

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 K.E., a Student, by and through Parents
4 S.E. & K.E.
5 Petitioners,
6 v.
7 Legacy Traditional School
8 Respondent.

No. 21C-DP-022-ADE

**ADMINISTRATIVE LAW JUDGE
DECISION**

9 **HEARING:** Hearing sessions were conducted on the following dates: March 30,
10 2021, March 31, 2021, and August 18, 2021, followed by extended post-hearing legal
11 memoranda submission and extended review.

12 **APPEARANCES:** Hope N. Kirsch, Esq. represented Student K.E. (Student or
13 K.E.).
14 David D. Garner, Esq. represented Respondent Legacy Traditional School (Respondent
15 or Legacy).

16 **WITNESSES:**¹

- 17 • Parent K.E. (**Parent**);
- 18 • [REDACTED] Owner of Dyslexia Pros. ([REDACTED])
- 19 • [REDACTED] Educational Advocate ([REDACTED])
- 20 • [REDACTED] **Special Education Teacher**;
- 21 • [REDACTED] **General Education Teacher**;
- 22 • [REDACTED] **Special Education Teacher (Fmr)**;
- 23 • [REDACTED] School Psychologist ([REDACTED])

24 **HEARING RECORD:** Certified Court Reporter Cindy Mahoney recorded the
25 proceedings as the official record of the hearing.²

26 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

27 ¹ Throughout the body of this Decision, proper names of Student, Parents, and Student's teachers are not
28 used in order to protect the confidentiality of Student and to promote ease of redaction. Where necessary,
29 pseudonyms (designated here in bold typeface) will be used instead. Pseudonyms are not used for
30 administrators, service providers, evaluators, and other professionals.

² The parties stipulated that the court reporter's transcript would be the official record of the proceedings.
However, by statute, the Tribunal is required to make an audio recording. The Tribunal received the entire
transcript after the final hearing session. The Tribunal does not begin its review process with the use of a
transcript until the hearing sessions are complete and the post-hearing submissions are complete for the
reason that parties often stipulate, concede, and/or withdraw issues that, therefore, would not be considered
or addressed in a final decision.

1 Parents brings this due process action on behalf of Student, claiming that Legacy
2 violated the Individuals with Disabilities Education Act (IDEA), alleging procedural and
3 substantive errors. The law governing these proceedings is the IDEA found at 20 United
4 States Code (U.S.C.) §§ 1400-1482 (as re-authorized and amended in 2004),³ and its
5 implementing regulations, 34 Code of Federal Regulations (C.F.R.) Part 300, as well as
6 the Arizona Special Education statutes, Arizona Revised Statutes (A.R.S.) §§ 15-761
7 through 15-774, and implementing rules, Arizona Administrative Code (A.A.C.) R7-2-401
8 through R7-2-406.

9 **PROCEDURAL HISTORY**

10 The due process complaint notice (Complaint) in this matter was filed with the
11 Arizona Department of Education (Department) on November 30, 2020. After continuances,
12 a due process hearing was conducted on March 30, 2021 and March 31, 2021. The due
13 process hearing did not conclude on March 31, 2021. Therefore, a further hearing was set
14 for June 14, 2021 and June 15, 2021. Due to an unforeseen medical emergency, the
15 Administrative Law Judge was unavailable to conduct the hearing set to convene June 14,
16 2021 and a further hearing was rescheduled for August 18, 2021.

17 In the instant case, the parties agreed to submit post-hearing briefs.⁴ The parties
18 requested extensions to the deadlines to submit such post-hearing briefs and agreed to
19 extend the 45-day timeline for issuing the Tribunal's decision to January 24, 2022.

20 ***Evidence and Issues at Hearing***

21 The parties presented testimony, Exhibits, and some argument at formal
22 evidentiary hearing sessions convened on three days.

23 ***Exhibits***

24 The parties provided pre-marked proposed Exhibits. After the hearing convened
25 on March 30, 2021, the parties stipulated to the Exhibits; Petitioners had pre-marked
26 Exhibits A through N. Respondent had pre-marked Exhibits 1 through 132.

27 ³ By Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of 2004,"
28 IDEA 2004 became effective on July 1, 2005.

29 ⁴ Each re-calendaring within the hearing process, each additional day of hearing sessions, and each
30 extension of the matter caused the hearing record review time to be adjusted, increased and re-calendared
due to the Tribunal's existing calendar.

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Issues for Hearing

Through the Complaint, Petitioners raised the following issues for a due process hearing:⁵

1. Whether Legacy denied a FAPE when it failed to provide any Basic Reading Skills goal in Student's November 15, 2018, IEP although acknowledging eligibility in SLD for Basic Reading Skills?
2. Whether Legacy failed to, among other things, address reading and anxiety in the November 12, 2019 IEP, and therefore, denied a FAPE.
3. Whether Legacy denied a FAPE when it failed to provide an evidence-based dyslexia specific instructional program following the March 25, 2020 IEP?
4. Whether Legacy failed to address Student's goals in his March 25, 2020 IEP and therefore, denied a FAPE.
5. Whether Legacy failed to provide or delayed in providing an audiobook accommodation to Student and therefore, denied a FAPE.⁶

Requested Remedies

As remedies, Parents requested:

1. Respondent should provide compensatory services in reading through a private-outside provider using evidence-based dyslexia specific instruction such as Van Roekel Learning Center for at least 4200 minutes (70 hours), either paying Parents at the rate of \$85.00 hourly or contracting directly with a provider.
2. Respondent should provide compensatory services in counseling to address Student's school-based performance anxiety; from Student's current therapist for 10 sessions, or reimbursing Parents for 10 sessions at \$125.00 per hour.⁷

In due process matters, remedies are only considered regarding proven IDEA violations and all remedies must be related to a resolution of a proven IDEA violation.

⁵ The November 2020 Complaint included an allegation that Legacy denied a FAPE by failing to issue progress reports on the goals written in the September 17, 2019 November 12, 2019 IEPs. The Complaint also included an allegation that Legacy denied a FAPE by failing to evaluate Student for Auditory Processing Disorder that its own staff suspected. Petitioners' counsel subsequently withdrew both claims. See Petitioners' post-hearing brief, pg. 2, Footnote 1 and Tr. 564, lines 2-7.

⁶ Petitioners' counsel clarified at hearing that it was limiting its allegation related to a failure to provide accommodations and modifications to the sole issue of the audiobook.

⁷ See the Transcript of the hearing (Tr.) 258:1-259:12 [Parent K.E. testifying to hourly rate of counselor].

1
2 The Administrative Law Judge has considered the entire hearing record including
3 the testimony and the admitted Exhibits,⁸ and now makes the following Findings of Fact,
4 Conclusions of Law, and Decision finding that Petitioners have failed to demonstrate that
5 Legacy violated the IDEA through the allegations set forth in the Complaint.

6 **FINDINGS OF FACT**

7 1. Student is 11 years old and attended Legacy from the second through fifth
8 grade. Student has dyslexia.

9 2. Dyslexia is a disorder specifically listed in the implementing regulations of
10 the IDEA as a condition included under the eligibility category of Specific Learning
11 Disability (SLD). 34 C.F.R. § 300.8(c) (10).

12 3. On November 16, 2017, Student was determined eligible for special
13 education services in the areas of Speech Language Impairment and SLD: Written
14 Expression and Basic Reading Skills.⁹

15 4. On December 6, 2017, an Individualized Education Program (IEP) was
16 developed for Student that included reading and writing goals.¹⁰

17 5. An IEP Meeting was held on November 15, 2018. The November 15, 2018
18 IEP (November 2018 IEP) included several reading goals. However, the November
19 2018 IEP did not include a goal that was specifically labeled, “Basic Reading Skills.”
20 See Exhibit 3. At the November 15, 2018 IEP Meeting, the IEP team decided to
21 progress Student’s reading goal from a focus on basic reading to a focus on reading
22 comprehension. The team focused on the following information that was provided in the
23 IEP:¹¹

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26 ⁸ The Administrative Law Judge has read and considered each page of each admitted Exhibit, even if not
27 mentioned in this Decision. The Administrative Law Judge has also considered the testimony of every
28 witness, even if the witness is not specifically mentioned in this Decision. The review of the hearing record
in relation to the only appropriate due process complaint notice, the documentation, the testimony.

⁹ See Exhibit 1.

¹⁰ See Exhibit 2.

¹¹ See Tr. 399-407 [Special Education Teacher (Fmr)].

- Student mastered both of the basic reading goals in his prior year (2017) IEP.¹²
- Student was reading at grade level at a rate of 110 words per minute and exceeded his goal.¹³
- Student was also able to orally state sounds of 50 out of 50 phonograms.¹⁴
- Under the section addressing Student’s Present Level of Academic Achievement, Student’s present level at the time the November 2018 IEP was created, reflected ██████ reads fluently and expressively. He volunteers to read aloud regularly.”¹⁵
- Under “reading needs,” Student’s present levels at the time the November 2018 IEP was created, reflected: “[Student] struggles with reading comprehension.”¹⁶
- Under the Section, “Parent/Adult Student’s Input on Student’s Current Functional Achievement:” the November 2018 IEP provides: “[Student’s] parents are concerned with his math and reading comprehension.”¹⁷

6. The November 2018 IEP team determined that its focus should be on Student’s primary presenting reading need at the time: reading comprehension.¹⁸

7. In the November 2018 IEP, the team identified that Student had educational needs in the area of Basic Reading Skills.¹⁹

8. Student’s November 2018 IEP shows that the team determined that Student would receive specially designed instruction (SDI) in strategies for basic reading skills.²⁰

9. On September 20, 2019, ██████ administered the Behavior Assessment System for Children – 3 (BASC-3) Teacher Rating Scale to Student. Under the *Externalizing Problems Composite* section, the BASC-3 shows that Student was average in the area of Anxiety.²¹ Ms. Hingst, Student’s General Education teacher in

¹² See Exhibit 2 at 718-719.

¹³ See Exhibit 2 at 718-719.

¹⁴ See Exhibit 2 at 718-719.

¹⁵ See Exhibit 3 at 733.

¹⁶ See Exhibit 3 at 733.

¹⁷ See Exhibit 3 at 733.

¹⁸ See Tr. 399-407 [Special Education Teacher (Fmr)].

¹⁹ See Exhibit 3 at 735.

²⁰ See Exhibit 3 at 743.

²¹ See Exhibit 5 at 939.

1 2019, rated Student's score as average in the area of anxiety. Special Education
2 Teacher (Fmr) rated Student's score as "clinically significant" in the area of anxiety.²²
3 Student rated himself as average in the area of Anxiety under the *School Problems*
4 *Composite* section.²³ ██████████ concluded that Student demonstrates "anxiety-like
5 behavior" in some circumstances, such as when completing unfamiliar or timed
6 tasks/activities."²⁴

7 10. Special Education Teacher (Fmr) noticed a need for dyslexic based
8 instruction when she first began working at Legacy.²⁵ Special Education Teacher (Fmr)
9 noticed that several students at the school had dyslexia and she wanted to teach
10 effectively.²⁶

11 11. In October of 2019, Special Education Teacher (Fmr) requested training
12 from her ESS team lead in a dyslexia –specific program called, "Orton-Gillingham."²⁷
13 The request was denied.

14 12. On November 12, 2019, the Multidisciplinary Evaluation Team (MET) re-
15 evaluated Student for eligibility for special education services. See Exhibit 5. The MET
16 determined that Student's primary category of eligibility for special education services
17 was SLD in the area of Written Expression. See id at 923.

18 13. During the November 12, 2019 re-evaluation (November 2019 re-
19 evaluation), the MET administered the Kaufman Test of Educational Achievement Test
20 Third Edition (KTEA-3). See Exhibit 5 at 952. The MET re-evaluation shows the following
21 results from the KTEA-3:²⁸

- 22 • In the area of Reading Composite: Student scored a 95
23 that falls in the Average classification range.
- 24 • In the area of Letter and Word Recognition: Student
25 scored a 97 that falls in the Average classification range.

26 ²² See id.

27 ²³ See Exhibit 5 at 940.

28 ²⁴ See Exhibit 5 at 966.

29 ²⁵ See Tr. at 486.

30 ²⁶ See id.

²⁷ See Tr. at 485 at lines 13-24.

²⁸ See id.

- In the area of Reading Comprehension: Student scored 94 that falls in the Average classification range.
- In the area of Test Taking: “Student demonstrated good test taking strategies, as he would often read the question, then go back and find the answer on the text. He looked at clues and was able to derive meaning from the information.”
- Overall assessment: “Student demonstrated grade-level ability when compared to other peers his age.”

14. During the November 2019 re-evaluation, the MET administered the Gray Oral Reading Test-Fifth Edition (GORT-5).²⁹ Student achieved the following scores on the GORT-5:³⁰

- Rate Score of 89 fell within the Low Average classification range.
- Accuracy score of 9 fell within the Average classification range.
- Average scores in the area of Fluency
- Score of 6 in the area of Reading Comprehension fell in the below average classification range

15. During the November 2019 re-evaluation, the MET also made the following observations at the time that it administered the GORT-5:³¹

██████ had some difficulty with substitutions and mispronunciations, especially when [*sic*] rushed through the reading task.....

When completing the first stories of the task, ██████ read quickly and often mispronounced words and disregarded punctuation. He was encouraged to read loud and clear, and he was able to slow down.

██████ was often focused on reading quickly, that he did not pay attention to the content in the story as he knew he was being timed. He would often rush through and would ignore periods and commas, making the reading material difficult to understand.

.....

²⁹ See Exhibit 5 at 953.

³⁰ See *id.*

³¹ See Exhibit 5 at 953.

1 16. Student's classroom teacher made the following observations during the
2 November 2019 re-evaluation:³²

3 Student's classroom reading grade is 97% which is an A.
4 takes suggestions easily, he follows
5 directions and classroom rules, and he tries... tends to
6 rush through his work sometimes. He is keeping his desk a
7 little more neatly...I am happy with progress in all
8 areas except writing....

9 17. The November 2019 MET re-evaluation MET shows that Special Education
10 Teacher (Fmr) made the following observations in the area of Reading:³³

11 He usually comes in ready to work. He is able to fluently
12 blend multisyllabic words together. He rarely struggles with
13 words. He has good comprehension skills and can answer
14 5W questions as to what he has just read.
15 He has good strategies when finding information and goes
16 back and looks for keywords as well as searching for
17 information in the text. He does well with multiple choice que
18 stions and tends to struggle with written response questions.

19 18. An IEP Meeting was held on November 12, 2019.³⁴ Student's November
20 12, 2019 IEP (November 2019 IEP) shows that Student read a grade level text fluently
21 with an adult and his peers:³⁵

22 He reads well and is able to fluently read a grade level text
23 with an adult and with peers. When given the San Diego Quick
24 k reading assessment his independent reading level scored
25 at grade five. He consistently and accurately reads
26 passages with 900-1000 Lexile levels.³⁶

27 19. In November of 2019, Special Education Teacher (Fmr) did not have
28 concerns about Student's reading.³⁷

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³² See Exhibit 5 at 930.

³³ See Exhibit 5 at 930.

³⁴ See Exhibit 6.

³⁵ See Exhibit 6 at 804.

³⁶ See Ms. Special Education Teacher (Fmr)'s testimony at Tr 414:11-12 that Lexile level 900-1000 is
"roughly grade 4 reading."

³⁷ See Special Education Teacher (Fmr)'s testimony at Tr. 412:7-10.

1 20. The November 2019 IEP Team determined that Student did not require SDI
2 or a goal for reading in connection with drafting his November 2019 IEP.

3 21. The November 2019 IEP Team provided support for Student's reading
4 needs through accommodations in the November 2019 IEP. The November 2019 IEP
5 provided, in relevant part, as follows:

6 Section 3: Present Level of Academic Achievement

7 READING

8 STRENGTHS: He reads well and is able to fluently read a
9 grade level text with an adult and with peers. When given the
10 San Diego Quick reading assessment his independent
11 reading level scored at grade five. He consistently and
12 accurately read passages with 9001000 Lexile levels.

13 NEEDS: He has shown some difficulty comprehending readi
14 ng passages that were read and has difficulty understanding
15 the why question when answering the 5W questions.

16 ACCOMMODATIONS: Use preferential seating, provide [REDACTED]
17 [REDACTED] a teacher copy of classroom notes, [REDACTED] can highlight n
18 otes to follow along, only call on [REDACTED] when he raises his
19 hands, give the student written directions along with oral
20 directions, frequently monitor independent work and use a
21 nonverbal cue for supports with task initiation, break down
22 assignments into smaller parts: providing interim due dates on
23 long term assignment, provide a desk model of board talk to
24 include multiple step directions, provide a word bank for
25 vocabulary, allow provisions for physical movement, find
26 student a quietly area for independent work, and minimize
27 distractions in classroom

28 22. The November 2019 IEP team did not conclude that anxiety presented an
29 educational need warranting SDI.³⁸ However, the November 2019 IEP addressed
30 Student's "anxiety-like behavior" in some circumstances through the following
methods:³⁹

- Provide a word bank for vocabulary.

³⁸ See Exhibit 6 at 805.

³⁹ See Tr. 284:22-286:1 [Parent K.E.].

- Find student a quiet place to work.
- Minimize distractions in classroom.
- Frequently monitor independent work.
- Break down assignments into smaller parts.
- Student will be provided with a teacher copy of classroom notes.
- Student will be able to highlight notes to follow along.
- Use preferential seating to increase proximity of instruction.

Special Education Teacher (Fmr) used many of the accommodations listed above to address Student's continued progress in reading during the November 2019 IEP schoolyear.⁴⁰

23. In January of 2020, [REDACTED] [REDACTED] Psy.D. conducted an independent neuropsychological evaluation of Student.⁴¹

24. [REDACTED] diagnosed Student with Dyslexia.⁴²

25. An IEP meeting was held on March 25, 2020.⁴³ An advocate for Student's parents, Ms. [REDACTED], was present at the March 25, 2020 IEP Meeting (March 2020 IEP Meeting).⁴⁴ After the Prior Written Notice and finalized IEP were emailed to Student's parents, an objection to the omission of a dyslexia specific program was not received.⁴⁵ The March 4, 2020 Eligibility Determination shows in the area, "Description of any options the agency considered:" section, "The team considered the area of Other Health Impairment as primary, however it was discussed that his diagnosis of Dyslexia and Dysgraphia are the primary area of eligibility as these impact his learning the most."⁴⁶

26. The Conference Summary Notes of the March 25, 2020 IEP (March 2020 IEP) provided, in relevant part, as follows:⁴⁷

The programming for the dyslexia piece was discussed. Linda Mood Bell programming for seeing Stars – where would you like that documented in the IEP? Is it determined we are seeing Stars and implementing that into his reading

⁴⁰ See Tr. 414:22; 415:15.

⁴¹ See Exhibit A232-263.

⁴² See Exhibit A232-263.

⁴³ See Exhibit 10.

⁴⁴ See Tr. at 434.

⁴⁵ See id at 435.

⁴⁶ See Exhibit A287.

⁴⁷ See Exhibit 18 at 31.

1 instruction? [Special Education Teacher Fmr] is trained in it
2 and can implement that into his time. 200 minutes a month for
3 each reading service? 1x a day for 30 minutes every day.
4 Mom is trying to research what is evidence based for students
5 with dyslexia. She is trying to figure out what is best by doing
6 research on her own. [Special Education Teacher Fmr]
7 described the Stars program and offered to have mom come
8 in and show her the program. If I get him more help outside of
9 school I wanted to know what he is working on so he is not
10 getting different types of services. Special Education Teacher
11 (Fmr) stated she can provide worksheets to mom.

12 27. During the March 2020 IEP Meeting, Parents requested the Seeing Stars
13 dyslexia specific program.

14 28. Special Education Teacher (Fmr) prepared the Prior Written Notice for the
15 March 2020 IEP that did not include a commitment to provide a dyslexia specific program
16 for Student in the IEP.⁴⁸ The IEP team did not officially agree to implement Seeing Stars
17 as a part of Student's IEP.⁴⁹

18 29. A dyslexia-based program was not included in the Special Education
19 Services to be Provided section of the March 2020 IEP because the Seeing-Stars
20 program was requested by Student's parent.⁵⁰ The Seeing-Stars program was not
21 intended to be a program issued by Legacy. Special Education Teacher (Fmr) owned the
22 Seeing-Stars program. The Seeing-Stars program was not owned by Legacy.⁵¹

23 30. Student's special education teachers were Special Education Teacher and
24 Special Education Teacher (Fmr).⁵² Special Education Teacher holds a Ph.D.in
25 curriculum and instruction. Special Education Teacher holds a Bachelor's in Elementary
26 Education and a Master's in Education Administration. Special Education Teacher has
27 been a professional educator for 43 years. Special Education Teacher has 17 years of
28 classroom experience and at least 5 years of experience in special education.⁵³ Special

29 ⁴⁸ See Tr. at 434.

30 ⁴⁹ See Tr. at 494:21-24.

⁵⁰ See Tr. at 430-431.

⁵¹ See id.

⁵² See Tr. at 16 and Exhibit 117.

⁵³ See Tr. 384:22-385:3; 24-286:2

1 Education Teacher (Fmr) has been a special education teacher for approximately 10
2 years and holds a master's degree in special education with an emphasis on curriculum
3 and instruction, and dual bachelor's degrees in special education and elementary
4 education.⁵⁴

5 31. Special Education Teacher and Special Education Teacher (Fmr) hold valid
6 teaching certificates and certifications in special education from the Department and are
7 fully qualified to provide SDI to students who qualify for series under IDEA-including
8 students with dyslexia, like Student.⁵⁵

9 32. Special Education Teacher (Fmr) provided SDI to Student for the remainder
10 of the school year after the March 2020 IEP was created. Special Education Teacher
11 (Fmr) provided research-based methodologies such as explicit instruction and scaffolding
12 that benefitted Student.⁵⁶

13 33. Student's May 21, 2020 progress report shows that by the end of the 2019-
14 2020 school year, Student had made progress on twelve of his fifteen IEP goals based
15 on the SDI provided by Special Education Teacher (Fmr).⁵⁷

16 34. Special Education Teacher (Fmr) opined that Student was making progress
17 appropriate to his circumstances during the time that she worked for him.⁵⁸

18 35. Special Education Teacher became Student's special education teacher in
19 the Fall of 2021 at Legacy. Special Education Teacher promptly implemented SDI for
20 Student in August.⁵⁹ Special Education Teacher provided SDI under Student's IEP based
21 on her advanced education and over 40 years of experience as a professional educator.⁶⁰

22 36. Special Education Teacher provided SDI to Student through the following
23 peer-reviewed methods:⁶¹

24 ⁵⁴ See Tr. 384:22-385:3, 385:24-386:2.

25 ⁵⁵ See Tr. 516:4-618:10.

26 ⁵⁶ See Tr. 498:18-25 (use of explicit instruction), 449:18-23 (use of scaffolding); id. 491:11- 24 (noting that
27 teacher prompts are an appropriate method of scaffolding).

28 ⁵⁷ See Exhibit 10 at 783-790; Tr. 444-450 [Special Education Teacher (Fmr)].

29 ⁵⁸ See Tr. 490:12-14, 452:9-12.

30 ⁵⁹ See Tr. 41:18-19 [Special Education Teacher]

⁶⁰ See Tr.627-628.

⁶¹ See Tr. 634-36, 668:13-16, 692:12-24 [Special Education Teacher]; see also, e.g.,
<https://www.ldatschool.ca/planning-teaching-explicit-instruction/> (reviewing research supporting explicit
instruction); <https://dyslexiaida.org/multisensory-structuredlanguage-teaching-fact-sheet/> (endorsing use

- Explicit instruction
- Multisensory methods
- Extended practice
- Chunking of materials,
- Re-teaching
- Pre-reading
- Scaffolding to assist Student in working towards his IEP goals and progressing in the general curriculum

37. Special Education Teacher also used a variety of educational strategies to help Student master concepts and make progress including, but not limited to:⁶²

- Brainstorming
- Checklists
- Extended time
- Video vignettes
- Highlighters

38. Special Education Teacher implemented educational strategies with Student that were effective for students with dyslexia. The educational strategies were selected and used based on Student's unique needs.⁶³ Legacy purchased the Barton tutoring program to work with Student's parents. Special Education Teacher completed training in Barton levels 1 through 5.⁶⁴ Special Education Teacher and Special Education Teacher (Fmr) opined at hearing that Barton nor Seeing Stars were required for Student to make progress in the general curriculum or advance toward his IEP goals.⁶⁵ Special Education Teacher gleaned applicable strategies from the Barton tutoring, in particular from Barton Levels 4 (Multi-Syllable Words and Vowel Teams) and 5 (Prefixes &

of multisensory methods for dyslexic students); <https://www.oneontacsd.org/Downloads/research-based-practices-for-teaching-students-with-disabiliti.pdf> (noting extended practice [at 2] and reteaching [at 1] as a research-based practices for teaching students with disabilities); https://thelearningcoach.com/elearning_design/chunking-information/ (addressing chunking as an effective instructional strategy).

⁶² See Tr. 636:8-19, 24:4-23 [Special Education Teacher]. Notably, nothing in the IDEA requires schools to only use peer-reviewed instructional strategies. 34 C.F.R. § 300.320(a)(4) (noting use of peer-reviewed strategies "to the extent practicable"); 71 Fed. Reg. 46,665 (2006). Nor are schools required to completely or exclusively implement any particular methodology. E.g., A.G. v. Bd. of Educ. Of the Arlington Central Sch. Dist., 69 IDELR

⁶³ See Tr. 717:16-25.

⁶⁴ See Tr. 27:10-28:3 [Special Education Teacher]

⁶⁵ See Tr. 27:10-28:3 [Special Education Teacher]

1 Suffices), because these levels aligned with Student’s SDI for basic reading, which also
2 focused on “Prefixes and suffixes multi-syllabic words.”⁶⁶

3 39. Special Education Teacher provided all of the SDI contemplated in
4 Student’s IEP—in all categories and for the required amounts of time.⁶⁷ Student made
5 progress in his IEP despite his disability.⁶⁸ Student’s October 2020 progress report shows
6 that Student was progressing in the area of citing textual information⁶⁹, Student was doing
7 well in his fluency goal⁷⁰, Student was improving in the area of writing paragraphs, and
8 showing “more confidence as a reader.”⁷¹ Special Education Teacher had worked on the
9 majority of Student’s goals as of October of 2020.⁷²

10 40. Student continued to show improvement in several areas in his November
11 progress report and Special Education Teacher noted: “[Student] is making steady
12 progress. He is becoming more confident as a reader.”⁷³ Student continued to show
13 progress on all of his goals throughout the school year.⁷⁴ Student made significant
14 progress by the end of the 2020-2021 IEP year. Student’s March 2020 IEP included the
15 following Reading Goal:⁷⁵

16 Reading (Fluency): When given a reading passage and a
17 choice of the next appropriate word (using DIBELS Daze
18 informal assessment), K.E. will choose the correct word
19 (indicated by a score [of] 15 or higher) in three out of four
20 trials, increased from a baseline [score] of 3.

21 Student’s baseline score was 3. By the end of the 2020-2021
22 IEP school year, Student’s score increased to 18.⁷⁶

23 41. Student’s March 2020 IEP included the following Reading Goal:⁷⁷

24 ⁶⁶ <https://bartonreading.com/scope/#scopesequence> and Exhibit 10 at 794.

25 ⁶⁷ See Tr. 628-633 [Special Education Teacher]; Exhibit 10 at 794.

26 ⁶⁸ See Tr. 693:13-17 [Special Education Teacher].

27 ⁶⁹ See Exhibit 36 at 460.

28 ⁷⁰ See Exhibit 36 at 457.

29 ⁷¹ See Exhibit 36 at 460.

30 ⁷² See Exhibit 37.

⁷³ See Exhibit 37.

⁷⁴ See Tr. 649:7-12 [Special Education Teacher]; Exhibit 40.

⁷⁵ See Exhibit 41 at 1097 Tr. 653:12-654:7 [Special Education Teacher]

⁷⁶ See id.

⁷⁷ See Exhibit 41 at 1097 Tr. 654:8-20 [Special Education Teacher]

1 Reading (Comprehension): K.E. will be able to demonstrate
2 knowledge of the skill of citing textual information when
3 answering comprehension (who, what, where, when and why)
4 questions in three out of four trials increased from a baseline
5 of one out of four trials.

6 Student's baseline score was 1/4. By the end of the 2020 –
7 2021 IEP school year, Student's Score increased to 4/4.⁷⁸

8 42. Student's March 2020 IEP included the following Reading Goal:⁷⁹

9 Reading (Decoding): When given a list of ten ... multisyllabic
10 words with Latin roots, prefixes, or suffixes, K.E. will decode
11 the word and be able to define in three out of four trials
12 increased from a baseline of one out of four.

13 Student's baseline score was 1/4. By the end of the 2020-2021
14 IEP school year, Student's Score increased to 3/4.⁸⁰

15 43. Student's March 2020 IEP included the following Reading Goal:⁸¹

16 Reading (Fluency): When given a fourth grade reading
17 passage, K.E. will increase his ability to read fluently from 83
18 WPM to 115 WPM in three out of four trials.

19 Student's baseline score was 83wpm. By the end of the 2020-2021
20 IEP school year, Student's score was 150 wpm.⁸²

21 44. Student's March 2020 IEP included the following Reading Goal:⁸³

22 Reading (Comprehension): After reading a passage at his
23 independent reading level, K.E. will demonstrate
24 comprehension of a text by verbally answering inferencing
25 questions in three out of four opportunities, increased from a
26 baseline of one out of four opportunities.

27 ⁷⁸ See id.

28 ⁷⁹ See Exhibit 41 at 1099 Tr. 654:21-655:10 [Special Education Teacher] ("He was coming
29 very close to meeting the goal")

30 ⁸⁰ See id.

⁸¹ See Exhibit 41 at 1099 and Tr. 655:11-656:5; 686:8-17 [Special Education Teacher]
[Student] was right within the range of a fifth grader."

⁸² See id.

⁸³ See Exhibit 41 at 1102 and Tr. 660:1-13 [Special Education Teacher]

1 Student's baseline score was 1/4. By the end of the 2020-2021
2 IEP school year, Student's score was 4/4.⁸⁴

3 45. Student's March 2020 IEP included the following Writing Goal:⁸⁵

4 Writing: When given a writing prompt or self-selected topic,
5 K.E. will be able to formulate a complex sentence in 8 out of
6 10 opportunities with two or less teacher prompts, increased
7 from a baseline of 4 out of 10 opportunities with three teacher
8 prompts.

8 Student's baseline score was 4/10. By the end of the 2020-2021
9 IEP school year, Student's score was 6/10.⁸⁶

10 46. Student's March 2020 IEP included the following Writing Goal:⁸⁷

11 Writing: When provided a graphic organizer model, K.E. will
12 write a paragraph with a main idea, three supporting details,
13 and a conclusion in 4 out of 5 opportunities with less than 2
14 teacher prompts as measured by teacher data, increased
15 from a baseline of 1 out of 5 opportunities with 6 teacher
16 prompts.

16 Student's baseline score was 1 out of 5 opportunities with 6 prompts. By the
17 end of the 2020-2021 IEP school year, Student's score was 4 out of 5
18 opportunities with 4 prompts.⁸⁸

19 47. Student's March 2020 IEP included the following Writing Goal:⁸⁹

20 Writing: K.E. will edit a paragraph in 4 out of 5 opportunities
21 with less than 3 teacher prompts as measured by teacher
22 data, increased from a baseline of 2 out of 5 opportunities with
23 5 teacher prompts.

24
25
26 ⁸⁴ See id.

27 ⁸⁵ See Exhibit 41 at 1100 and Tr. 656:6-20 [Special Education Teacher] (K.E. "absolutely" made
28 progress).

29 ⁸⁶ See id.

30 ⁸⁷ See Exhibit 41 at 1100 and Tr. 656:21-657:10 [Special Education Teacher]

⁸⁸ See id.

⁸⁹ Exhibit 41 at 1101 and Tr. 657:11-658:5 [Special Education Teacher]

1 Student's baseline score was out of 2 out of 5 opportunities with 5
2 teacher prompts. By the end of the 2020-2021 IEP school year, Student's
3 score was 4 out of 5 opportunities with 4 prompts.⁹⁰

4 48. Student's March 2020 IEP included the following Writing Goal:⁹¹

5 Writing: Utilizing the COPS/ARMS checklist, K.E. will be able
6 to develop a complex sentence from previously written simple
7 sentences with less than two teacher prompts in 8/10
8 opportunities, increased from a baseline of 3/10 opportunities
9 with five teacher prompts.

10 Student's baseline score was 3/10 opportunities with five teacher prompts. By the
11 end of the 2020-2021 IEP school year, Student's score was 8 out of 10 opportunities
12 with 4/5 prompts.⁹²

13 49. Student's March 2020 IEP included the following Math Goal:⁹³

14 Math: When given a fraction [REDACTED] will be able to convert the
15 fractions to percentage in three out of four trials, increased
16 from a baseline of two out of four.

17 Student's baseline score was 2/4. By the end of the 2020-2021 IEP school year,
18 Student's score was 4/4.

19 50. Student's March 2020 IEP included the following Math Goal:⁹⁴

20 Math: When given a fraction, K.E. will be able to convert the
21 fractions to decimals in three out of four trials, increased from
22 a baseline of one out of four.

23 Student's baseline score was 1/4. By the end of the 2020-2021 IEP school year,
24 Student's score was 3/4.⁹⁵

25 51. Student's March 2020 IEP included the following Math Goal:⁹⁶

26 ⁹⁰ See id.

27 ⁹¹ See Exhibit 41 at 1101 and Tr. 658:6-659:25 [Special Education Teacher]

28 ⁹² See id.

29 ⁹³ Exhibit 41 at 1103 and Tr. 660:14-24 [Special Education Teacher]

30 ⁹⁴ See Exhibit 41 at 1103 and Tr. 660-25-661:6 [Special Education Teacher]

⁹⁵ See id.

⁹⁶ See Exhibit 41 at 1104 and Tr. 661:7-18 [Special Education Teacher]

1 Math: K.E. will solve addition, subtraction, multiplication and
2 division word problems referencing percentages by identifying
3 the relevant information and using CUBES strategies (circle
4 the numbers, underling the question, box key words, eliminate
5 what you don't need, does the answer make sense?) to solve
6 in 4 out of 5 opportunities, increased from a baseline of 1 out
7 of 5 opportunities.

8 Student's baseline score was 1/5. By the end of the 2020-2021 IEP school year,
9 Student's score was 3/5.⁹⁷

10 52. Student's March 2020 IEP included the following Math Goal:⁹⁸

11 Math: K.E. will solve addition, subtraction, multiplication and
12 division word problems referencing decimals by identifying the
13 relevant information and using CUBES strategies (circle the
14 numbers, underling the question, box key words, eliminate
15 what you don't need, does the answer make sense?) to solve
16 in 4 out of 5 opportunities, increased from a baseline of 1 out
17 of 5 opportunities.

18 Student's baseline score was 1/5. By the end of the 2020-2021 IEP school year,
19 Student's score was 3/5.⁹⁹

20 53. Student's March 2020 IEP included the following Math
21 Goal:¹⁰⁰

22 Math: K.E. will solve addition, subtraction, multiplication and
23 division word problems referencing fractions by identifying the
24 relevant information and using CUBES strategies (circle the
25 numbers, underling the question, box key words, eliminate
26 what you don't need, does the answer make sense?) to solve
27 in 4 out of 5 opportunities, increased from a baseline of 1 out
28 of 5 opportunities.

29 Student's baseline score was 1/5. By the end of the 2020-2021 IEP school year,
30 Student's score was 3/5.¹⁰¹

⁹⁷ See id.

⁹⁸ See Exhibit 41 at 1104 and Tr. 661:19-662:3 [Special Education Teacher]

⁹⁹ See id.

¹⁰⁰ Exhibit 41 at 1106 and Tr. 662:4-12 [Special Education Teacher]

¹⁰¹ See id.

1 54. Student's March 2020 IEP included the following Math Goal:¹⁰²

2 Math: When given an operation vocabulary checklist and a
3 word problem containing addition, subtraction, multiplication,
4 or division K.E. will use the checklist to identify the operation
5 in three out of four trials increased from a baseline of two out
6 of four trials.

7 Student's baseline score was 2/4. By the end of the 2020-2021 IEP school year,
8 Student's score was 3/4.¹⁰³

9 55. Special Education Teacher opined at hearing that the mastery of the goals
10 in the March 2020 IEP were achieved based on the specifically designed instruction that
11 she provided.¹⁰⁴ Special Education Teacher opined that the prepackaged programs that
12 were listed in [REDACTED] report were not necessary for Student to progress toward his
13 goals.¹⁰⁵

14 56. At the end of the 1st quarter of the 2020-2021 IEP schoolyear, Student had
15 a reading grade of 73%(C).¹⁰⁶

16 57. Student had a reading grade of 82% by the end of the 2020-2021 IEP
17 schoolyear.¹⁰⁷

18 58. Student received 64% on the MAP Standards-Based Reading
19 Assessment 64% by the end of the 1st quarter.¹⁰⁸

20 59. Student received an 86% on the MAP Standards-Based Reading
21 Assessment by the end of the IEP school year.¹⁰⁹

22 60. Student "Met/Exceeded" his goal on the DIBELS Daze Reading
23 Assessment.¹¹⁰

24 61. Student's overall grades at the end of the 2020-2021 IEP schoolyear were

25 ¹⁰² See Exhibit 41 at 1106-07) and Tr. 662:13-23 [Special Education Teacher]

26 ¹⁰³ See id.

27 ¹⁰⁴ See Tr. 662:24- 663:3, 19-25 [Special Education Teacher]

28 ¹⁰⁵ See id.

29 ¹⁰⁶ See Tr. 683:13-684:2 [Special Education Teacher].

30 ¹⁰⁷ See id.

¹⁰⁸ See Tr. 684:3-685:5 [Special Education Teacher]

¹⁰⁹ See Tr. 684:3-685:5 [Special Education Teacher]

¹¹⁰ See Tr. 685:6-14 [Special Education Teacher]

1 “A”s and “B”s in all classes except Science and Math.¹¹¹

2 62. Student improved and showed progress in the area of Social-Emotional
3 Growth X K.E.¹¹²

4 63. Student’s three-year progress as measured by MAP, showed steady
5 progress, which “put[] him right on the cusp of the National Average Achievement score
6 of other students his age.”¹¹³

7 64. Student was “glowing” when he learned of his performance on MAP, and
8 when General Education Teacher shared the news of Student’s progress with Student’s
9 parents, they also exuded: “That is amazing!!! Your help has sure made a difference.
10 Thank you, thank you!!!”¹¹⁴

11 65. Student’s March 2020 IEP included 15 goals, which is a huge amount for
12 any student.¹¹⁵ Special Education Teacher (Fmr) testified that scaffolding and
13 staggering the order of work on goals was appropriate, “especially with so many
14 goals.”¹¹⁶ Special Education Teacher addressed all of Student’s goals over the school
15 year by clustering some of them together to work on a few at a time and scaffolding
16 them to avoid overwhelming Student.¹¹⁷ Ms. ██████ agreed at hearing that the
17 instruction of a student with dyslexia should be “scaffolded.”¹¹⁸ Special Education
18 Teacher (Fmr) and Special Education Teacher addressed all of Student’s IEP goals
19 during the 2020-2021 IEP year. Student made progress on all 15 of his IEP goals during
20 the IEP year and mastered more than half of them.¹¹⁹

21
22 ¹¹¹ See Tr. 688:6-15 [Special Education Teacher] (“His grades ha[ve] gone up remarkably,” including
23 reading); Tr. 372:2-19 [General Education Teacher] (“I’ve seen growth in his grades”)

24 ¹¹² See Tr. 688:16-22 [Special Education Teacher] Tr. 372:2-29 [General Education Teacher] (I’ve seen
25 growth in ... his confidence ..., [and] in his ability to participate in discussions.”)

26 ¹¹³ See Exhibit 112

27 ¹¹⁴ Attachment C; Exhibit 112; Tr. 321:6-324:7 [Parent K.E.]; Tr. 362:15-372:23 [General Education
28 Teacher].

29 ¹¹⁵ Special Education Teacher testified that she had never worked with a student before with as many
30 goals, and in her experience, a typical number of goals in a student’s IEP ranges between five to eight.
Tr. 622:5-10 [Special Education Teacher].

¹¹⁶ Tr. 494:5-15 [Special Education Teacher (Fmr)].

¹¹⁷ Tr. 668 [Special Education Teacher].

¹¹⁸ Tr. 188:3-4 [██████].

¹¹⁹ See Tr. 649:7-12 [Special Education Teacher] and Exhibit 41.

1 66. The March 2020 IEP included an accommodation to provide audiobooks as
2 needed.¹²⁰

3 67. Student received the computer for the audiobook in October of 2020.¹²¹
4 Student did not access the audiobook until November of 2020.¹²² However, the audiobook
5 was made available to Student through Legacy’s online Schoology platform and through
6 Student’s teachers’ practice of consistently reading aloud to Student.¹²³

7 68. Student’s fifth grade general education provided the audiobook
8 accommodation with a consistent routine of: (1) reading the story aloud herself; (2) then
9 playing the story as an audiobook; and (3) then having students listen to each other read
10 the story.¹²⁴ During Special Education Teacher’s instructional time with Student, she
11 would first “read the story” to Student “every single time.” More globally, stories,
12 textbooks, and course content were available as audiobooks at any time through Legacy’s
13 online educational platform, Schoology, which was accessible both in the classroom and
14 at home throughout the school year.¹²⁵ Detailed information about Schoology and
15 training/instructions for accessing the program were sent out to the entire school
16 community and made available to Student’s parents via email in July.¹²⁶ Parent K.E.
17 acknowledged receiving an email inviting parents to participate in a virtual parent
18 orientation about Schoology and how to navigate it, but the Parents did not participate in
19 the training or view the orientation video that was publicly posted on YouTube.¹²⁷

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23 _____
¹²⁰ See Exhibit 10 at 791 and 794.

24 ¹²¹ See Tr. 253:9-255:10

25 ¹²² See id.

26 ¹²³ See Tr. 357-361 [General Education Teacher]. Additionally, and though not required or necessary for
27 Parents to access audiobooks, the School sent a Chromebook home with Parent K.E. at the beginning of
28 October “to assist with his school work” and to allow him to more easily access the audiobooks on
29 Schoology at home. Tr. 361-362 [General Education Teacher].

30 ¹²⁴ See Tr. 355:22-356:24 [General Education Teacher].

¹²⁵ See Tr. 692:12-24 [Special Education Teacher].

¹²⁶ See Tr. 357-361 [General Education Teacher]; Tr. 89:2-7 [Special Education Teacher].

¹²⁷ See Tr. 293:10-16, 295:4-196:1 [Parent K.E.]. Parent K.E. later recanted her testimony of having
received the email notice, after Ms. Kirsch lodged several objections, which were overruled.

1 **CONCLUSIONS OF LAW**

2 **APPLICABLE LAW**

3 ***FAPE***

4 1. Through the IDEA, Congress has sought to ensure that all children with
5 disabilities are offered a FAPE (free appropriate public education) that meets their
6 individual needs.¹²⁸ These needs include academic, social, health, emotional,
7 communicative, physical, and vocational needs.¹²⁹ To provide a FAPE, a school district
8 must identify and evaluate all children within their geographical boundaries who may be
9 in need of special education and services. The IDEA sets forth requirements for the
10 identification, assessment, and placement of students who need special education, and
11 seeks to ensure that they receive a FAPE. A FAPE consists of “personalized instruction
12 with sufficient support services to permit the child to benefit educationally from that
13 instruction.”¹³⁰ The FAPE standard is satisfied if the child’s IEP sets forth his or her
14 individualized educational program that is “reasonably calculated to enable the child to
15 receive educational benefit.”¹³¹ The IDEA mandates that school districts provide a “basic
16 floor of opportunity.”¹³² The IDEA does not require that each child’s potential be
17 maximized.¹³³ A child receives a FAPE if a program of specialized instruction “(1)
18 addresses the child’s “unique” needs, (2) provides adequate support services so the child
19 can take advantage of the educational opportunities and (3) is in accord with the child’s
20 individualized educational program.”¹³⁴

21 ***The IEP***

22 _____
23 ¹²⁸ 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

24 ¹²⁹ *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (quoting H.R. Rep. No. 410, 1983
U.S.C.C.A.N. 2088, 2106).

25 ¹³⁰ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

26 ¹³¹ *Id.*, 485 U.S. at 207. In 2017, in *Andrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. ____ , 137 S.
27 Ct. 988, 2017 West Law 1234151 (March 22, 2017), the Supreme Court reiterated the *Rowley* standard,
adding that a school “must offer an IEP that is reasonably calculated to enable a child to make progress
appropriate in light of the child’s circumstances,” but the Court declined to elaborate on what “appropriate
progress” would look like case to case (*i.e.*, in light of a child’s circumstances).

28 ¹³² *Rowley*, 458 U.S. at 200.

29 ¹³³ *See id.* at 198.

30 ¹³⁴ *Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1033 (9th Cir. 2006) (citing *Capistrano Unified
Sch. Dist. v. Wartenberg*, 59 F.3d 884, 893 (9th Cir. 1995)).

1 2. Once a student is determined eligible for special education services, a team
2 composed of the student's parents, teachers, and others familiar with the student
3 formulate an IEP (individualized education program) that generally sets forth the student's
4 current levels of educational and functional performance and sets annual goals that the
5 IEP team believes will enable the student to make progress in the general education
6 curriculum.¹³⁵ The IEP tells how the student will be educated, especially with regard to
7 the student's unique needs that result from the student's disability, and what services will
8 be provided to aid the student. The student's parents have a right to participate in the
9 formulation of an IEP.¹³⁶ The IEP team must consider the strengths of the student,
10 concerns of the parents, evaluation results, and the academic, developmental, and
11 functional needs of the student.¹³⁷

12 ***Substantive versus Procedural***

13 3. A determination of whether or not a student received a FAPE must be based
14 on substantive grounds.¹³⁸ For a substantive analysis of an IEP, the review of the IEP is
15 limited to the contents of the document.¹³⁹ Therefore, any question regarding whether an
16 IEP is reasonably calculated to provide educational benefit to a student must be decided
17 on the basis of the content of the IEP itself.

18 4. Procedural violations in and of themselves do not necessarily deny a student
19 a FAPE. If a procedural violation is alleged and found, it must be determined whether the
20 procedural violation either (1) impeded the student's right to a FAPE; (2) significantly
21 impeded the parents' opportunity to participate in the decision-making process; or (3)
22 caused a deprivation of educational benefit.¹⁴⁰ If one of those three impediments has
23 occurred, the student has been denied a FAPE due to the procedural violation.

24
25 ¹³⁵ 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324.

26 ¹³⁶ 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. §§ 300.321(a)(1).

27 ¹³⁷ 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324(a).

28 ¹³⁸ 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. §§ 300.513(a)(1).

29 ¹³⁹ *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 768 (6th Cir. 2001) ("only those services identified or
described in the . . . IEP should have been considered in evaluating the appropriateness of the program
offered) (relying on *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994) (IDEA requirement of a
formal, written offer should be enforced rigorously)).

30 ¹⁴⁰ 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2).

Burden of Proof and Basis of Decision

5. A parent who requests a due process hearing alleging non-compliance with the IDEA must bear the burden of proving that claim.¹⁴¹ The standard of proof is “preponderance of the evidence,” meaning evidence showing that a particular fact is “more probable than not.”¹⁴² Therefore, in this case Petitioners bear the burden of proving by a preponderance of evidence that Respondent substantively violated the IDEA through the alleged actions or inactions. If a procedural violation is alleged and demonstrated, Petitioners must then show that the procedural violation either (1) impeded Student’s right to a FAPE, (2) significantly impeded Parents’ opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit to Student.¹⁴³

DECISION

Issue #1

6. Parents alleged that Respondent denied a FAPE when it failed to provide a specific Basic Reading Skills goal in Student’s November 15, 2018 IEP.

7. The appropriateness of Legacy’s offer of FAPE is to be determined in light of the circumstances at the “snapshot in time” when the IEP was developed—not with the benefit of hindsight. J.W., 626 F.3d at 439 (“The standard for evaluating IEPs, commonly called the ‘snapshot rule,’ is not retrospective ‘We do not judge an [IEP] in hindsight; rather, we look to the [IEP’s] goals and goal achieving methods at the time the plan was implemented.’”) (quoting Adams, 195 F.3d at 1149 (noting that and IEP “is a snapshot, not a retrospective”); D.A. ex rel. Adams v. Fairfield-Suisun Unified Sch. Dist., 2013 WL 5278952 (E.D. Cal. Sept. 18, 2013) (holding that the adequacy of an IEP must be evaluated “in terms of what was objectively reasonable when it was developed.”) (emphasis added); Pangerl, 2017 WL 603834, at *6 (“A court must not critique an IEP with the benefit of hindsight; instead, it must evaluate whether the goals and methods

¹⁴¹ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

¹⁴² *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279 (1993) quoting *In re Winship*, 397 U.S. 358, 371-72 (1970); see also *Culpepper v. State*, 187 Ariz. 431, 437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action No. J-84984*, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

¹⁴³ 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2).

1 were reasonably calculated to ensure that the child would receive educational benefits at
2 the time of implementation.”) (citing Anchorage Sch. Dist. v. M.P., 689 F.3d 1047, 1058
3 (9th Cir. 2012)); Lessard v. Wilton Lyndeborough Coop. School Dist., 518 F.3d 18, 29
4 (1st Cir.2008) (rejecting the idea that a student’s progress.

5 8. The hearing record shows that the November 2018 IEP team
6 appropriately determined to focus on Student’s reading comprehension because
7 Student had mastered his prior basic reading skills goals from the 2017 IEP and his
8 reading fluency was at grade level. Furthermore, reading comprehension necessarily
9 includes basic reading skills. Additionally, the evidence presented at hearing shows that
10 Legacy provided SDI to Student in “Strategies for Basic Reading Skills.”

11 9. Based on Findings of Fact 5 - 8 above, the evidence presented at hearing
12 shows that Legacy provided Student with a free appropriate public education that met his
13 unique needs. Petitioners failed to establish by a preponderance of the evidence that the
14 November 15, 2018 IEP was not reasonably calculated to ensure that Student would
15 receive educational benefit at the time that the IEP was developed. Parents’ allegation is
16 dismissed.

17 ***Issue #2***

18 10. Parents alleged that the November 12, 2019 IEP failed to address reading
19 and anxiety and therefore, Legacy denied Student a FAPE.

20 11. The types of accommodations and services included in the November 12,
21 2019 IEP were consistent with similar accommodations that haven been found to be
22 appropriate in addressing anxiety behaviors. See, e.g., S.C. v. Oxford Area Sch. Dist.,
23 751 F. App'x 220 (3d Cir. 2018) (concluding that the school provided FAPE to student
24 with anxiety when teachers provide accommodations such as: oral prompts, a seat near
25 the front of the classroom, extra time for assignments, and an academic support class to
26 address his difficulties with focus); In re: Student with a Disability, 120 LRP 8248 (SEA IA
27 01/22/20) (finding IEP and Behavioral Intervention Plan that offered student access to
28 special education room during independent work times, advance notice of unusual
29 circumstances, specially designed instruction on reframing negative self-talk, and
30

1 “thought breaks” before known stressful situations helped show that this district
2 developed an IDEA-compliant IEP in addressing anxiety).

3 12. Based on Findings of Fact 9, and 12-23 above, the evidence presented at
4 hearing showed that Legacy appropriately addressed reading and anxiety issues in the
5 November 12, 2019 IEP at the time that the IEP was developed. Parents failed to
6 establish that the November 12, 2019 IEP was not reasonably calculated to provide
7 educational benefit to Student. Parents’ allegation is dismissed.

8 ***Issue #3***

9 13. Parents alleged that Legacy failed to provide an evidence-based dyslexia
10 specific instruction program to Student following the March 25, 2020 IEP and therefore,
11 denied Student a FAPE.

12 14. The evidence presented at hearing shows that Student’s IEP did not require
13 the use of a canned dyslexia program. Furthermore, the IDEA does not require that
14 schools use any particular methodology—much less, a canned program—in providing
15 special education services to students with dyslexia. *Wishard v. Waynesboro Area Sch.*
16 *Dist.*, 2020 WL 4924566 at *19 (M.D. Pa. Aug. 21, 2020) (“Under IDEA, school districts
17 are not required to implement any particular educational methodology.”).

18 15. The hearing record shows that Legacy properly used peer-reviewed
19 methodologies that were tailored to Student’s specific needs when implementing the
20 March 25, 2020 IEP. The hearing record shows that Legacy provided all SDI under
21 Student’s IEP. The hearing record further shows that Legacy’s approach that focused on
22 the needs of Student in implementing Student’s IEP was effective and Student made
23 significant progress.

24 16. Based on Findings of Fact 25-48 and 55-65 above, Parents failed to
25 establish that Legacy denied Student a FAPE. Parents’ allegation is dismissed.

26 ***Issue #4***

27 17. Parents alleged that Legacy failed to address Student’s goals in his March
28 25, 2020 and therefore, denied Student a FAPE.

29 18. Under 34 CFR 300.020(a)(2), an IEP must include “a statement of
30 measureable *annual* goals.” Emphasis Added. IEP goals are “annual goals” and “reflect

1 what a [student] can reasonably be expected to accomplish within a 12-month period.”¹⁴⁴
2 The IDEA does not require that schools simultaneously work on every goal in the IEP.
3 The evidence presented at hearing shows that Special Education Teacher appropriately
4 staggered the order of work on the goals during the 2020-2021 IEP schoolyear.

5 19. Based on Findings of Fact 30-65 above, the evidence presented at hearing
6 showed that Legacy appropriately addressed Student’s goals in the March 25, 2020 IEP.
7 Parents’ allegation is dismissed.

8 ***Issue #5***

9 20. Parents alleged that Respondent failed to provide or delayed the provision
10 of an audiobook accommodation that was written in Student’s March 25, 2020 IEP and
11 therefore, denied Student a FAPE.

12 21. Based on Findings of Fact 66-68 above, the Administrative Law Judge
13 concludes that Legacy appropriately provided Student with an audiobook
14 accommodation. Parents have not established that Legacy denied Student a FAPE.
15 Parents’ allegation is dismissed.

16 **CONCLUSION**

17 22. Because the evidentiary record does not demonstrate any violation of the
18 IDEA by Legacy and, therefore, no remedies would be fashioned, the Administrative Law
19 Judge does not address Petitioners’ requested remedies. The Administrative Law Judge
20 concludes that Petitioners’ Complaint shall be dismissed.

21 **RULING**

22 Based on the findings and conclusions above,
23 **IT IS HEREBY ORDERED** that Petitioners’ Complaint is dismissed in its entirety.
24 ORDERED this day, January 24, 2022.

25 /s/ Velva Moses-Thompson
26 Administrative Law Judge
27
28

29 _____
30 ¹⁴⁴ 34 CFR 300.320 (a)(2); Letter to Butler, 213 IDELR 118 (OSERS 1988) (emphasis added).

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RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this Decision and Order is the final decision at the administrative level. Furthermore, any party aggrieved by the findings and decisions made herein has the right to bring a civil action, with respect to the complaint presented, in any State court of competent jurisdiction or in a Legacy court of the United States. Pursuant to Arizona Administrative Code § R7-2-405(H) (8), any party may appeal the decision to a court of competent jurisdiction within thirty-five (35) days of receipt of the decision.

Copy mailed/e-mailed January 24, 2022 to:

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