

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014060731

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on June 12, 2014, naming the Twin Rivers Unified School District. At the joint request of the parties, the due process hearing was continued on July 15, 2014, and August 26, 2014.

B. Andrea Miles, Administrative Law Judge, heard this matter on December 3 and 4, 2014, in McClellan, California.

Student's father represented Student. Clarissa LaGuardia, a Spanish interpreter, was present throughout the hearing in order to interpret the proceedings for Father. Student was not present.

John Sayler, a non-attorney consultant, represented Twin Rivers. Dr. Tammy Forrest, Twin River's director of special education, was present on December 3, 2014. On December 4, 2014, Kerry Kelly, a program specialist with Twin Rivers, was present.

At the close of the hearing, a continuance was granted for the parties to file written closing briefs and the record remained open until the close of business on December 11, 2014. On December 11, 2014, Twin River filed its closing brief. Student failed to file a closing brief. At the close of business on December 11, 2014, the record was closed and the matter was submitted for decision.

ISSUE

Did Twin Rivers deny Student a free appropriate public education from August 14, 2014, to the present by failing to provide Student with an adequate reading program?¹

SUMMARY OF DECISION

Student contends that the reading program offered to Student was inadequate. Further, Student contends that in order for Student to receive a FAPE, Twin Rivers must provide Student with reading instruction at Lindamood-Bell Learning Center.

This decision holds that Student did not meet her burden of proving that Twin Rivers denied her a FAPE from August 14, 2014, through December 11, 2014, by failing to provide Student with an adequate reading program.

FACTUAL FINDINGS

Jurisdiction

1. Student is a 13-year-old girl who has resided within the geographical boundaries of Twin Rivers School District at all relevant times. Student is eligible for special education under the category of specific learning disability. Student has an auditory processing disorder, which hinders her academic progress. Originally, Student was found qualified for special education services in February 2012.

Student's Special Education Placement and Services Prior to the 2014-2015 School Year

2. Student is classified as an English-Language learner whose native language is Spanish. To date, all of Student's educational instruction has been provided in English. Student lives with her father, mother, and older sister. Student's parents only speak Spanish in the home. Student converses primarily in English at school and at home with her sister.

¹ On November 25, 2014, Twin Rivers filed a motion in limine to exclude allegations arising prior to the beginning of the 2014-2015 school year. Twin Rivers argued that Student was barred from asserting any claims outside that time period because Student had entered into a prior settlement agreement which waived any and all claims against Twin Rivers through the end of the 2013-14 school year and the extended school year. The ALJ granted Twin River's motion at the beginning of the hearing. As a result, the hearing's sole issue statement was revised to reflect the modified time period. This decision interprets the term "to the present" to mean the close of the hearing.

3. In 2013, Twin Rivers placed Student at Foothill Ranch Middle School. However, Father removed Student from that school because he felt that the school's students would be a negative influence on Student. Student did not attend public school during the 2013-2014 school year because Father refused to allow Student attend Foothill Ranch.

4. Since the beginning of the 2014-2015 school year, Student has attended Rio Linda Preparatory Academy, a school within Twin Rivers. However, Student has been absent from school since November 14, 2014. The reason for Student's absence from school is unrelated to this case.

5. By written agreement, Twin Rivers agreed to provide Student with four hours per school day of services at Lindamood-Bell Learning Center, beginning January 13, 2014, and ending June 12, 2014. Student attended Lindamood-Bell from January 2014 through June 2014, where Student received four hours of one-on-one reading instruction per school day. Initially, all four hours of instruction were devoted to improving Student's reading fluency. After Student made some progress in that area, Student's reading fluency instruction was reduced to one hour a day. The other three hours were comprised of instruction on visualizing and verbalizing, a method for teaching reading skills. Student's reading skills improved while she attended Lindamood-Bell. During the 2013-2014 school year and the extended school year, Student did not receive any other reading instruction and did not attend school.

Twin River's 2014 Academic Assessment's Reading Scores

6. During May and June 2014, Twin Rivers conducted an academic assessment, a speech and language assessment, and a psycho-educational assessment of Student, in preparation for Student's June 2014 individualized education program team meeting. The purpose of the assessments were to assist the IEP team in determining Student's eligibility for special education, her present levels of performance, and assist the IEP team in determining appropriate services and placement.

7. Christie Vallance, a resource specialist program (RSP) specialist with Twin Rivers, conducted Student's academic assessment. Ms. Vallance administered the Woodcock-Johnson III Test of Achievement to assess Student in the areas of reading, math, and language. Student scored below average to far below average in the areas of letter-word identification, reading fluency, passage comprehension, and word attack. Student's broad reading score fell between a second and third grade level, as measured by the Woodcock-Johnson. At no point during the hearing did Student challenge the validity of Ms. Vallance's academic assessment of Student. Ms. Vallance's testing established that Student displayed a continued need in the area of reading.

The June 11, 2014 IEP

8. Twin Rivers held an annual IEP team meeting on June 11, 2014. At that meeting, Student's assessment data, eligibility, areas of need, present levels of performance,

annual goals, supports, modifications, services, and placement, were discussed. The IEP team utilized Ms. Vallance's findings from the Woodcock-Johnson to determine Student's present levels of performance in reading and to assist in creating annual and short-term goals for Student in the area of reading.

9. Word decoding is an important component in the development of reading fluency. As a student's ability to decode words increases, so too does his or her reading fluency. Based upon Student's established need in reading, the IEP team developed a reading comprehension and a reading fluency goal. Student did not provide any evidence that the reading goals contained in the June 2014 IEP's were inadequate.

10. The June 11, 2014 IEP offered Student 240 minutes daily of academic instruction in a special day class with physical education and one elective in general education classes. It also offered Student 60 minutes weekly of individualized speech and language services and 120 minutes monthly of counseling services with a school psychologist. Student's auditory processing disorder caused Student to experience various reading challenges. Therefore, the proposed IEP included various accommodations and modifications for Student, such as, shortened assignments, use of a visual placeholder, modified assignments, extended time to complete assignments, repeated or rephrased instructions, open book tests, and flexible scheduling. The June 2014 written IEP did not specify the specific methodology for teaching reading. However, the evidence at hearing established the details of the reading program offered to Student.

11. Father declined the June 2014 IEP offer, because he wanted Student's IEP to include one-on-one reading services at Lindamood-Bell. At the IEP team meeting, Father expressed his concerns regarding Student's difficulties with reading and his desire for Student to receive additional reading services at Lindamood-Bell. At the request of Father, Terri Mehl, Center Director at Lindamood-Bell, attended the June 2014 IEP team meeting. Ms. Mehl provided the IEP team with Student's test results from the testing conducted by Lindamood-Bell staff members in January 2014 and June 2014. Ms. Mehl recommended that Student complete another eight to ten weeks of reading instruction at Lindamood-Bell. As she had not personally assessed Student, Ms. Mehl based her opinion on the results of the testing conducted by Lindamood-Bell staff members and their observations of Student. The IEP team members discussed the option of Student returning to Lindamood-Bell, however, the Twin Rivers members of the IEP team rejected that option because they felt that a less restrictive placement option would better suit Student's needs.

12. At the hearing, Ms. Mehl provided no opinion regarding the adequacy of the June 2014 IEP's reading goals or the offered specialized instruction. While the information Ms. Mehl provided through her testimony was consistent with the information she provided to the IEP team, Ms. Mehl's testimony did not contradict the adequacy of the June 2014 IEP offered reading program.

The Reading Program Implemented During the 2014-2015 School Year

13. During the 2014-2015 school year, Twin Rivers implemented Student's February 7, 2013 IEP due to Father's refusal to sign the June 2014 IEP. The February 7, 2013 IEP was designated as Student's "stay put" placement in a written agreement between the parties. The February 7, 2013 IEP provided Student with placement at a public school, in a special day class for five out of six class periods and the sixth period, physical education, in a general education class. The February 7, 2013 IEP contained annual and short-term goals in reading comprehension and reading fluency. The evidence established that Twin Rivers's offered reading instruction in the June 11, 2014 IEP was the same reading instruction as offered to Student and implemented with Student pursuant to Student's February 7, 2013 IEP.

14. At the beginning of the 2014-2014 school year, Twin Rivers placed Student in a special day class at Rio Linda Preparatory Academy. The special day class was comprised of 17 seventh and eighth graders and was taught by a certified special education teacher with the assistance of two paraprofessionals.² Some form of reading instruction was integrated into each of the Student's five special day classes. The first two special day class periods were devoted to English language arts. During the English language arts periods, the special day teachers and paraprofessional provided Student with both individualized and small group reading instruction. The teachers of Student's special day classes were aware of Student's reading goals, as outlined in the February 2013 IEP, and they worked with Student to help her achieve those goals.

15. The teachers used the National Geographic's reading program *Insider* as part of Student's English language arts curriculum. In order to accommodate Student's learning disability, the special day teachers helped Student use graphic organizers and other visual supports while working with the *Insider* program. The *Insider* program focused on reading comprehension and other reading skills, including fluency. While using the *Insider* program, Student would work either independently or in small groups. The teacher and the paraprofessional circulated throughout the classroom, providing individuals and small groups with reading instruction. The class generally worked on decoding and word attack in small groups every Wednesday by using the *Insider* program and workbooks.

16. In order to increase Student's reading fluency, Ms. Landon, one of Student's special day teachers, and Student would alternate reading short passages aloud to each other. This exercise provided Student with a model and allowed Student the opportunity to correct her reading mistakes with Ms. Landon's assistance. Initially, Student would not to read aloud, however, over time Student gained confidence and began reading aloud not only to Ms. Landon, but also during small group instruction. The special day class teachers also

² Until September 21, 2014, Travis Cunningham taught Student's special day class. After Twin Rivers promoted Mr. Cunningham to vice principal, Twin Rivers assigned two part-time, substitute, credentialed special education teachers to teach Student's special day class.

utilized the program *Read Naturally*, as part of Student's reading fluency instruction. This program allowed the teachers to keep a running record of Student's progress with reading fluency.

17. During Student's time in the special day class, her reading comprehension, decoding, and fluency improved. Student's reading needs and the focus of Student's reading goals included in the February 2013 IEP were similar to those included in Student's June 2014 IEP. Twin Rivers's June 2014 IEP offer addressed Student's unique reading needs through specialized instruction in the Rio Linda Preparatory special day class.

18. During the hearing, Father failed to establish the reason that he believed the June 2014 IEP offered reading program inadequate, although he was allowed multiple opportunities to do so. Instead, Father's testimony focused on his desire to have Student return to Lindamood-Bell for additional reading instruction. Additionally, Father did not present any evidence showing that the reading program currently being provided to Student does not adequately meet Student's reading needs.

LEGAL CONCLUSIONS

Introduction – Legal Framework under the IDEA³

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁴ et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to a parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R.

³ Unless otherwise indicated, the legal citations in the introduction and in the sections that follow are incorporated by reference into the analysis of each issue decided below.

⁴ All subsequent references to the Code of Federal Regulations are to the 2006 version.

§ 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services, which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 (*Mercer*) [In enacting the IDEA . . . , Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.*, at p. 950, fn. 10.)

4. 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, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3) (C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Student has the burden of proof.

Did Twin Rivers Deny Student a FAPE by Failing to Offer Student an Adequate Reading Program?

5. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit. (*Ibid.*) However, the methodology to be used to implement an IEP is left up to the school district's discretion so long as it meets a student's needs and is reasonably calculated to provide some educational benefit to the child. (See *Rowley*, 458 U.S. at p. 208; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149; *Pitchford v. Salem-Keizer Sch. Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick Sch. Comm.* (1st Cir. 2004) 361 F.3d 80, 84.)

6. Student contends that Twin Rivers denied her a FAPE by failing to provide her with an adequate reading program. Thus, the adequacy of the reading program contained in the June 2014 IEP offer must be analyzed to determine whether Student was denied a FAPE. In order for Twin River's offered reading program to constitute a FAPE, the offered placement and educational services must be designed to meet Student's unique reading needs, comport with Student's IEP, and be reasonably calculated to provide the pupil with some educational benefit. The June 2014 IEP recognized Student's unique reading needs, as evinced by the reading goals contained in the IEP. In part, the IEP team based those reading goals on the academic assessment conducted by Twin Rivers's RSP specialist. Student did not challenge the validity of the academic assessment, nor did any evidence arise during the hearing, which would have cast a shadow on the validity of the academic assessment. The June 2014 IEP offered Student 240 minutes daily of academic instruction in a special day class, during which time Student's reading needs would be addressed. Thus, the offered reading program comports with Student's June 2014 IEP as it provides a method for meeting Student's unique reading needs and for making progress toward her annual goals.

7. Father's contention that Twin Rivers must provide Student with reading services at Lindamood-Bell, in order for Student to receive a FAPE, was unsupported by the evidence. As *Gregory K.* established, a school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. The evidence in this case shows that the reading program, which is currently being provided to Student and would be provided to Student pursuant to the June 2014 IEP, is reasonably calculated to provide some educational benefit to Student. Therefore, Student did not meet her burden of proving that Twin Rivers denied her a FAPE from August 14, 2014 to the present by failing to provide her with an adequate reading program.

ORDER

All relief sought by Student is denied.

PREVAILING PARTY

Pursuant to 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. Twin Rivers prevailed on the only issue heard and decided.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: January 16, 2015

_____/s/_____
B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings