READ Academy to release information to Twin Rivers and allow Twin Rivers to observe Student.

Parent agreed to make Student available for speech/ language and academic assessments by Twin Rivers staff on December 12 and 15, 2023, but did not initially agree to allow Twin Rivers to get data from READ Academy or observe Student at READ Academy. In a December 12, 2023 email, Twin Rivers' attorney asked Student's attorney to speak with Parent about allowing Twin Rivers to gather information from READ

Academy “so that it can develop [Student’s] IEP based on all the information it can gather.” Student’s attorney responded December 14, 2023, stating Parent would not authorize a direct exchange of information or observations, but would agree to facilitate the exchange updated information about Student’s needs, if Twin Rivers would pay for the time spent by READ Academy staff.

On December 18, 2023, Student’s attorney emailed that, with Twin Rivers agreeing to pay for time spent, Parent “would agree to extend the [release of information] with READ for purposes of providing information on Student’s present levels in academics.” Parent did not agree at that time to Twin Rivers observing Student at READ Academy.

Ultimately, Twin Rivers and Student incorporated terms for a release of Student’s data from READ Academy into their January 29, 2024 settlement. Parent agreed to provide Twin Rivers updated information from READ Academy regarding Student’s present levels of performance in academics, and all testing updates from READ Academy. Parent also agreed to authorize READ Academy to release information to Twin Rivers, if Twin Rivers reviewed the information provided by Parent and believed additional information from READ Academy was necessary for Student’s IEP team to make an appropriate offer of FAPE. Student also agreed to request permission from READ Academy for Twin Rivers staff to observe Student. Parent was not required to do any of these things sooner than 30 days after January 29, 2024.

The evidence showed that Twin Rivers reached out to READ Academy and Parent more than two months before Student’s 2024 annual IEP was due, to obtain information on Student’s performance to develop the IEP. It took more than a month for Twin Rivers to obtain Parent’s agreement to agree to authorize READ Academy to share data, and

another six weeks to agree on terms for obtaining the data by March 2024. Information on Student's performance at READ Academy was not reasonably available to Twin Rivers for developing the January 11, 2024 IEP.

Student presented evidence Twin Rivers failed to make any material changes to the goals in the January 11, 2024 IEP in subsequent IEPs developed after Twin Rivers obtained data from READ Academy. Student argues this demonstrates Twin Rivers would not have developed appropriate goals in the January 11, 2024 IEP even if the READ Academy data had been available. The failure to make changes to goals in response to data from READ Academy may be relevant to the appropriateness of those IEPs, but not to the appropriateness of Twin Rivers' January 11, 2024 IEP, which must be evaluated in light of information available at the time it was developed, and not in hindsight.

STUDENT'S READING COMPREHENSION GOAL WAS APPROPRIATE

Twin Rivers' January 11, 2024 annual goal for Student in the area of reading comprehension called for her to be able to

"recall major points from a text at her independent reading level (mid to end of 1st grade) and make predictions about forthcoming information with 90 percent accuracy in four of five trials, as measured by teacher charted student records/student work samples."

Compared to Student's baseline, the goal called for Student to slightly increase the grade level of her independent reading, and slightly increase her comprehension of what she read. The baseline was based on testing of Student by district special

education teacher Maryann Polson in December 2023. It stated Student's independent reading level was at a grade equivalent of the middle of first grade, and Student comprehended 71 to 85 percent of a first-grade story.

Student contends that the goal was not appropriately ambitious to achieve its purpose of helping Student's IEP team determine whether she made appropriate progress in reading comprehension over the coming year. Student contends Polson's December 2023 assessment of Student was not conducted appropriately, and underestimated Student's independent reading level. However, the appropriateness of Twin Rivers' assessments is not an issue in this case.

Student also contends that even if the December 2023 assessment results are used, they, together with the results of previous March 2023 testing, indicate Student required a more ambitious goal. Student did not state specifically what the goal should have been, or how it should have been calculated, but suggested an appropriate goal would have called for Student to be reading at a higher independent reading level by January 2025.

However, a comparison of Student's March 2023 and December 2023 assessment results show Student making little or no progress in her independent reading level, suggesting the slight increase in reading level stated in the goal was in line with her existing rate of progress. Student's reading scores in March 2023 on the Woodcock-Johnson IV Tests of Achievement found her broad reading ability, scored as a grade equivalent, to be a 1.5, or equivalent to the average score of a student in the fifth month of first grade. Her overall reading comprehension scored a 1.7, as did reading comprehension subtests in passage comprehension and reading recall. Her reading vocabulary subtest scored slightly lower, at 1.4.

Polson's observation and testing of Student nine months after the March 2023 assessment found Student's reading comprehension level essentially unchanged, with an independent reading level in the middle of first grade. Student's December 2023 assessment results did not show an improvement in Student's reading comprehension since March 2023 that would support a more ambitious goal. In light of Student's limited progress, based on the assessment results and observations available to Twin Rivers' January 11, 2024 IEP, Student failed to prove that Twin Rivers' proposed reading comprehension goal for Student was not appropriately ambitious.

Twin Rivers prevailed on this issue.

STUDENT'S WRITTEN EXPRESSION GOAL WAS INAPPROPRIATE

Twin Rivers' January 11, 2024 IEP goal for Student in the area of written expression/paragraph writing was:

By January 10, 2025 following teacher-led prewriting activities, [Student] will compose a single paragraph including a topic sentence, 3 supporting sentences and a concluding sentence scoring at least a 4 on a rubric out of 5 (1: Does Not Meet, 2: Partially Meets, 3. Does not Fully Meet, 4. Meets, 5. Exceeds).

Student's present levels of performance relevant to the goal were that Student could compose up to three sentences on a single topic, and spell between 78 to 83 percent of the words in the sentences correctly, but could not write a five-sentence paragraph even when provided a bank of suggested words.

Student correctly contends this goal was not measurable because the standards to be met in the rubric were not clear. The goal included a rating scale from Does Not Meet to Exceeds, but what criteria were not being met, or exceeded, is not stated. Twin Rivers' witnesses, including Polson, who drafted the goal, were unable to explain the criteria, ultimately suggesting that the criteria were left to the discretion of the teacher implementing the goal.

The written expression goal does not satisfy the requirements of the IDEA or Education Code. Without knowing the specific criteria to be applied, the description is not specific enough to allow Twin Rivers and Parent to determine whether Student made progress. The goal does not make clear what specific skills will be required to satisfy the rubric and achieve the goals. For example, Polson thought good spelling would be required, while Davis did not.

Student did not prove her additional contention that the written expression goal was not appropriately ambitious in light of Student's present levels of performance. Student based this contention on Polson's characterization of the goal as a second or third-grade level goal, which Student contrasted with Student's fifth-grade level score in March 2023 on the writing samples subtest of the Woodcock-Johnson IV. However, Polson also testified she drafted this goal to write a single paragraph with spelling, punctuation and grammar in mind. Spelling and punctuation are not part of the writing samples subtest, which measures quality of expression, not basic writing skills like spelling and punctuation. Assuming the purpose of this goal did not include improving Student's quality of expression, Student's fifth-grade writing samples score is not relevant to determining whether the written expression goal was appropriately ambitious. Measured against Student's kindergarten grade level spelling subtest score of K.7, and her 2.9 grade level sentence writing fluency score on the March 2023

Woodcock-Johnson IV, a second or third-grade level goal would be appropriately ambitious. It is true that the Woodcock-Johnson IV's written expression cluster is made up of the writing samples and writing fluency subtests, and does not include the spelling subtest. However, a possible failure of January 11, 2024 IEP's written expression goal to actually address Student's needs in written expression goes to the goal's lack of defined, measurable criteria, not its lack of ambition.

Twin Rivers' failure to offer an appropriate written expression goal was a procedural violation of the IDEA. The inability of the IEP team to use the goal as a means of measuring Student's progress in this area impeded Student's right to a FAPE and significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student.

Student prevailed on this issue.

STUDENT'S MATH GOAL WAS INAPPROPRIATE

The January 11, 2024 IEP's math goal was intended to address Student's difficulty with real-world, math word problems. Parent reported at the IEP meeting that Student loved math, and was doing fine in math except for word problems. Polson's assessment of Student in December 2023 found Student was able to add and subtract two-digit numbers up to 20. However, Student scored zero out of six when asked to solve math word problems involving addition or subtraction, although she was able to explain orally how to solve the problem.

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The January 11, 2024 IEP offered Student a math/word problems goal of solving with 90 percent accuracy in four of five trials, 20 real-world word problems at a first-grade level, using addition and subtraction within 40, in situations involving adding to, taking from, putting together, taking apart, and comparing (by using manipulatives, a hundreds chart or drawings).

Student contends a math/word problems goal was inappropriate for Student because it combined two deficits – math and reading, so that Student’s math skills would not be measured in isolation, but rather in the context of her reading and understanding of language. Student also contends the goal was not appropriately ambitious, because it called for Student to solve math word problems at a first-grade level, even though Student’s math scores on the Woodcock Johnson-IV in March 2023 were all at a second or third-grade level.

Student did not prove that the proposed math/word problems goal was inappropriate because it combined math and reading and would not provide information regarding Student’s progress in math alone. The ability to solve real-world math word problems is its own recognized academic skill, assessed as part of math reasoning in the Woodcock-Johnson IV through the applied problems subtest.

Student, in fact, achieved a 2.8 grade level score on the applied problems subtest when Twin Rivers assessed her in March 2023. That score on the standardized Woodcock-Johnson IV suggests that Student’s zero of six score during Polson’s informal testing of the same skill was an error or anomaly. It was a mistake for Twin Rivers to rely solely on Polson’s informal testing in drafting a goal for Student when the results of that testing were markedly lower than recent standardized testing in the same area. Based

on Student's 2.8 grade level equivalent score on the Woodcock-Johnson's applied problems subtest, Student proved Twin Rivers first-grade level math/word problems goal was not appropriately ambitious for Student.

Twin Rivers' failure to offer an appropriate written expression goal was a procedural violation of the IDEA. The inability of the IEP team to use the goal as a means of measuring Student's progress in this area impeded Student's right to a FAPE and significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student.

Student prevailed on this issue.

STUDENT'S PHONEMIC AWARENESS GOAL WAS INAPPROPRIATE

The January 11, 2024 IEP's proposed phonemic awareness goal called for Student to orally combine individual letters, letter patterns containing consonant blends, and letter patterns containing long and short vowel patterns in random order, to read recognizable words with 90 percent accuracy in four of five trials, as measured by teacher-charted observations. The baseline present levels of performance for the goal gave Student's scores from Polson's December 2023 testing of Student's ability to sight-read commonly used words on Fry's First, Second, and Third-Grade Word Lists, and Student's overall score of 62 out of 95 on the Basic Phonics Skills Test, which measured a range of phonics skills, from letter sounds, consonant digraphs, short vowel sounds, and consonant-vowel-consonant sounds, where Student achieved perfect or near-perfect scores, to long vowel words, vowel digraphs, two syllable words, and multi-syllable words, where Student scored a two out of five in each category.

Student proved the phonemic awareness goal was inappropriate. First, the baseline data did not relate directly to the goal, and provided no information about Student's present ability to perform the skills required to achieve the goal. Also, the goal was also not measurable because it failed to state the number of words Student would be required to read correctly to achieve the goal. When asked about the number of words Student would be tested on to determine whether she met the goal, Polson replied that Student would need to achieve a 90 percent on the Basic Phonics Skills Test to meet the goal. However, the goal itself did not reference that test.

Twin Rivers' failure to offer an appropriate phonemic awareness goal was a procedural violation of the IDEA. The inability of the IEP team to use the goal as a means of measuring Student's progress in this area impeded Student's right to a FAPE and significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student.

Student prevailed on this issue.

STUDENT'S SPELLING GOAL WAS INAPPROPRIATE

The January 11, 2014 IEP offered Student a spelling goal calling for Student to use spelling strategies of phonetic analysis, visual memory, and morphological analysis to spell "familiar and unfamiliar words with 90 percent accuracy in four of five trials." The baseline of the goal noted that when writing, Student spelled words phonetically, spelling a word by the way it sounded. This goal was not measurable as written because it failed to identify the number and types of words Student would be tested on to

determine whether she met the goal, including the number of “familiar” versus “unfamiliar” words, and the grade levels of both types of words. The goal also failed to state how Twin Rivers proposed to measure and report Student’s progress on the goal.

Twin Rivers’ failure to offer an appropriate phonemic awareness goal was a procedural violation of the IDEA. The inability of the IEP team to use the goal as a means of measuring Student’s progress in this area impeded Student’s right to a FAPE and significantly impeded Parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to Student.

Student prevailed on this issue.

Student met her burden of proving the written expression, math, phonemic awareness, and spelling goals Twin Rivers offered in the January 11, 2024 IEP were inappropriate. Twin Rivers’ failure to offer appropriate impeded Student’s right to a FAPE. The failure to offer appropriate measurable goals s impeded Student’s right to a FAPE and significantly impeded Parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, because the goals could not be used to determine if Student made progress.

Student prevailed on Issue 1.B.

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STUDENT'S ISSUE 1.C.: DURING THE 2023-2024 SCHOOL YEAR, DID TWIN RIVERS DENY STUDENT A FAPE FROM JANUARY 11, 2024, THROUGH THE FILING OF STUDENT'S COMPLAINT ON APRIL 3, 2024, BY FAILING TO OFFER STUDENT ANY GOALS IN THE AREAS OF MATH FACTS AND LISTENING COMPREHENSION?

Student contends Twin Rivers denied Student a FAPE by failing to offer Student any goals in the areas of math facts and listening comprehension, even though Twin River's March 2023 triennial reevaluation of Student identified these as areas of academic weakness. Twin Rivers did not dispute Student's need for goals in the areas of math facts and listening comprehension, but argued the January 11, 2024 IEP does offer goals in those areas.

Twin Rivers explicitly offered Student a goal in the area of listening comprehension. IEP Goal #6 called for Student to "develop and utilize taught listening comprehension strategies/techniques (e.g., active note taking, verbal rehearsal, paraphrasing, answering related questions, questioning, etc.) in four consecutive speech sessions with 75% accuracy and moderate cueing, during structured language tasks (e.g., listening to a short article & answering related questions, visualization activities, chunking items into groups for recall, listening to a short story & paraphrasing, etc.), in order to increase her ability to process, retain and comprehend auditory information, as observed and measured by [speech/language pathologist] data/charting."

Twin Rivers argued that its math/word problems goal effectively incorporated a goal in the area of math facts, because Student would have to use math facts to solve word problems. However, knowledge of math facts and the ability to solve word

problems are distinct mathematical skills, with the former measured by the math facts fluency subtest on the Woodcock-Johnson IV, and the latter measured by the applied problems subtest. Because Student's progress on math facts fluency could not be isolated from her progress on the reading skills needed to solve math word problems, the math word problems goal would not satisfy Student's need for a separate math facts goal to monitor her progress in that area.

Twin Rivers' failure to offer a math facts goal was a procedural violation of the IDEA that impeded Student's right to a FAPE. The inability of the IEP team to use the goal as a means of measuring Student's progress in this area impeded Student's right to a FAPE and significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student.

Student prevailed on Issue 1.C.

STUDENT'S ISSUE 1.D.: DURING THE 2023-2024 SCHOOL YEAR, DID TWIN RIVERS DENY STUDENT A FAPE FROM JANUARY 11, 2024, THROUGH THE FILING OF STUDENT'S COMPLAINT ON APRIL 3, 2024, BY FAILING TO OFFER STUDENT APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION IN THE AREAS OF READING, WRITTEN EXPRESSION, AND MATH?

Student contends Twin Rivers denied Student a FAPE by failing to make an appropriate offer of specialized academic instruction to address her needs in reading, written expression, and math. Twin Rivers contends its offer of 1,100 minutes per week of specialized academic instruction appropriately addressed Student's need in those areas.

TWIN RIVERS FAILED TO OFFER STUDENT APPROPRIATE SPECIALIZED READING INSTRUCTION

Student and Twin Rivers agreed Student's most significant educational challenge was her specific learning disability of dyslexia, which had thus far limited her reading skills to a low elementary school level, and affected her learning in all academic subjects. To minimize the potential lifelong impact of that deficit, Parent and Student wanted an educational program centered on effective reading intervention curriculum. Parent and Student believed Student was making, and could continue to make, significant gains in her reading skills through READ Academy's dyslexia-focused reading intervention program that uses a structured literacy methodology.

Twin Rivers was skeptical of the degree of Student's gains in reading skills in the READ Academy program, and her ability to significantly improve her existing reading skills. At the January 11, 2014 IEP team meeting, in testimony at hearing, and particularly in its closing brief, Twin Rivers suggested, as stated in the closing brief,

"it is time to expand Student's educational program: to continue to focus on remediation of basic reading skills, but at the same time, to expand upon and develop other skills that are also necessary for success in life after high school."

In this litigation, notwithstanding its viewpoint that no reading intervention program was likely to greatly increase Student's reading skills, and its position that it would be best for Student to expand upon and develop her life skills at a Twin Rivers general education high school, Twin Rivers does not dispute that Student needs reading instruction using a structured literacy methodology to receive a FAPE.

Student contends Twin Rivers' offer of specialized reading instruction using the READ 180 reading intervention program in the January 11, 2024 IEP was unclear, which significantly impeded Parent's opportunity to participate in the decision-making process regarding the IEP, and thereby denied Student a FAPE. Student also contends the READ 180 program was not a structured literacy program, and was inadequate to provide Student a FAPE at any level of duration or frequency.

Twin Rivers contends its offer of specialized academic instruction was legally compliant, and the READ 180 reading intervention program was a structured literacy reading intervention program appropriate for Student.

TWIN RIVERS FAILED TO MAKE A CLEAR OFFER OF READING INSTRUCTION TO ADDRESS STUDENT'S DYSLEXIA

Student contends Twin Rivers committed a procedural violation of the IDEA, and denied Student a FAPE, by making an unclear offer in the January 11, 2024 IEP that appeared to offer Student a daily academic intervention class period devoted solely to the READ 180 reading intervention program, when the class actually devoted only half its time to reading intervention, and half to math intervention.

Twin Rivers contends this discrepancy is irrelevant to whether it made a clear offer, because Twin Rivers accurately stated the total number of minutes of specialized academic instruction Student would receive weekly, and had no legal obligation to specify the amount of specialized academic instruction that would be devoted to a particular goal or subject.

The IDEA requires an IEP to include a statement of special education and related services. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345(a)(4).) It also requires that the IEP set the anticipated frequency, location, and duration of services. (20 U.S.C. § 1414(d)(1)(A)(VII); 34 C.F.R. § 300.320 (a)(7) (2007); Ed. Code, § 56345(a)(7).) An IEP provides notice to both parties as to what services will be provided to the Student during the period covered by the IEP. (*M.C. v. Antelope Valley Union High Sch. Dist.* (2017) 858 F.3d 1189, 1197.) Insufficiently specific drafting renders the IEP a useless blueprint for enforcement. (*Id.* at p. 1199.)

The methodology used to implement IEP services 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.) An IEP generally is not required to include the specific instructional methodology 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)), unless that instructional methodology is necessary to enable a student to receive a FAPE. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 952 (*Mercer Island*), citing 64 Fed.Reg. 12,552; *E.E. 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].) The comments to the Federal Regulations cited in *Mercer Island* explain:

"[I]t is clear that in developing an individualized education there are circumstances in which the particular teaching methodology that will be used is an integral part of what is 'individualized' about a student's

education, and in those circumstances will need to be discussed at the IEP meeting and incorporated into the student's IEP." (64 Fed.Reg. 12,552.)

In *Rogich v. Clark City. School. Dist.* (D.Nev. Oct. 12, 2021) 2021 WL 4781515, at *7, (*Rogich*) 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." (*Id.* at *7.)

The court in *Rogich* 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.

Twin Rivers' January 11, 2024 IEP offered Student 1,100 minutes per week of specialized academic instruction in a group setting, to be provided as "one period a day in elective academic intervention class for reading intervention," and three periods of core academic classes in mild-moderate special day classes. This equated to 275 minutes weekly in each class, comprised of four 59 minutes periods per week, and one 39-minute period per week on Wednesdays, which had a shortened school day. The IEP notes included a five-period sample schedule for the special day class program that identified READ 180 as the reading curriculum offered in the reading intervention class.

At the January 11, 2024 IEP team meeting, Parent's principal concerns about Student returning to the district were that Student's dyslexia would not be properly supported, because in the past district staff had been unfamiliar with dyslexia, and district class sizes would be too large for Student, who tended to avoid participating in larger groups. She explained the curriculum at READ Academy was designed entirely to address needs of students with dyslexia.

The IEP team discussed the nature of the READ 180 program. Foothill High School Principal Heather King explained the READ 180 curriculum was designed as an intensive curriculum to support struggling readers, and was available at Foothill as an elective class. As of the IEP, there were only three students in the class, but the class size could be up to 18, with a teacher and a para-educator. Special Education Director Davis clarified that READ 180 was not based on an Orton-Gillingham structured literacy curriculum, like the Wilson Reading System used at READ Academy, but was a comprehensive reading intervention program. Davis explained that a kinesthetic and sensory component like that used in the Orton-Gillingham curriculum could be added to the READ 180 curriculum and tailored specifically to individual students.

At hearing, testimony of Twin Rivers' staff revealed to Student for the first time that the academic intervention class was not devoted solely to the READ 180 reading intervention program, as described in Student's IEP, but was divided equally between that program, and a math intervention program called MATH 180. This was true as of the January 11, 2024 IEP.

Given Student's need for reading intervention using a structured literacy methodology, Twin Rivers was required to include in the January 11, 2024 IEP a description of the amount of reading intervention services to be provided, and the specific instructional methodology to be used. Even if Twin Rivers was not legally obligated to include such information in the IEP, it did so, and was required to provide accurate information.

In the context of a student request to enforce the provisions of an IEP, the text of the January 11, 2024 IEP, supported by the discussion of the IEP team, would be interpreted as a clear, enforceable offer of 275 minutes per week of specialized academic instruction in reading, in a special day class devoted solely to teaching the READ 180 reading intervention curriculum. In this case, it represents, at best, an unclear offer of what was actually available.

Twin Rivers' failure to make a clear offer of specialized academic instruction in reading to address Student's dyslexia was a procedural violation of the IDEA. The lack of a clear, enforceable offer of services in this area impeded Student's right to a FAPE and significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student.

Student prevailed on this issue.

THE READ 180 READING INTERVENTION PROGRAM OFFERED
BY TWIN RIVERS WAS NOT A STRUCTURED LITERACY
PROGRAM APPROPRIATE FOR STUDENT

Dyslexia is a specific learning disability. (20 U.S.C. § 1401(30)(B); Ed. Code, § 56337, subd. (a).) 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.)

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 developed specific guidelines, called the [California Dyslexia Guidelines](#), to be used to improve educational services for students with dyslexia. (Ed. Code, § 56335, subd. (a).) Educational services for students with dyslexia means an

evidence-based, multisensory, direct, explicit, structured, and sequential approach to instruction. (*Id.*) In the context of educating students with dyslexia, each of these terms has a specific meaning. (California Dyslexia Guidelines, p. 64.)

- Evidence-Based instruction means an activity, strategy, or intervention that—
 - (i) demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—
 - (I) strong evidence from at least one well-designed and well-implemented experimental study;
 - (II) moderate evidence from at least one well-designed and well-implemented quasi-experimental study; or
 - (III) promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias; or
 - (ii) (See below)
 - (I) demonstrates rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and
 - (II) includes ongoing efforts to examine the effects of such activity, strategy, or intervention.” 20 U.S.C. § 7801(21)(A).)

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- Multisensory instruction incorporates two or more modalities simultaneously, purposefully integrating visual, auditory, and kinesthetic-motor pathways using touch or physical manipulation, to support memory and learning of both oral and written language skills. (California Dyslexia Guidelines, pp. 66-67.)
- Direct, Explicit instruction teaches all concepts directly and explicitly with continuous student-teacher interaction. Learning is never assumed. All concepts, skills, and procedures are deliberately taught and practiced with teacher guidance and feedback. The goal of instruction is always independent and functional use. (California Dyslexia Guidelines, p. 67.)
- Structured instruction follows step-by-step procedures for introducing, reviewing, and practicing concepts, always with the goal of independent functional use. Teachers must individualize instruction (even within groups) based on careful and continuous assessment using both informal (e.g., observation) and formal (i.e., standardized) tools. (*Id.*)
- Sequential and Cumulative instruction presents concepts and skills following the logical order of the structure of the language. Instruction is scaffolded and begins with teaching of the simple, most basic language concepts and elements and progresses systematically to more difficult and complex concepts and elements. Instruction in every lesson moves from teaching of skills to functional use and application of skills. New concepts are related to previously taught concepts, skills, and information—and

presented in anticipation of future learning. Content must be mastered to the degree of automaticity needed to free attention and cognitive resources for comprehension and oral and written expression. (*Id.*)

Structured Literacy encompasses approaches to reading instruction that conform with the International Dyslexia Association's *Knowledge and Practice Standards for Teachers of Reading*. There are many Structured Literacy approaches with different names, but employ multisensory, direct, explicit, structured, and sequential instruction. (*Id.* at p. 65.)

All structured literacy approaches also teach the same content, which emphasizes the structure of language at all levels, including

- the speech sound system (phonology);
- the writing system (orthography);
- the meaningful parts of words (morphology);
- structure of sentences (syntax);
- meaning relationships among words,
- phrases, clauses, and sentences—and their referents (semantics);
- and
- the organization of spoken and written discourse (pragmatics).

Instructional strategies for teaching this content emphasize planning, organization, attention to task, task analysis, critical thinking, and self-management. (*Id.* at p. 67.)

Evidence at hearing established that READ 180 was the first reading intervention curriculum available to high school students in Twin Rivers, and 2023-2024 was the first school year it was used. The READ 180 curriculum was taught by district special education teachers, who received two days training from the publisher, Houghton

Mifflin, in how to implement the program, and periodic visits from two READ 180 coaches sent by the publisher. Twin Rivers staff at hearing described READ 180 as using a multisensory, direct, explicit, structured, and sequential approach to instruction.

Special education teacher Alan Garrett, who taught the READ 180 curriculum at Foothill, testified regarding the implementation of READ 180 in the academic intervention class. Garrett split the class into two groups based on reading abilities. On Mondays, Tuesdays, and Thursdays, he spent half of each period working with one group while the other half worked on the computer. During their computer time, students worked on "a variety of things, sometimes reading into the computer, sometimes listening to reading, sometimes watching a video." On Wednesdays, the students read either in a group, read on their own, or listened to a story read to them by their computer. On Fridays, the students were rewarded for good behavior with computer time. Garrett estimated that students in the class received 25 to 30 minutes of direct instruction in reading with him, on Mondays, Tuesdays, and Thursdays, for half of the weeks of the school year. Garrett explained that the class worked on READ 180 for two weeks at a time. After two weeks, the class would switch to using Math 180 for the next two-week period, and no reading intervention would occur during that time.

Id.

Student's principal challenges to the use of READ 180 as an instruction methodology for Student were that it did not demonstrate the statistically significant effect on improving student outcomes required to qualify as an appropriate evidence-

based structured literacy approach for someone with Student's profile, and, as implemented by Twin Rivers, did not offer enough direct, explicit instruction to help Student, who required a high amount of such instruction to address her high level of impairment.

Student's expert, licensed educational psychologist Lisa Pippin testified regarding the appropriateness of READ 180 as a teaching methodology for Student. Pippin reviewed Student's records, interviewed Parent, observed Student at Read Academy, and interviewed her teacher. She also researched the published academic literature on the effectiveness of READ 180 on improving student outcomes, and observed the academic intervention class at Foothill High School on a Wednesday in May 2024. Pippin was a school psychologist for nine years before entering private practice in 2013, teaches part-time at California State University Sacramento in the school psychology graduate program, and has experience and expertise working with students with specific learning disabilities. She was well-qualified to conduct classroom observations and offer opinions on instructional methodologies for addressing dyslexia and other learning disabilities.

Pippin characterized Student as a "high-risk" student for reading failure. The term high-risk applied to students reading below the 25th percentile or reading below the fourth-grade level as a ninth-grader. Although Student had made progress in reading at READ Academy, she was still reading below the first percentile. As a high-risk reader with significant deficits in phonology, orthography, morphology, attention, suspected auditory processing disorder, and anxiety, Pippin believed Student required a frequent and intense intervention. Specifically, she believed Student required 90 minutes of direct and explicit structured literacy instruction in reading, four to five days per week.

Pippin reviewed a Compendium of READ 180 Research prepared in 2013 by Scholastic, the original publisher of READ 180. The Compendium described READ 180 as research-based, but did not state it qualified as structured literacy. In her review, Pippin relied on information from The What Works Clearinghouse, a research group created in 2002 by the Institute of Education Sciences, the statistics, research, and evaluation arm of the U.S. Department of Education, to evaluate scientific evidence on education programs, products, practices, and policies, determine which studies meet rigorous standards, and summarize the findings to help teachers, administrators, and policymakers make evidence-based decisions. (<https://ies.ed.gov/ncee/wwc/WhoWeAre>.)

Pippin found 90 percent of the studies referenced in the Compendium were funded by the publisher. Pippin explained that this was problematic because publisher-funded studies have historically overstated the effectiveness of the program. Also, most of the studies referenced in the Compendium were not peer-reviewed. Reviewing one of the peer-reviewed studies not funded by the publisher on the What Works Clearinghouse, Pippin found the Compendium omitted information indicating READ 180 did not have a positive impact on reading for high-risk readers like Student. (Lang, L.H., Torgeson, J.K., Petscher, Y., Vogel, W., Chanter, C., & Lefsky, E. (2008) *Exploring the Relative Effectiveness of Reading Interventions for High School Students*.)

Based on the research, Pippin concluded that READ 180 can be effective for students with more moderate reading needs. However, for high-risk children like Student, with more severe reading needs, there was no evidence to support its efficacy. Twin Rivers objected that Pippin's research did not include studies of the most recent 2022-2023 version of READ 180 used by the district. The Twin Rivers special education

teacher implementing the rollout of READ 180 in the district, Reginal Otto, testified that there was only one such study. Pippin reviewed it, and found it was not peer reviewed, tested both gifted and disabled students, and used questionable statistical analysis that measured only positive outcomes, but not negative outcomes.

Twin Rivers did not rebut Pippin's expert opinion that peer-reviewed studies did not support the effectiveness of READ 180 to teach high-risk readers like Student.

Pippin's observation of the Wednesday READ 180 academic intervention class at Foothill High was consistent with Garrett's description of the class. There was no direct instruction or oral reading. The students were provided with leveled readers and logged onto computers. They wore headphones, so Ms. Pippin was not sure whether the computer was reading aloud to the students, or the students were reading silently to themselves.

In Pippin's opinion, the READ 180 program as implemented by Twin Rivers did not provide enough direct, explicit instruction to benefit Student. By the district's own estimate, Students in the academic intervention class received only 25 to 30 minutes of direct instruction, three days per week, on a two-weeks on, two-weeks off basis. By contrast, Student required 90 minutes of direct and explicit structured literacy instruction in reading, four to five days per week, every week throughout the school year.

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The weight of the evidence proved Twin Rivers' offer of specialized academic instruction in reading in the January 11, 2024 IEP was not reasonably calculated to enable Student to make progress in light of her circumstances. (*Endrew F.*, *supra*, 137 S.Ct. at 1001.) The failure to offer appropriate services in this area impeded Student's right to a FAPE.

Student prevailed on this issue.

WRITTEN EXPRESSION: TWIN RIVERS OFFERED STUDENT APPROPRIATE INSTRUCTION

Student contends Twin Rivers' denied Student a FAPE by failing to make an appropriate offer of direct, explicit specialized academic instruction to address her needs in written expression. Twin Rivers contends its offer of 275 minutes per week in an English language arts special day class appropriately addressed Student's need in the area of written expression.

Twin Rivers acknowledged that its academic intervention class, which used structured, research-based intervention programs, did not provide instruction in written expression. Instead, Twin Rivers offered instruction in written expression through its English Language Arts Essentials special day class.

Special education teacher Otto explained that English Language Arts class focused on teaching grade level material and standards, using accommodations and modifications. The class included some writing "at the very least as a warm-up activity"

on a daily basis, but sentence building and sentence structure was not explicitly taught in that class. Student and Twin Rivers did not elicit testimony on whether the class included any direct and explicit instruction in written expression.

Student's expert Pippin did not believe the English Language Arts class could address Student's needs in writing. She testified that, due to Student's dysgraphic and dyslexic profile, including her word finding challenges, Student required direct, explicit instruction in written expression. READ Academy had provided such instruction to Student through the Institute in Excellence for Writing intervention program, and Student had made clinically significant growth in Spelling, Sentence Combining, and Essay Composition, as measured by standardized testing using the Wechsler Individual Achievement Test-4, administered by READ Academy in July 2022 and May 2024.

Student failed to prove Twin Rivers' offer of specialized academic instruction in the area of written expression was not appropriate for Student. Student did not explain the information available to Twin Rivers as of January 11, 2024, that would have required it to offer Student a direct, explicit intervention program in written expression. No issues or concerns were raised at the January 11, 2024 IEP about the adequacy of Twin Rivers' services to address Student's needs in the area. That Student made progress in written expression through the intervention program offered at READ Academy is not evidence she would not have made progress in the English Language Arts class at Foothill High.

Twin Rivers prevailed on this issue.

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MATH: TWIN RIVERS FAILED TO OFFER STUDENT APPROPRIATE INSTRUCTION

The January 11, 2024 IEP offered Student one period per day of the Integrated Math Essentials special day class. As with the English Language Arts class, the Essentials math class taught grade level, general education content, taught at a slower pace. The teacher of this class, Jeremy Arsich, testified that content was the same as the ninth-grade general education math class, but taught over two years.

Student's expert Pippin Ms. Pippin observed the Math Essentials class. She did not observe any specific curriculum being utilized. The teacher completed a math problem on the board and asked questions of the students while he worked, using a "Socratic method" teaching approach.

Pippin explained that this was not the type of direct and explicit instruction Student required to learn. Student's standard scores in math as of her spring 2023 triennial assessment were multiple grade levels below the ninth grade. Pippin opined Student required direct explicit instruction in math, in a small group setting, using the Making Math Real curriculum used at READ Academy, or another similar intervention program, for at least 45 minutes, four times per week in order to make appropriate progress. To support her opinion, Ms. Pippin cited to the clinically significant growth Student made in Numerical Operations during her time at READ Academy with this type and level of intervention.

Special Education Director Davis agreed Student required more direct instruction in math skills at her level, and stated that MATH 180 was necessary for Student to receive a FAPE. However, the Math 180 program was not mentioned in the January 11,

2024 IEP offer, or any of the IEPs developed thereafter. A formal written IEP offer is a requirement of the IDEA that "... should be enforced rigorously." (*Union v. Smith, supra*, 15 F.3d at p. 1526.) A district cannot rely on an offer of services that is not documented in the IEP. (*Antelope Valley, supra*, 858 F.3d at pp. 1196-1198 (9th Cir. 2017).)

Student proved Twin Rivers' offer of specialized academic instruction in the Math Essentials class was not reasonably calculated to provide Student with appropriate progress in math. The failure to offer appropriate services in this area impeded Student's right to a FAPE.

Student prevailed on this issue.

STUDENT'S ISSUE 1.E.: DURING THE 2023-2024 SCHOOL YEAR, DID TWIN RIVERS DENY STUDENT A FAPE FROM JANUARY 11, 2024, THROUGH THE FILING OF STUDENT'S COMPLAINT ON APRIL 3, 2024, BY FAILING TO OFFER STUDENT ADEQUATE SPEECH AND LANGUAGE SERVICES?

Student contends Twin Rivers denied Student a FAPE in the January 11, 2024 IEP by failing to offer her adequate speech and language services to address the IEP's two proposed speech and language goals addressing Student's needs in receptive language/auditory comprehension, and phonological awareness. Twin Rivers contends the January 11, 2024 IEP's offer of 25 minutes per week of individual speech and language services was adequate to address these goals, especially when supported by Student's proposed placement on a comprehensive high school campus, where Twin Rivers suggests exposure to general education Students would positively impact Student's speech and language deficits.

Student's closing brief argued new claims regarding speech and language goals that were not asserted in Student's complaint or addressed at the prehearing conference regarding. Twin Rivers did not question witnesses with respect to the new claims raised in Student's closing brief, nor address these claims in its closing brief. This Decision does not address claims raised for the first time in Student's closing brief, since both sides did not have an opportunity to question witnesses and argue the new claims in their closing briefs. (See, e.g., *H.B. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed.Appx. 342, 344-345 [nonpub. opn.])

Speech and language therapy is a related services that must be provided as required to assist an individual with exceptional needs to benefit from special education. (Ed. Code § 56363 (a).)

Student's expert, speech and language pathologist Larissa Reigh, testified regarding the adequacy of Twin Rivers' offer of speech and language services. Reigh based her opinions on a review of Student's previous assessments. She did not assess Student herself, or observe Student in class. Reigh testified that 25 minutes per week was insufficient to address the January 11, 2024 Student's two speech and language goals, given the complexity and length of the auditory comprehension goal. Reigh opined this goal needed to be broken up into two separate goals, with one goal targeting the development and use of listening comprehension strategies and the second to use those learned strategies to answer comprehension questions from a story read aloud. Each of these goals would require a minimum of 15 minutes of weekly direct services, exceeding the 25 minutes Ramirez recommended. Reigh did not state her opinion on how many additional minutes of speech and language services would be required to address Student's phonological awareness goal.

Reagh's opinion was based on record review only, with no independent observation or assessment of Student. Her opinion on the amount of speech and language services required to address Student's speech and language goals is less persuasive than the opinion of the Twin Rivers speech and language pathologist who assessed Student in December 2023 and wrote the goals.

Student did not prove Twin Rivers' failed to offer Student adequate speech and language services. Twin Rivers prevailed on this issue.

STUDENT'S ISSUE 1.F: DURING THE 2023-2024 SCHOOL YEAR, DID TWIN RIVERS DENY STUDENT A FAPE FROM JANUARY 11, 2024, THROUGH THE FILING OF STUDENT'S COMPLAINT ON APRIL 3, 2024, BY FAILING TO OFFER STUDENT APPROPRIATE ASSISTIVE TECHNOLOGY DEVICES, PROGRAMS, AND SERVICES

Student contends Twin Rivers denied Student a FAPE in the January 11, 2024 IEP, by failing to offer Student assistive technology training, technical assistance, and maintenance services as a related service to enable Student to use her IEP accommodations of speech to text/text to speech software, and audiobooks to access her educational program. Twin Rivers contends its offer of speech to text/text to speech software and audiobooks as accommodations was appropriate to address Student's need for assistive technology, and Student did not demonstrate a need for any additional assistive technology devices, programs, or services.

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A student's IEP team must consider whether the student requires assistive technology devices and services to receive a FAPE. (Ed. Code § 56341.1, subd. (b)(5). If so, the IEP must include a statement of what particular device or service, accommodation, or modification, the student requires. (Id., § 56341.1, subd. d(c).) "Assistive technology services" include the

- evaluation of a child's needs,
- procuring, customizing, maintaining devices, and
- training or technical assistance for the student, family, and other educators. (20 U.S.C. § 1401(2).)

Twin Rivers agreed Student required assistive technology, in the form of speech-to-text and text-to-speech software and audiobooks. However, these were listed as accommodations in the January 11, 2024 IEP instead of on the designated special factors page. Special Education Director Davis testified Student did not require a special device or software to utilize these accommodations because all students were provided Chromebooks that had speech-to-text and text-to-speech capability. However, she admitted that she did not know if additional software would be required to allow Student to access those features. Davis also was unsure how Student would access audiobooks. She stated Student's case manager could find out from the district's information technology department.

Parent characterized Student as fairly tech-savvy. However, she believed Student would require some initial instruction on the use of speech-to-text and text-to-speech software to be able to use them for educational purposes.

The California Dyslexia Guidelines suggest training is the “most crucial” service for student success with assistive technology. (California Dyslexia Guidelines at p. 80.) The Guidelines training should include basic tool use and strategies on how to apply the tool to the student’s identified challenges. In addition to training the student, it is important to include the parents, teachers, and any other pertinent providers. Technical assistance, maintenance, and repair issues must also be addressed.

Special Education Director Davis’ unfamiliarity with how to access speech-to-text and text-to-speech software, and audiobooks, Parent’s opinion that Student would require some training, and the Dyslexia Guidelines’ emphasis on the need for assistive technology training, together are persuasive that Student’s IEP should have included at least some initial training to make sure Student could access the technology.

Student proved Student needed training to access assistive technology devices. The failure to offer appropriate services in this area impeded Student’s right to a FAPE.

Student prevailed on this issue.

DISTRICT’S ISSUE: DOES TWIN RIVERS’ JANUARY 11, 2024 IEP OFFER STUDENT A FAPE, SUCH THAT THE TWIN RIVERS CAN IMPLEMENT IT WITHOUT PARENT CONSENT?

Student affirmatively proved that Twin Rivers’ January 11, 2024 IEP failed to offer Student a FAPE.

Student prevailed on this issue.

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.

STUDENT'S ISSUE 1.A.:

During the 2023-2024 school year, Twin Rivers denied Student a FAPE from January 11, 2024, through the filing of Student's complaint on April 3, 2024, by failing to make a clear written offer of FAPE with respect to the amount of time Student would be in the regular education setting versus a special day class.

Student prevailed on Student's Issue 1.A.

STUDENT'S ISSUE 1.B.:

During the 2023-2024 school year, Twin Rivers denied Student a FAPE from January 11, 2024, through the filing of Student's complaint on April 3, 2024, by failing to offer Student appropriate, measurable goals in, written expression, math, phonemic awareness, and spelling.

Twin Rivers did not deny Student a FAPE by failing to offer Student appropriate, measurable goals in reading comprehension.

Student and Twin Rivers each prevailed in part on Student's Issue 1.B.

STUDENT'S ISSUE 1.C.:

During the 2023-2024 school year, Twin Rivers denied Student a FAPE from January 11, 2024, through the filing of Student's complaint on April 3, 2024, by failing to offer Student any goals in the areas of math facts and listening comprehension.

Student prevailed on Student's Issue 1.C.

STUDENT'S ISSUE 1.D.:

During the 2023-2024 school year, Twin Rivers denied Student a FAPE from January 11, 2024, through the filing of Student's complaint on April 3, 2024, by failing to offer Student appropriate specialized academic instruction in the areas of reading and math.

Twin Rivers did not deny Student a FAPE by failing to offer Student appropriate specialized academic instruction in the area of written expression.

Student and Twin Rivers each prevailed in part on Student's Issue 1.D.

STUDENT'S ISSUE 1.E.:

During the 2023-2024 school year, Twin Rivers did not deny Student a FAPE from January 11, 2024, through the filing of Student's complaint on April 3, 2024, by failing to offer Student adequate speech and language services.

Twin Rivers prevailed on Student's Issue 1.E.

STUDENT'S ISSUE 1.F.:

During the 2023-2024 school year, Twin Rivers denied Student a FAPE from January 11, 2024, through the filing of Student's complaint on April 3, 2024, by failing to offer Student appropriate assistive technology devices, programs, and services.

Student prevailed on Student's Issue 1.F.

DISTRICT'S ISSUE:

Twin Rivers' January 11, 2024 IEP did not offer Student a FAPE, such that the Twin Rivers can implement it without parent consent.

Student prevailed on District's Issue.

REMEDIES

Student prevailed on Student's Issue 1.A., Student's Issue 1.C., Student's Issue 1.F., and District's Issue 1. Student partially prevailed on Student's Issue 1.B., and Student's Issue 1.D. As a remedy for Twin River's denials of FAPE with respect to those issues, Student requests that Twin Rivers:

- Reimburse Student's compensatory fund in the amount of \$8,800, for expenses incurred at READ Academy through the end of the 2023-2024 school year.

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- Reimburse Parent for the cost of transportation expenses associated with Student's placement at READ Academy during the spring 2024 semester, based on the Internal Revenue Service mileage rate and dates of attendance at READ Academy.
- Fund Student's placement at READ Academy, including transportation costs, until such time as an appropriate IEP offer is made.
- Conduct an assistive technology assessment of Student and revise her IEP to reflect the device(s), software and services required.

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*).)

READ ACADEMY REIMBURSEMENT

A parent may be entitled to reimbursement for placing their child in a private placement without agreement of the school district if the Student proves at a due process hearing that 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].) 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. (*Burlington, supra*, 471 U.S. at pp. 370-371.)

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.)

Twin Rivers contends “no remedy is warranted” for Twin Rivers’ failure to offer Student a FAPE in the January 11, 2024 IEP, because “[p]arentally placed private school students ... are not entitled to FAPE, or an IEP from their district of residence.” This statement of the law is incorrect. The district of residence of a child with a disability who is parentally-placed in a private school is not required to automatically prepare annual IEPs for the child, and does not have to make FAPE available to the child if the parent makes clear his or her intention to keep the child enrolled in the private placement. (*Bellflower Unified School District v. Lua* (9th Cir. 2020) 832 Fed.Appx. 493, 496 (*Bellflower*), citing United States Department of Education, Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46593 (August 14, 2006), *Capistrano, supra*, 21 F.4th at p 1138.)

However, if the parents request an IEP, the request indicates an intention to consider a district placement, and the district must prepare an IEP for the child. (*Bellflower, supra*, 832 Fed.Appx. at p. 496; *Capistrano, supra*, 21 F.4th at p. 1138.) If the Student proves in a subsequent hearing that the IEP failed to offer the Student a FAPE, the parent may be entitled to reimbursement for the private placement, if the placement was appropriate.

Student proved Twin Rivers failed to offer Student a FAPE from January 11, 2024, through the filing of the complaint on April 3, 2024, and is entitled to compensatory education for that FAPE denial.

Student established READ Academy provided educational instruction specially designed to meet Student's needs, supported by services that enabled her to benefit from the instruction. READ Academy was specifically designed for students with dyslexia and related specific learning disabilities. Its educational program provided Student intensive learning intervention instruction through research-based, structured programs in reading (Wilson Reading System), writing (Institute for Excellence in Writing), and math (Making Math Real). In reading, her most critical area of need, Student received 90 minutes per day, four days per week, of direct instruction during the 2023-2024 school year, in a setting with one other student and a teacher trained in working with students with dyslexia. Student progressed through the first four steps of the Wilson Reading System. READ Academy used the standardized Wechsler Individual Achievement Test, Fourth Edition, to measure Student's gains in academic skills from the time she started at READ in July 2022 through May 2024. Student was able to prove by a preponderance of the evidence READ Academy administered the Weschler Test appropriately, over Twin River's challenges to the qualifications of the test administrator. Student's Weschler scores showed clinically significant improvement in her skills in all areas of reading, and in spelling, sentence combining, essay composition and math-numerical operations.

Appropriate compensatory education for a FAPE denial for the period January 11, 2024, to April 3, 2024, includes payment for costs of Student's tuition at READ Academy through the end of the school year, as Student could not reasonably be required to change placements so close to the end of the school year. Parent's request for \$8,800 for Student's tuition at READ Academy from January 11, 2024, through the end of the 2023-2024 school year was supported by evidence in the record. Student's READ Academy tuition for that time was paid from a compensatory education fund obtained

by Student through the parties' January 2024 settlement that resolved claims arising prior to the time period at issue in this case. The fund facilitated direct payment to READ Academy and other educational service providers in lieu of requiring Parent to make payments and then submit reimbursement requests. If Twin Rivers had offered an appropriate IEP that returned Student to a district placement, the \$8,800 paid to READ Academy would instead have remained available to reimburse parent for payments to other special education related services such as speech and language therapy, and educational therapy. Restoration of the \$8,800 to the compensatory education fund, as requested by Student, is an appropriate equitable remedy.

To support Parent's request for reimbursement of mileage costs at the 2024 IRS mileage rate for transporting Student to and from READ Academy from January 11, 2024 through the end of the 2023-2024 school year, Student presented evidence that Parent incurred expenses for two round trips per day, totaling 45 miles per day. Student did not present evidence of the number of days Student attended READ Academy, but can do so. The ALJ takes official notice of the 2024 Internal Revenue Service business mileage rate of \$0.67 per mile. (<https://www.irs.gov/tax-professionals/standard-mileage-rates>)

READ ACADEMY PROSPECTIVE PLACEMENT

Evidence at hearing established that Twin Rivers made at least two IEP offers to Student after the January 11, 2024 IEP. One or both of these IEP's may have offered Student a FAPE for dates after the end of the 2023-2024 school year. It would therefore be inappropriate to extend Student's award of compensatory remedies in this case to prospective placement beyond the end of the 2023-2024 school year.

ASSISTIVE TECHNOLOGY

Student proved Twin Rivers' offer of assistive technology for Student was inappropriate because it did not include training in the assistive technology to be used by Student if she were attending a Twin Rivers school. Student did not challenge the Twin Rivers assistive technology assessment, or the nature of the assistive technology Twin Rivers offered, just the lack of training. In school at Twin Rivers, an independent assistive technology assessment would not have been necessary to determine how to train Student on equipment already selected, and would not have been an appropriate remedy. Training Student to access her assistive technology equipment would have been an appropriate remedy, and perhaps compensatory education if Student demonstrated that a lack of training had actually impacted her education and deprived her of educational benefit.

However, Student was not attending a Twin Rivers school at time of hearing, and no evidence was presented that Student would be returning to Twin River for the 2024-2025 school year. There was no evidence Student was deprived of any educational benefit because she was not offered training on the equipment available to her at Twin Rivers. As there is no point to training Student in the use of an assistive technology not available to Student, and Student presented no evidence of a need for training in whatever assistive technology may be available to Student at READ Academy, or of any other appropriate remedy, no remedy is provided for this FAPE denial.

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ORDER

1. Within 30 days of the date of this Decision, Twin Rivers shall reimburse Student's compensatory fund in the amount of \$8,800, for expenses incurred at READ Academy through the end of the 2023-2024 school year.
2. Within 30 days of the date of this Decision, Parent shall provide Twin Rivers attendance records or other documentation from READ Academy establishing the dates of Student's attendance at READ Academy from January 11, 2024, through the end of the 2023-2024 school year.
3. Within 30 days of receipt from Parents of the documents establishing the dates of Student's attendance at READ Academy from January 11, 2024, through the end of the 2023-2024 school year, Twin Rivers will reimburse Parent the cost of round-trip travel for each day of attendance. This shall be calculated based on a distance of 45 miles per day times the official Internal Revenue Service 2024 business mileage rate of \$0.67 per mile, which equates to \$30.15 per each day of attendance.
4. All other requests for relief made by the parties are denied.

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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.

Robert Martin

Administrative Law Judge

Office of Administrative Hearings