

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

**Tina Salata, parent on behalf of E.D., a minor student v. Mesa
Unified School District**

Salata · No. CV-24-01671-PHX-GMS · Decided March 31, 2026

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF
ARIZONA 8 9 Tina Salata, parent on behalf of E.D., a minor No. CV-24-01671-PHX-GMS
student, 10 ORDER Plaintiff, 11 v. 12 Mesa Unified School District, 13 Defendant. 14 15 Pending
before the Court is an appeal for judicial review of a final administrative 16 decision of an
Administrative Law Judge (“ALJ”) with the Arizona Office of 17 Administrative Hearings under
the Individuals with Disabilities Education Act.

For the 18 following reasons, the ALJ’s decision is affirmed in part and reversed in part.1 19
BACKGROUND 20 Plaintiff E.D. (“Student”) is a minor child who resides with Tina Salata
Decelles 21 (“Mother”) in Maricopa County, Arizona. (Doc. 1 at 2). Student has a disability that
22 qualifies her for special education and related services under the Individuals with 23
Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 et seq.

(Doc. 1 at 2). Congress 24 enacted the IDEA, in part, “to ensure that all children with disabilities
have available to 25 them a free appropriate public education [or ‘FAPE’] that emphasizes special
education 26 27 1 Plaintiff’s request for oral argument is denied because the parties have had an
adequate opportunity to discuss the law and evidence, and oral argument will not aid the 28
Court’s decision.

See Lake at L.V. Invs. Grp., Inc. v. Pac. Malibu Dev. Corp., 933 F.2d 724, 729 (9th Cir. 1991). 1
and related services designed to meet their unique needs and prepare them for further 2 education,
employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). 3 “The IDEA focuses on
making a FAPE available to disabled students through 4 development of Individualized Education
Programs (‘IEPs’).” A.G. v. Paradise Valley 5 Unified Sch.

Dist. No. 69, 815 F.3d 1195, 1202 (9th Cir. 2016) (citations and footnote 6 omitted). “An IEP is a
comprehensive plan collaboratively prepared by a child’s ‘IEP 7 Team’ (which includes teachers,
school officials, and the child’s parents), and must be 8 drafted in compliance with a detailed set
of procedures.” McIntyre v. Eugene Sch. Dist. 9 4J, 976 F.3d 902, 910 (9th Cir.

2020) (citing Endrew F. ex rel. Joseph F. v. Douglas Cnty. 10 Sch. Dist. RE-1, 580 U.S. 386, 391
(2017)); see also 20 U.S.C. § 1414(d). The IEP 11 “consists of a written statement setting forth the

special services and aids the child needs 12 to get a FAPE.” *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 847 (9th Cir. 2016) 13 (citing 20 U.S.C. §§ 1401, 1414).

14 A. Student’s Enrollment at Zaharis and the Legacy IEP 15 Student enrolled in third grade at Zaharis Elementary School (“Zaharis”) in 16 Defendant Mesa Unified School District (the “District”) in August 2023. (Doc. 22 at 7). 17 Student had previously been enrolled at Legacy Traditional School (“Legacy”), a charter 18 school. (Id.). While at Legacy, Student was placed on an IEP.

(Id.). Student’s IEP at 19 Legacy (the “Legacy IEP”) provided Student with the following specially designed 20 instruction, implemented in a special education classroom, totaling 2.5 hours of “pull-out” 21 instruction each week: 22 • Basic reading for 60 minutes each week (30 minutes, twice a week); 23 • Math for 60 minutes each week (30 minutes, twice a week); and 24 • Written expression for 30 minutes each week (30 minutes, once a week).

25 26 27 2 “Pull-out” educational services are provided outside of the general education setting (e.g., in a special education classroom or through individual instruction), whereas “push- 28 in” educational services are provided in a general education setting (i.e., in a classroom with non-disabled peers). 1 (Doc. 1 at 22; IR 124 at 19).³ The Legacy IEP further outlined three “direct”⁴ therapy 2 services: 3 • Occupational therapy (“OT”) for 90 minutes each month (30 minutes, three sessions each month); 4 • Physical therapy (“PT”) for 90 minutes each month (30 minutes, three 5 sessions each month); and 6 • Speech therapy for 240 minutes each month (30 minutes, twice a week).

7 (Doc. 1 at 22; IR 124 at 19). Finally, the Legacy IEP outlined certain services and 8 requirements for Student within the general classroom setting, which included: 9 • Reading comprehension for 60 minutes each week through “push-in” 10 instruction (60 minutes, once a week); 11 • Requirement that Student spend at least 80% of her day inside a general education classroom with general education peers; 12 • Paraprofessional support and modified curriculum, assignments, and 13 assessments to allow Student to access general curriculum at her 14 instructional level; and 15 • Twenty different academic accommodations, such as “preferential seating,” “simplification of directions,” and “testing accommodations.” 16 (Doc.

1 at 22; IR 124 at 19-20). Student’s parents (“Parents”) provided District staff at 17 Zaharis with Student’s Legacy IEP upon her enrollment. (Doc. 22 at 7). The District 18 conducted an IEP transfer review process, and it determined that it would implement the 19 Legacy IEP “with comparable services and accommodations/modifications to the fullest 20 extent possible until a new IEP was developed.” (Doc.

1 at 23 (citation modified)). 21 B. The District’s Update to the Legacy IEP 22 At the start of Zaharis’s school year, which began on August 3, 2023, Student’s 23 special education teacher,

Julie Cooper, assessed Student's reading abilities and 24 determined that Student could not decode words and had not mastered letter-sound 25 3 "IR" refers to the "Index of Record on Review" as a part of the complete 26 Administrative Record on Review.

The page numbers cited by the Court do not reflect any paginations that may appear at the bottom of the pages within each record and instead 27 reflect the order in which that page appears within each specific document (for example, (IR 130 at 12) refers to the twelfth page of IR 130, which is a sixteen-page document). 28 4 "Direct" services are provided in a one-on-one or small group setting.

(See IR 124 at 19). 1 correspondence. (Id. at 24). On August 31, 2023, Mother met with Cooper and Student's 2 general education teacher, Afton Zapata-Scow. (Id. at 26). At the meeting, Cooper relayed 3 her belief to Mother that the services outlined in the Legacy IEP were not meeting Student's 4 needs. (Id.). Mother articulated that her goal for Student at Zaharis was to "catch up to 5 her peers in an inclusive setting." (Id.).

In response, Cooper stated that Student's 6 instructional minutes would need to be increased if Student were to catch up to the 7 academic level of her peers. (Id.). Cooper also stated that she would increase Student's 8 service times, collect data on Student's progress, and schedule an IEP meeting to write a 9 new IEP for Student. (Id.). 10 The IEP meeting was held on November 14, 2023.

(Doc. 22 at 10). Present at the 11 meeting were Parents, Cooper, and Julie Bartanen, special education director in the District 12 who oversaw special education at Zaharis. (Doc. 1 at 29). The purpose of the meeting, 13 according to Cooper, was to formalize increases in pull-out instruction that were already 14 being provided to Student and obtain additional adult instructional support for Student.

15 (Id.). Cooper presented Parents with an updated and incomplete IEP (the "Draft IEP") that 16 included the following increased levels of pull-out services, totaling 7 hours of pull-out 17 instruction each week—nearly three times the amount of pull-out instruction set forth in 18 the Legacy IEP: 19 • Reading comprehension for 60 minutes each week; 20 • Reading decoding for 120 minutes each week; 21 • Written expression for 120 minutes each week; 22 • Math problem-solving for 60 minutes each week; and 23 • Math calculation for 60 minutes each week.

24 (Id. at 30, 33). These pull-out services were all to be implemented in a special education 25 classroom. (Id. at 36). Furthermore, the Draft IEP removed the 90 minutes of direct PT 26 services provided in the Legacy IEP. (Id. at 33). 27 The Draft IEP also modified Student's least restrictive environment ("LRE") 28 requirements. (Id. at 33-34).

The IDEA requires that children with disabilities must, "[t]o 1 the maximum extent appropriate," be "educated with children who are not disabled." 20 2 U.S.C. § 1412(a)(5)(A). This "least

restrictive environment requirement” reflects “IDEA’s 3 strong preference for educating children with disabilities alongside their non-disabled 4 peers.” D.R. ex rel. R.R. v. Redondo Beach Unified Sch.

Dist., 56 F.4th 636, 641 (9th Cir. 5 2022). The Draft IEP—instead of requiring Student to spend at least 80% of her day inside 6 a general education classroom with her non-disabled peers—only mandated that Student 7 spend a minimum of 40% and a maximum of 79% of her day inside a general education 8 classroom. (Doc. 1 at 33-34).

The Draft IEP allowed for instruction in a general education 9 setting only when Student was not “receiving instruction in the resource setting for reading, 10 writing, and mathematics,” citing Student’s “significant delays in all academic areas.” (IR 11 130 at 16). 12 Though Parents were handed copies of the Draft IEP at the outset of the IEP 13 meeting, the provisions in the document detailing the increase in pull-out services and the 14 changes to Student’s LRE were not actually discussed at the meeting.

(Doc. 1 at 34). 15 Instead, the topics of discussion at the meeting included Student’s general progress at 16 Zaharis, recommendations for alternative programs at different schools, and the merits of 17 instructional aide support. (Id. at 30-33). Parents and the District employees scheduled a 18 second IEP meeting, to discuss the remaining IEP provisions, for December 13, 2023.

(Id. 19 at 34-35). Mother believed that the Legacy IEP would continue to remain in effect until 20 the December meeting. (Id. at 35). 21 But the District, without convening any further with Parents, implemented a 22 modified version of the Draft IEP (the “Modified IEP”) soon after the November meeting. 23 (Id. at 35-37).

On November 20, 2023, the District mailed the Modified IEP to Parents. 24 (Id. at 36). The Modified IEP kept the Draft IEP’s provisions regarding the increase in 25 pull-out services for Student in a special education classroom. (Id.).

On November 21, 26 2023, Cooper emailed Mother a prior written notice⁵ that detailed the changes made to 27 Student’s IEP, stating that “[t]he IEP team has decided to implement the attached IEP.” 28 ⁵ The prior written notice was dated November 8, 2023. 1 (Id.; IR 132 at 3). Such notice, under the IDEA, must be sent to parents before “an 2 educational agency proposes, or refuses, to initiate or change the educational placement of 3 a disabled child.” Union Sch.

Dist. v. Smith, 15 F.3d 1519, 1526 (9th Cir. 1994); 34 C.F.R. 4 § 300.503(a). The prior written notice also stated that “the team will reconvene in 5 December to determine the best placement for [Student] to receive her specially designed 6 instruction.” (IR 132 at 4). 7 C. Due Process Petition, Resolution Sessions, and Unilateral Services 8 On December 4, 2023, Parents filed a due process

petition on behalf of Student with 9 the Arizona Office of Administrative Hearings through the Arizona Department of 10 Education, pursuant to 20 U.S.C. § 1415(f).

Parents alleged that the District's decision to 11 implement the Modified IEP violated Student's and Parents' right to a FAPE in the LRE 12 under the IDEA. (IR 1 at 2). Parents primarily sought to halt implementation of the 13 Modified IEP while ensuring that the Legacy IEP continued to stay in effect while Student 14 remained at Zaharis. (Id. at 16-18). Parents indicated in their petition that they would be 15 "unilaterally" placing Student at another educational program, claiming that District staff 16 were "not trained to implement an inclusive IEP and, as such, Student needs a new 17 placement with more accepting and trained staff." (Id. at 16).

18 In light of Parents' decision to file a due process petition, the IEP follow-up meeting 19 scheduled for December 13, 2023, was cancelled. (Doc. 1 at 44). The parties then met 20 virtually for two resolution meetings, as provided by the IDEA, in hopes of resolving the 21 dispute without a hearing. See 20 U.S.C. 1415(f)(1)(B); 34 C.F.R. § 300.510; (IR 109 at 22 81-122).

At the first resolution meeting—on December 19, 2023—Mother and her 23 attorney, Amy Langerman, were present and raised concerns with the Modified IEP. (IR 24 74 at 8). Langerman, stating that her clients had "lost trust" in the District's IEP team, 25 requested that the District retain and pay the expenses for a private inclusion specialist— 26 Sherry Mulholland—and allow Langerman herself to train District staff on inclusion.

(Id. 27 at 8; IR 109 at 82). The District rejected Langerman's training requests. (IR 109 at 82). 28 However, the District proposed a new IEP (the "December Settlement IEP") that otherwise 1 incorporated Plaintiff's concerns with the Modified IEP. (Id.).

The December Settlement 2 IEP increased Student's LRE to at least 80%, stating that Student would only receive pull- 3 out instruction for "speech/language, reading/decoding and math instruction" due to 4 Student's "unique needs," and that Student would otherwise be "fully included for the rest 5 of the school day" in the general classroom setting with the help of "supplementary aides 6 and services." (Id. at 82, 100).

7 But on January 4, 2024, Parents filed an amended due process petition. (IR 74 at 8 9). The District held a second resolution meeting with Mother and Langerman on January 9 19, 2024, where they raised concerns with the December Settlement IEP. (Id.). Langerman 10 reiterated her requests that the District retain and pay the expenses for a private inclusion 11 specialist (Mulholland) and allow Langerman to train District staff on inclusive practices.

12 (Id.). While the District again rejected Langerman's requests, it rewrote the IEP again (the 13 "January Settlement IEP") to respond to concerns raised at the second resolution meeting 14 and offered to pay reasonable attorney's fees. (IR 109 at 102-22).

The January Settlement 15 IEP maintained the reduced hours in pull-out services and the 80% LRE requirement 16 present in the December Settlement IEP. (Id.). 17 Parents did not respond to the District's settlement offers. (IR 74 at 10). Student's 18 last day at Zaharis was on December 14, 2023. Parents homeschooled Student before 19 enrolling her at Tempe Montessori School at the end of January 2024.

(Doc. 22 at 12). 20 Parents also retained a special education teacher to provide specially designed instruction 21 in reading and math outside of the school day, for two hours a week, as was set out in the 22 Legacy IEP. (Id.). Student's private special education teacher noted an improvement in 23 Student's reading progress while at Tempe Montessori. (Id. at 12-13).

Student received 24 OT, PT, and speech therapy services—as outlined in the Legacy IEP—through the Division 25 of Developmental Disabilities with the Arizona Long Term Care System. (Id. at 12). 26 Parents retained Mulholland as an “inclusion specialist” to provide “training and 27 recommendations at Tempe Montessori.” (Id. at 13). Mulholland conducted an onsite 28 observation of the school and a virtual observation of Student's private special education 1 tutoring.

(Id.). Mulholland observed Student during one of her classes at Tempe 2 Montessori and noted that Student had made “phenomenal gains” with her reading abilities 3 and was demonstrating a high level of engagement and executive functioning. (Id.) 4 D. Due Process Hearing 5 The due process hearing with the ALJ was held from March 11-14 and April 2-3, 6 2024. (Doc.

1 at 15). Plaintiff raised four issues at the hearing: 7 (1) Whether the District denied parental participation resulting in a substantive 8 denial of FAPE at the IEP meeting on November 14, 2023; 9 (2) Whether the Modified IEP would provide a FAPE to Plaintiff in the LRE; 10 (3) Whether the District removed Plaintiff from a general education setting in excess 11 of the amount of time identified by the Legacy IEP or otherwise did not 12 implement the Legacy IEP as it was written—denying FAPE to Plaintiff; and 13 (4) Whether the District discriminated against Plaintiff by denying Plaintiff equal 14 access to the District's general education programs.

15 (Id. at 16). Plaintiff asked the ALJ to issue an order: 16 (1) Preventing the District from implementing the Modified IEP and mandating that 17 the District implement the Legacy IEP; 18 (2) Finding that the District did not substantially implement the Legacy IEP, and 19 thus denied a FAPE to Student, as well as determining the extent of the non- 20 implementation of the Legacy IEP; 21 (3) Determining that the District predetermined Student's educational placement 22 and services in the Modified IEP and implemented them without prior written 23 notice, which constituted a denial of parental participation and a substantive 24 denial of FAPE; 25 (4) Holding that the Modified IEP will not provide Student a FAPE and will not 26 place Student in the LRE and cannot be implemented; 27 (5) Requiring consultation and training by an outside inclusion specialist for 28 Student's IEP team, including monthly follow-up support for Student from that 1

specialist for a full school year; 2 (6) Mandating in-person legal training of Student's IEP team on issues of LRE, prior 3 written notice, predetermination, push-in services, and FAPE; and 4 (7) Reimbursing Parents for any expenses associated with any unilateral placement 5 of Student that Parents may make (such as private school, homeschooling, etc.).

6 (Id. at 17-18). 7 The ALJ issued her decision on June 5, 2024, concluding: 8 The evidentiary record demonstrates that the District committed procedural violations of the IDEA that significantly 9 impeded Parents' opportunity to participate in the decision- 10 making process, and thereby denied Student a FAPE.

The District predetermined placement/services and implemented 11 them without prior written notice which denied parental 12 participation and is a substantive denial of FAPE. The evidentiary record further demonstrates that the [Modified 13 IEP] fails to provide a FAPE to Student. 14 (Doc. 1 at 69).

The ALJ ordered that Student's Legacy IEP remain in place, barred the 15 District from implementing the Modified IEP, and instructed the District to complete a new 16 IEP as soon as possible. (Id. at 70). For remedies, the ALJ ordered the District to fund 60 17 minutes of direct PT to Student from a private provider, but denied all other requested 18 relief, including Plaintiff's request for reimbursement of expenses associated with the 19 unilateral placement of Student at Tempe Montessori due to lack of sufficient evidence 20 indicating whether placement was appropriate.

(Id. at 69-70). 21 E. Issues on Appeal 22 On appeal, Plaintiff raises two issues. First, Plaintiff contends that the ALJ failed 23 to consider and decide issues raised in the due process petition, thus denying Parents their 24 "guaranteed right of impartial review" under the IDEA. (Doc. 22 at 5, 7). Plaintiff 25 identifies four sub-issues that the ALJ purportedly failed to analyze when deciding the due 26 process petition: 27 (a) Whether the unilateral increase in the amount of pull-out services provided to 28 Student constituted a denial of FAPE; 1 (b) Whether the District materially failed to implement required services for reading 2 comprehension and basic reading of sight words; 3 (c) Whether the District materially failed to implement required services for 4 physical and occupational therapy; and 5 (d) Whether the location of services identified in the Modified IEP violated 6 Student's right to be educated in the LRE.

7 (Id. at 14-25). 8 Second, Plaintiff argues that the ALJ erred in concluding that there was insufficient 9 evidence to conclude that Parents' unilateral placement of Student at Tempe Montessori 10 was "appropriate." (Id. at 25-29). Plaintiff argues that Parents had a right to reimbursement 11 because their rights under the IDEA were violated. (Id. at 25). 12 LEGAL STANDARD 13 In judicial review under the IDEA, district courts employ a modified form of de 14 novo review.

Ojai Unified Sch. Dist. v. Jackson, 4 F.3d 1467, 1471-72 (9th Cir. 1993). 15 The Court reviews de novo whether a school district's proposed IEP provided a FAPE 16 under the IDEA. Timothy O. v. Paso Robles Unified Sch. Dist., 822 F.3d 1105, 1118 (9th Cir. 2016) (citation omitted). "However, complete de novo review of the administrative 18 proceeding is inappropriate." Van Duyn ex rel.

Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 19 811, 817 (9th Cir. 2007) (citation modified). Mixed questions of law and fact are reviewed 20 de novo unless the question is primarily factual. Gregory K. v. Longview Sch. Dist., 811 F.2d 1307, 1310 (9th Cir. 1987). 22 "Due weight" must be given to the ALJ's factual findings, and courts should not 23 "substitute their own notions of sound educational policy for those of the school authorities 24 which they review." Id. (citations omitted). "The amount of deference accorded [to] the 25 [ALJ's] findings increases where they are thorough and careful." Capistrano Unified Sch.

26 Dist. v. Wartenberg, 59 F.3d 884, 891 (9th Cir. 1995) (internal quotation marks and citation 27 omitted). If an ALJ fails to "address all issues and disregard[s] some of the evidence 28 presented at the hearing," then the ALJ's findings are "neither thorough nor careful." M.C. 1 ex rel. M.N. v. Antelope Valley Union High Sch. Dist., 858 F.3d 1189, 1194-95 (9th Cir.

2 2017). A federal court bases any decision to issue relief on the preponderance of the 3 evidence. 20 U.S.C. § 1415(i)(2)(C). 4 DISCUSSION 5 I. ALJ's Failure to Rule on Issues Raised in the Due Process Petition 6 Plaintiff identifies four issues raised during the administrative proceedings that were 7 not addressed by the ALJ.

The Court addresses each in turn. 8 A. Whether the District's Unilateral Increase in the Amount of Pull-Out Services Provided to Student Resulted in a Denial of FAPE 9 Plaintiff first argues that the ALJ failed to address whether the District's 10 implementation of the Modified IEP on November 14, 2023, resulted in a denial of FAPE. 11 (Doc. 22 at 17).

In particular, Plaintiff claims that the District's failure to discuss the 12 increase in Student's pull-out services at the IEP meeting or provide Parent with prior 13 written notice of the increases before implementation "denied meaningful parental 14 participation in the decision-making process," thus constituting a denial of FAPE. (Id.). 15 As a remedy, Plaintiff requested that the ALJ require the District to provide Student with 16 two weeks of a parent-selected summer camp program (representing the period from 17 November 14, 2023, through the end of the school semester in mid-December 2023), with 18 full reimbursement for tuition and transportation.

(Id. at 19). The ALJ did not grant this 19 remedy, and Plaintiff renews that request here. 20 "When formulating an IEP, a school district must comply both procedurally and 21 substantively with the IDEA." Antelope Valley, 858 F.3d at 1194 (citation modified). 22 Under the IDEA, there

are a number of “procedural safeguards that are designed to protect 23 the rights of disabled children and their parents.” *Id.* at 1195 (citing 20 U.S.C. § 1415).

24 One such right is the right of parental participation. *Amanda J. v. Clark Cnty. Sch. Dist.*, 25 26 6 The ALJ recognized that Cooper informed Mother on August 31, 2023, that she 27 would increase Student’s service times, collect data on Student’s progress, and schedule an IEP meeting to write a new IEP. (Doc. 1 at 26). Plaintiff, in her appeal, does not argue 28 that any increase in services beginning on August 31 constituted a procedural violation of the IDEA by denying meaningful parental participation.

1 267 F.3d 877, 892 (9th Cir. 2001) (“Procedural violations that interfere with parental 2 participation in the IEP formulation process undermine the very essence of the IDEA.”). 3 A “unilateral amendment” to a student’s IEP constitutes a “per se procedural violation of 4 the IDEA because it vitiates the parents’ right to participate at every step of the IEP drafting 5 process.” *Antelope Valley*, 858 F.3d at 1197 (footnote omitted).

6 Not all procedural harm is actionable under the IDEA. *L.M. v. Capistrano Unified 7 Sch. Dist.*, 556 F.3d 900, 909 (9th Cir. 2009). However, procedural deficiencies that 8 “seriously infringe the parents’ opportunity to participate in the IEP formulation process[] 9 clearly result in the denial of a FAPE.” *Id.* (citation omitted); *id.* at 910 (district courts 10 must “consider whether the procedural error... significantly restricted parental 11 participation” (emphasis added)); *D.O. ex rel.*

Walker v. Escondido Union Sch. Dist., 59 12 F.4th 394, 417 (9th Cir. 2023); 20 U.S.C. § 1415(f) (3)(E)(ii)(II). If “a parent is unaware 13 of the services offered to the student—and, therefore, can’t monitor how these services are 14 provided—a FAPE has been denied.” *Antelope Valley*, 858 F.3d at 1198. 15 If a student is denied a FAPE, the district court has discretion to “grant such relief 16 as the court determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(iii).

In situations where 17 a student was denied a FAPE due to a significant deprivation of the parents’ right to 18 participate in the IEP process, plaintiffs, “[a]t the very least,” “are entitled to have the 19 District draft a proper IEP and receive compensatory education to place [the student] in the 20 same position [she] would have occupied but for the school district’s violations of the 21 IDEA.” *Antelope Valley*, 858 F.3d at 1201 (citation modified). “[I]t may be a rare case 22 when compensatory education is not appropriate to remedy an IDEA violation.” *R.P. ex 23 rel.*

C.P. v. Prescott Unified Sch. Dist., 631 F.3d 1117, 1125 (9th Cir. 2011) (internal 24 quotation marks and citation omitted). 25 Here, there was a procedural violation of the IDEA. Through the District’s 26 unilateral implementation of the Modified IEP on November 14, 2023, which nearly tripled 27 the amount of pull-out instruction set forth in the Legacy IEP and lowered the Student’s

28 LRE requirement, the District denied Mother her ability to participate in the IEP 1 formulation process.

The District did not offer Mother the ability to participate “at every 2 step of the IEP drafting process”—given that the District predetermined the increase in 3 pull-out services in the Modified IEP without first consulting Parents—and thus Mother 4 “suffered procedural harm by not being apprised of the actual status of the services being 5 provided” to Student.

Antelope Valley, 858 F.3d at 1197-98. 6 The procedural violation denied Student a FAPE. As the ALJ held, the “the District 7 significantly impeded the parents’ opportunity to participate in the decision-making process 8 when it locked in and finalized an unfinished IEP and began implementing the IEP 9 immediately following the November 14, 2023 meeting.” (Doc.

1 at 52 (emphasis added)). 10 The ALJ’s reasoning on this point was thorough and careful, and it is entitled to due weight. 11 The ALJ pointed to the testimony from the District’s assistant superintendent of student 12 services confirming that the District should not have implemented the Modified IEP 13 without first discussing the increase in pull-out services and Student’s LRE placement with 14 Parents—which did not occur at the November 14, 2023 meeting.

(Id.). Yet the special 15 education director (Bartanen) began implementing the Modified IEP before the follow-up 16 IEP meeting in December 2023, which “stripped the Parents of their ability to timely 17 exercise their procedural rights and stop [its] implementation.” (Id.).

The District’s failure 18 to involve Mother in the implementation of the Modified IEP “clearly infringed on [her] 19 ability to participate in the IEP formulation process,” a reason that, alone, “is cause to 20 conclude that [Student] was denied a FAPE.” See *Doug C. v. Hawaii Dep’t of Educ.*, 720 21 F.3d 1038, 1047 (9th Cir. 2013). 22 The ALJ erred, however, in not considering whether to award Plaintiff a remedy for 23 her denial of FAPE based on the violation of Mother’s procedural rights.

As to this issue, 24 the ALJ’s decision was deficient. The ALJ, after concluding that the District significantly 25 impeded the Parents’ opportunity to participate in the IEP decision-making process based 26 on the evidence provided at the hearing, seemingly contradicted herself in the next 27 paragraph, stating that “Petitioner has failed to establish that the District significantly 28 impeded Parents’ opportunity to participate in the decision-making process.” (Doc.

1 at 1 52-53). But in her conclusion, the ALJ again affirmed that “[t]he evidentiary record 2 demonstrates that the District committed procedural violations of the IDEA that 3 significantly impeded Parents’ opportunity to participate in the decision-making process, 4 and thereby denied Student a FAPE.” (Id. at 69 (emphasis added)). Nonetheless, the ALJ 5 conducted no analysis on whether Plaintiff’s proposal of a two-week summer camp with 6 non-disabled peers would remedy Plaintiff’s denial of FAPE.

7 Plaintiff's proposed summer camp remedy is equitable as a form of compensatory 8 education that would place Student in the same position she would have occupied, but for 9 the District's violation of the IDEA. A central tenant of the IDEA is to ensure that children 10 with disabilities have "access to the general education curriculum in the regular 11 classroom." 20 U.S.C. § 1400(c)(5).

The IDEA requires that, to "the maximum extent 12 appropriate, children with disabilities" should be "educated with children who are not 13 disabled." Id. § 1412(a)(5)(A). Evidence from the hearing indicated that Student had been 14 receiving increased pull-out services for at least two weeks. (Doc. 22 at 15; IR 68 at 5). 15 Thus, for at least two weeks, Student was deprived of, to at least some extent, the 16 opportunity to learn in a general education setting with non-disabled peers at the rate set 17 forth in the Legacy IEP.

A remedy placing Student in an educational setting with her non- 18 disabled peers is appropriate. 19 With regard to Plaintiff's summer camp remedy, Plaintiff is directed to identify in 20 supplemental briefing to the Court her desired summer camp for summer 2026, provide the 21 cost of the camp, and justify why two full weeks (rather than a shorter period, such as one 22 full week) of a reimbursed program is appropriate.

Defendant may respond. 23 B. Whether the District Materially Failed to Implement Required Services for Reading Comprehension and Basic Reading of Sight Words 24 Plaintiff next argues that the ALJ did not address her claim that the District failed 25 to implement certain services required under the Legacy IEP. (Doc. 22 at 20). Plaintiff 26 highlights that, under the Legacy IEP, she was entitled to (a) 60 minutes per week of push- 27 in instruction in reading and listening comprehension and (b) 60 minutes per week of pull- 28 1 out instruction in basic reading to work on "phonetic decoding" and "reading sight words." 7 2 (Id.).

Plaintiff contends that evidence from the hearing demonstrated that the District failed 3 to provide the 60 minutes of push-in reading comprehension per week, nor did it provide 4 any pull-out services specifically on sight word instruction. (Id.).

As a remedy, Plaintiff 5 requests 20 hours of compensatory services in reading tutoring from a credentialed teacher 6 of Mother's choice. (Id. at 20-21). 7 A plaintiff under the IDEA has a claim against a school district for failing to 8 implement portions of an IEP only if that failure was "material." Van Duyn, 502 F.3d at 9 815. "A material failure occurs when there is more than a minor discrepancy between the 10 services a school provides to a disabled child and the services required by the child's IEP." 11 Id. at 822.

This standard "does not require that the child suffer demonstrable educational 12 harm in order to prevail," but a "child's progress, or lack of it, may be probative of whether 13 there has been more

than a minor shortfall in the services provided.” Id. Plaintiff bears 14 the burden of proof in demonstrating that a failure to implement IEP services was material.

15 Id. at 819-20. A material failure to implement part of an IEP is a denial of FAPE, and a 16 court can issue compensatory relief to remedy the harm caused. See id. at 822; 20 U.S.C. 17 § 1415(i)(2)(C)(iii). 18 Though Plaintiff raised the issue in her post-hearing brief (see IR 68 at 51-52), the 19 ALJ did not analyze whether there was a material failure to provide the required reading 20 services.

Thus, the Court addresses this issue de novo. 21 Under the Legacy IEP, Plaintiff was entitled to 60 minutes per week of specially 22 designed instruction for reading comprehension in the general education setting. (Doc. 22 23 at 7-8; IR 124 at 19). Additionally, Plaintiff was supposed to receive 60 minutes per week 24 of “basic reading” in a pull-out setting, where such sessions were supposed to consist of 25 “specialized instruction in sounding out cvc words⁸ and learning sight words.” (IR 124 at 26 7 “Sight words are common words that schools expect kids to recognize instantly.

Words like the, it, and and appear so often that beginning readers reach the point where 27 they no longer need to try to sound out these words.” Julie Rawe, What are sight words?, Understood, <https://www.understood.org/en/articles/what-are-sight-words> (last visited 28 March 4, 2026). 8 “CVC words are three letter words that follow one simple pattern: consonant-vowel- 1 19).

However, Student, during her 18 weeks of attendance at Zaharis, received a total of 2 120 minutes per week of pull-out reading instruction from the specially designed 3 instruction special education teacher at Zaharis, Lindsey Johnson. (Doc. 1 at 25-26). 4 Johnson provided instruction to Student specifically aimed at developing Student’s skills 5 in letter-sound correspondence (i.e., working on sounding out cvc words).

(Doc. 1 at 24). 6 At the hearing, Cooper testified that Johnson was responsible for implementing 7 Student’s sight word and reading comprehension goals. (IR 197 at 23:3-24:6, 30:21-31:4; 8 IR 219 at 280:13-17, 287:24-288:6). But Johnson testified that she had not been 9 implementing the sight word and reading comprehension goals, and that she believed that 10 Cooper had been implementing them.

(IR 226 at 114:24-115:6). Yet Cooper’s schedule 11 for the school year confirmed that Cooper only provided Student with instruction in written 12 expression and math—not any instruction in reading. (IR 188 at 15; see also IR 219 at 13 280:15-17 (Cooper testified: “Ms. Johnson[] serviced Student in reading only. I was the 14 provider of services in written expression and math.”))).

15 Plaintiff has thus met her burden in demonstrating that two provisions of the Legacy 16 IEP—reading comprehension and sight word services—were not provided during her time 17 at Zaharis. This failure was more than a minor discrepancy—it was instead a wholesale 18 departure from the

terms laid out in the Legacy IEP. By violating this “binding 19 commitment” to Student, Antelope Valley, 858 F.3d at 1197, the District materially failed 20 to implement required services for reading comprehension and sight words, and thus denied 21 Student a FAPE.

22 Defendant argues that it provided Student with “services comparable to those set 23 forth in the Legacy IEP,” thus removing any need for compensatory relief. (Doc. 23 at 8- 24 9). Defendant’s contention misses the mark. While the ALJ stated that “[b]etween August 25 3 and November 14, 202[3], the District provided the Student with services comparable to 26 those set forth in her Legacy IEP,” this factual finding relied exclusively on the opinions 27 consonant”—such as cat, red, and pig.

See Laurin Brainard, What are cvc words?, The 28 Primary Brain (July 19, 2024), <https://theprimarybrain.com/phonics/2024/07/19/What-Are-CVC-Words/>. 1 of District staff that “comparable services [in the Legacy IEP] could be provided” at 2 Zaharis. (Doc. 1 at 66-67 (emphasis added); see also id. at 23 (“On receipt of the Legacy 3 IEP, the District determined that it would implement the IEP with comparable services and 4 accommodations/modifications.. to the fullest extent possible until a new IEP was 5 developed.”))).

But the District’s belief that it could or did provide comparable services 6 does not mean that it actually did so. The District points to no rebuttal evidence indicating 7 that it did actually provide Plaintiff with reading comprehension and sight word services. 8 (See Doc. 23 at 8-9). Plaintiff is thus entitled to compensatory relief. 9 Plaintiff is directed, in her supplemental brief, to identify the credentialed teacher 10 that she proposes to provide reading tutoring, provide the tutor’s hourly rate, and justify 11 why 20 hours (as opposed to some other figure) of compensatory relief is appropriate.

12 C. Whether the District Materially Failed to Implement Required Services for Physical Therapy and Occupational Therapy 13 Third, Plaintiff contends that the ALJ did not address her claim that the District 14 failed to implement required services for PT and OT under the Legacy IEP. (Doc. 22 at 15 21-22).

The Legacy IEP required 90 minutes of direct PT services and 90 minutes of direct 16 OT services per month (each for three sessions of 30 minutes per month) in a one-on-one 17 or small group setting. (Doc. 1 at 22; IR 124 at 19).

For the semester that Student attended 18 Zaharis, Student was entitled to a total of 14 PT sessions and 14 OT sessions. (Doc. 22 at 19 9). Plaintiff avers that documentary evidence produced during the hearing established that 20 the District failed to provide Student with nine PT sessions and eight OT sessions—yet the 21 ALJ only issued a compensatory award for 60 minutes of PT services (two PT sessions).

22 (Id. at 21-22). Plaintiff seeks additional compensatory relief for the remaining seven PT 23 sessions and eight OT sessions. (Id. at 22). 24 Student, due to her disability, has diminished gross motor skills. (IR 68 at 27). 25 Student, in January 2023, scored poorly on tests for body coordination and strength and 26 agility. (Id.).

Thus, the Legacy IEP included PT services to help Student address her gross 27 motor delays. (IR 124 at 19). Yet the Draft IEP and Modified IEP eliminated all of 28 Student's gross motor goals and direct PT services. (Doc. 1 at 60).

The ALJ, noting that 1 Student had failed to make progress on her gross motor goals during her time at Zaharis 2 and still had gross motor needs, held that the removal of the gross motor goals and direct 3 PT services in the Modified IEP constituted a denial of FAPE. (Id. at 60-62).

To remedy 4 this violation, the ALJ ordered the District to fund 60 minutes of direct PT to Student from 5 a private provider selected by Student, reasoning that the Legacy IEP required 90 minutes 6 of direct PT per month, and Plaintiff had not received any PT services for over two weeks 7 after the Modified IEP was implemented. (Id. at 70).

The ALJ's findings and remedy here 8 are not at issue in this appeal. 9 However, at the due process hearing, a related but separate issue was raised as to 10 whether the District materially failed to implement the direct PT and OT services required 11 in Student's Legacy IEP during her full time at Zaharis. (Doc. 22 at 9).

The ALJ ordered 12 the District to produce Medicaid billing records indicating the range of such services 13 actually provided to Student. (Id.). The records were produced, and Plaintiff discussed 14 them in her post-hearing brief. (IR 68 at 52-53). According to Plaintiff, while the Legacy 15 IEP required 14 direct PT sessions and 14 direct OT sessions (for 30 minutes each), the 16 Medicaid billing records instead demonstrate that Student only received two full PT 17 sessions and three full OT sessions.

(Id. at 53). Student also received six sessions in a "co- 18 treating model," where both PT and OT services were rendered, but only for a combined 19 time of 30 minutes each session—rather than one full hour.⁹ (Id.). Student, thus, did not 20 receive the equivalent of nine PT sessions and eight OT sessions, as demonstrated below:

Service	Amount Required	Actual Services Received	Services Required
PT	150 minutes	2 full sessions × 30 minutes = 60 minutes	9 sessions × 30 min/session = 270 minutes
OT	150 minutes	3 full sessions × 30 minutes = 90 minutes	8 sessions × 30 min/session = 240 minutes

21 Service Amount Required Actual Services Required
22 Type by Legacy IEP Received at Zaharis Not Provided
23 150 minutes Physical 420 minutes
24 2 full sessions × 30 minutes = 60 minutes
25 9 sessions × 30 min/session = 270 minutes
26 270 min not provided (PT) min/session
27 8 sessions × 30 min/session = 240 minutes
28 240 min not provided (OT) min/session

26 27 9 Plaintiff remarks that "[a]ny time that PT and OT co-treated, Student was deprived 28 of 15 minutes of OT and 15 minutes of direct PT.

The records reflect that on 6 service dates, Student was being shortchanged because of the co-treating model." (IR 68 at 53). 1 180 minutes 2 Occupational 420 minutes (3 full sessions × 30

Eight sessions Therapy (14 sessions × 30 min/session) + (6 partial (240 min not provided 3 (OT min/session) sessions × 15 min/partial ÷ 30 min/session) session) 4 Based on the Medicaid billing records introduced at the hearing (IR 188 at 11-13, 5 “Student’s Exhibit 78”), the District materially failed to provide direct PT and OT services 6 required under the Legacy IEP, thus denying Student a FAPE.

See Van Duyn, 502 F.3d at 7 822. As was the case for the lack of reading comprehension and sight word services, the 8 District’s failure to provide nine full PT sessions and eight full OT sessions resulted in a 9 substantial non-implementation of services. Student needed these services to improve both 10 her gross motor (PT) and fine motor (OT) skills. (See IR 124 at 5).

By failing to provide 11 the PT and OT services, the District violated the IDEA. 12 Defendant does not seriously contest Plaintiff’s assertion here based on the 13 Medicaid billing records. Instead, Defendant briefly mentions that the ALJ awarded 14 Student 60 minutes of PT as a remedy, and “did not see reason to award” Plaintiff’s 15 requested remedy for seven PT sessions and eight OT sessions.

(Doc. 23 at 9). But the 16 ALJ did not analyze whether there was a material failure to provide the required PT and 17 OT services under the Legacy IEP, prior to the implementation of the Modified IEP. Thus, 18 the ALJ did not award Plaintiff’s remedy because the ALJ failed to consider the issue 19 altogether in her decision—even though Plaintiff raised the issue in her post-hearing brief.

20 Hence, there was no thorough or careful reasoning by the ALJ justifying the denial of 21 Plaintiff’s requested remedy. 22 The Court, however, cannot yet issue an award before further clarification from 23 Plaintiff.

The Medicaid billing records plainly demonstrate that Student received far less 24 than the amount of PT and OT services required. (IR 188 at 11-13). However, the Court 25 is unable to match the individual entries in the billing records with Plaintiff’s description 26 of the records.

For example, the Court cannot with full certainty identify the two full 27 sessions of PT and the three full sessions of OT, the six sessions provided in a co-treating 28 1 model, or discern the meaning of the service codes listed (such as “M – 97150” or “NB – 2 99999”).

The Court will require Plaintiff, in her remedies brief, to identify with 3 particularity the PT and OT services actually provided to Student at Zaharis before issuing 4 any compensatory relief. 5 D. Whether the Location of Services Identified in the Modified IEP Violated Student’s Right to be Educated in the LRE 6 Fourth, Plaintiff avers that the ALJ did not consider Plaintiff’s claim that the 7 location of services set forth in the Modified IEP—outside of the general classroom— 8 violated Student’s right to be educated in the LRE and thus constituted a denial of FAPE.

9 (Doc. 22 at 22-23). The ALJ determined that the increased amount of pull-out services in 10 the Modified IEP did not constitute a denial of FAPE in the Student's LRE because 11 "Student was not making progress on her IEP goals" and thus needed "additional service 12 minutes." (Doc. 1 at 52). Plaintiff, however, does not challenge whether the additional 13 services were necessary— instead, she argues that the ALJ failed to consider whether such 14 services needed to be provided in a pull-out setting.

(Doc. 22 at 22; Doc. 24 at 12). In 15 other words, she contends that the same services could have been provided in the general 16 education classroom. 17 Plaintiff seeks declaratory relief stating that the Modified IEP did not provide 18 Student with a placement in her LRE, thus denying her a FAPE. (Doc. 22 at 25). But the 19 ALJ, in her decision, already stated that the Modified IEP failed to provide a FAPE to 20 Student due to the violation of Parents' procedural rights.

(Doc. 1 at 69). The ALJ barred 21 the District from implementing the Modified IEP. (Id. at 70). Thus, even if the Court were 22 to separately hold that Modified IEP also violated Student's right to be educated in the 23 LRE, "resolving this claim would not change the result in this case," and the Court thus 24 "decline[s] to decide this issue." *Cassirer v. Thyssen-Bornemisza Collection Found.*, 862 25 F.3d 951, 966 n.13 (9th Cir.

2017). 26 II. Mother's Unilateral Placement of Student at Tempe Montessori 27 Plaintiff, upon rejecting the District's settlement offers, left Zaharis and enrolled at 28 Tempe Montessori in January 2024. The ALJ denied Plaintiff's request for reimbursement 1 of tuition and fees (\$5,757.00), private tutoring expenses (\$1,520.00), inclusion 2 consultation expenses (\$736.00), and transportation costs (\$3,044.29) incurred while 3 Student attended Tempe Montessori from January to May 2024.

(Doc. 1 at 69-70). 4 Plaintiff renews her request on appeal. The Court affirms the ALJ's denial of Plaintiff's 5 request for reimbursement. 6 Under the IDEA, parents can only receive reimbursement from a school district for 7 unilaterally placing their child in a private educational program if they can demonstrate 8 that (1) "the school district violated the IDEA" by failing to provide a FAPE and (2) "the 9 alternative private placement they chose was proper." *Redondo Beach Unified Sch.*

Dist., 10 56 F.4th at 647 (citing *C.B. ex rel. Baquerizo v. Garden Grove Unified Sch. Dist.*, 635 F.3d 11 1155, 1159 (9th Cir. 2011) and 20 U.S.C. § 1412(a)(10)(C)). An alternative placement is 12 considered "proper" under the IDEA "if the education provided by the private school is 13 reasonably calculated to enable the child to receive educational benefits." *Florence Cnty.*

14 *Sch. Dist. Four v. Carter ex rel. Carter*, 510 U.S. 7, 11 (1993) (internal quotation marks 15 and citation omitted). Parents must "demonstrate that the placement provide[d] 16 educational instruction specially designed to meet the unique needs" of their child. *Garden 17 Grove Unified*

Sch. Dist., 635 F.3d at 1159 (citation omitted). 18 If both requirements are met, then the Court “must exercise its broad discretion and 19 weigh equitable considerations to determine whether, and how much, reimbursement is 20 appropriate.” Id. (citation modified). “Relevant factors include the existence of more 21 suitable placements for the student and the parties’ level of cooperation during the IEP 22 process.” Redondo Beach Unified Sch.

Dist., 56 F.4th at 647 (citing Anchorage Sch. Dist. 23 v. M.P., 689 F.3d 1047, 1058-59 (9th Cir. 2012)). The Supreme Court has cautioned “that 24 parents who unilaterally change their child’s placement during the pendency of review 25 proceedings, without the consent of state or local school officials, do so at their own 26 financial risk.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 373- 27 74 (1985).

28 As the ALJ held, and now this Court has held, Defendant violated the IDEA by 1 denying Student a FAPE under the Modified IEP. The first requirement for reimbursement 2 is thus met. However, Plaintiff has not demonstrated on appeal, by a preponderance of the 3 evidence, that the placement at Tempe Montessori was “proper.” The ALJ, in denying 4 Plaintiff’s request for reimbursement, found that Plaintiff “did not submit any evidence of 5 the type of curriculum followed by the school and whether the curriculum was allowing 6 Student to make progress or would even be effective to allow Student to make progress.” 7 (Doc.

1 at 69). 8 Plaintiff fails to point to any evidence introduced at the hearing indicating what 9 “educational instruction” she received at Tempe Montessori that was “specially designed 10 to meet [her] unique needs.” See Garden Grove Unified Sch. Dist., 635 F.3d at 1159 11 (citation omitted). Instead, Plaintiff highlights the testimony of Mulholland, who believed 12 that Student’s placement at Tempe Montessori was appropriate and provided Student with 13 a FAPE.

(Doc. 22 at 13; IR 197 at 166:4-12). Parents retained Mulholland to conduct an 14 on-site observation at Tempe Montessori; at the visit, Mulholland observed that Student 15 was actively engaged, demonstrated a high level of executive functioning skills, and was 16 engaged with her peers. (IR 197 at 161:7-166:3). Mulholland testified that she believed 17 that Student made “phenomenal gains” in her phonics ability, yet later clarified that she 18 was “only [] making a guess that [Student] had made phenomenal gains” during her time 19 at Tempe Montessori.

(Id. at 130:10, 169:14-19). 20 Mulholland did not have personal knowledge of the specific type of curriculum 21 offered to Student at Tempe Montessori.¹⁰ She only knew that the Montessori school used 22 the “Montessori-based curriculum.” (Id. at 197:22). But such a conclusory statement, 23 without explaining the type of curriculum employed for Student, does not demonstrate that 24 Student actually received an educational instruction specially designed to meet her unique 25 needs.

26 No staff member from Tempe Montessori testified at the hearing. Nor did Student's 27 10 Nor did she have any personal knowledge of the curriculum utilized by Student's 28 private tutor outside of Tempe Montessori. (IR 197 at 192:5-9 (Mulholland confirmed that she "didn't have the chance to review any curriculum that the tutor was providing.")). 1 private tutor.

Nor did Plaintiff produce any documentary evidence listing Student's 2 curriculum. Plaintiff claims that there is no requirement for her to "'prove up' the specifics 3 of curricular interventions in a unilateral placement," and that mere evidence that "the 4 placement enable[d] [Student] to benefit educationally" is sufficient for a finding that the 5 placement is proper.

(Doc. 22 at 27). Plaintiff reads the law too loosely. While Plaintiff 6 "need not show that a private placement furnishe[d] every special service necessary to 7 maximize [her] potential," she must still demonstrate that "the placement provide[d] 8 educational instruction specially designed to meet [her] unique needs," such that she 9 benefitted from that instruction.

Garden Grove Unified Sch. Dist., 635 F.3d at 1159 10 (emphasis added and removed) (citation omitted). Plaintiff, while purporting to show the 11 benefit, fails to adequately link such benefit with the actual educational instruction 12 received.¹¹ And as Plaintiff describes, she was receiving private special education tutoring 13 in reading and math outside of Tempe Montessori, while also receiving OT, PT, and speech 14 therapy services through state programs.

(Doc. 22 at 12-13). 15 Even if the unilateral placement at Tempe Montessori was deemed "proper," the 16 Court, exercising its broad discretion, finds that reimbursement is still not appropriate here. 17 Two factors weigh heavily against Plaintiff here.

First, through the Settlement IEPs offered 18 by the District in December 2023 and January 2024, there was a suitable placement at 19 Zaharis that provided Student with a FAPE. After each of the resolution meetings, the 20 District subsequently adopted terms proposed by Mother and her attorney that, among other 21 items, increased Student's services in the general education setting, provided for PT and 22 OT services to work on Student's gross motor and fine motor skills, and added one hour 23 per day of personal care aide services in the general education classroom.

(IR 74 at 22- 24 11 Plaintiff cites to authority from the Sixth Circuit to support her claim that a showing 25 of progress, alone, is sufficient for reimbursement of a private placement at a Montessori program. (See Doc. 22 at 26 (citing *L.H. v. Hamilton Cnty. Dep't of Educ.*, 900 F.3d 779 26 (6th Cir. 2018))). But even in that case, the parties introduced evidence of the specific curriculum that the child received at the Montessori school.

Hamilton Cnty. Dep't of Educ., 27 900 F.3d at 787-88. The Sixth Circuit noted that "the record is clear that [student] had a personalized curriculum at [Montessori school] and a paraprofessional aide dedicated just 28 to him, such that he was working at his own pace with frequent repetition,

intense one-on-one instruction, and repeated prompting and reinforcement.” Id. at 797 (emphasis added).

1 30); see also 34 C.F.R. § 300.148(a) (a school district is not required to pay for student’s 2 private placement if it “made FAPE available to the child”). 3 Second, Plaintiff did not demonstrate a high level of cooperation during the 4 settlement process. During each of the resolution meetings, Plaintiff’s attorney required 5 that she be able to personally train District staff on inclusion, and that the District retain 6 Mulholland as a private inclusion specialist.

(IR 74 at 8-9). Such requests were not 7 reasonable under the IDEA, which does not require “the furnishing of every special service 8 necessary to maximize each handicapped child’s potential.” Bd. of Educ. of Hendrick 9 Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 199 (1982); see also KW v. Peninsula 10 Sch. Dist., 2025 WL 1592450, at *17 (W.D. Wash. June 5, 2025) (“Although Parent may 11 have preferred District staff receive different training, the IDEA does not obligate a school 12 district to adopt a parent’s preferred method for implementing their child’s educational 13 program.”).

Plaintiff also did not respond to either of the District’s Settlement IEP offers. 14 (IR 74 at 10). Through better cooperation, Plaintiff could have negotiated a better outcome 15 with Defendant, potentially obviating the need for Student’s placement at Tempe 16 Montessori.

The Court thus will not grant Plaintiff’s request for reimbursement. 17 CONCLUSION 18 The ALJ erred by failing to analyze three issues raised by Plaintiff, thus impeding 19 Plaintiff’s right to an impartial due process hearing under the IDEA. 20 U.S.C. § 1415(f). 20 The ALJ’s decision is thus reversed and modified with respect to those three issues.

The 21 ALJ’s decision to deny reimbursement for Student’s unilateral placement at Tempe 22 Montessori, however, is affirmed. 23 IT IS THEREFORE ORDERED that the ALJ’s decision is AFFIRMED in part 24 and REVERSED in part. 25 IT IS FURTHER ORDERED setting forth the following briefing schedule on the 26 issue of remedies: 27 1. Plaintiff shall file her supplemental brief on remedies by April 14, 2026.

In her 28 brief, which is not to exceed eight (8) pages, Plaintiff is directed to: 1 a. Identify her desired summer camp for summer 2026, provide the cost of 2 the camp, and justify why two full weeks (rather than a shorter period, 3 such as one full week) of a reimbursed program is appropriate; 4 b. Identify the credentialed teacher of her choice that will provide reading 5 tutoring, provide the tutor’s hourly rate, and justify why 20 hours (as 6 opposed to some other figure) of compensatory relief is appropriate; 7 c. Identify with particularity the PT and OT services actually provided to 8 her at Zaharis, as detailed in Student’s Exhibit 78; and 9 d. Address whether she is the “prevailing party” in this action, such that 10 attorney’s fees should be awarded.

11 2. Defendant shall file its response to Plaintiffs brief on April 28, 2026. 12 Defendant's
response shall not exceed eight (8) pages. 13 3. No reply shall be permitted. 14 Dated this 30th
day of March, 2026. 17 Senior United States District Judge 18 19 20 21 22 23 24 25 26 27 28 -25-