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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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<p>Rogich et al,</p> <p style="text-align: center;">v.</p> <p>Clark County School District,</p>	<p>Plaintiffs,</p>  <p>Defendant.</p>
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Case No. 2:17-cv-01541-RFB-NJK

ORDER

**I. INTRODUCTION**

Before the Court is Plaintiffs’ Motion for Judgment on the Administrative Record, as Supplemented (ECF No. 58) and Defendant’s Motion for Summary Judgment (ECF No. 59).

**II. PROCEDURAL BACKGROUND**

This is an appeal from the March 8, 2017, Decision on Appeal by the Nevada State Review Officer (“SRO”) which reversed the November 14, 2016, decision of the Independent Hearing Officer (“IHO”) in which the IHO determined that Plaintiffs had demonstrated Defendant’s failure to provide a free appropriate public education (“FAPE”) to O.R. as evidenced by the inadequacy of the 2014 and 2016 Individualized Educational Programs (“IEP”), and that Plaintiffs were therefore entitled to tuition and transportation reimbursement for June 2014 and the 2014-2015, 2015-2016, and 2016-2017 school years. ECF No. 1 at 1-2.

Plaintiffs filed the complaint in this Court on June 6, 2017 appealing the decision of the SRO and additionally asserting violations of Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act. ECF No. 1. Defendant filed a Motion to Dismiss Counts II and III of the Complaint on June 26, 2017. ECF No. 8. Plaintiffs responded on July 10, 2017;

1 Defendant replied on July 17, 2017. ECF Nos. 10, 11.

2 On January 22, 2018, Plaintiffs filed a Motion for Judgment on the Administrative Record,  
3 moving the Court to reverse the decision of the SRO. ECF No. 19. Defendant responded and filed  
4 a Cross-Motion for Summary Judgment on February 26, 2018. ECF No. 31. Plaintiffs replied and  
5 opposed the cross-motion on March 12, 2018. ECF No. 34. Defendant filed a reply to Plaintiff's  
6 opposition to the cross-motion on March 26, 2018. ECF No. 38.

7 Also on January 22, 2018, Plaintiffs filed a Motion for Summary Judgment on Counts II  
8 and III of the Complaint. Defendant responded and filed a Cross-Motion for Summary Judgment  
9 on Counts II and III of the Complaint on February 26, 2018. ECF No. 32. Plaintiffs replied and  
10 opposed the cross-motion on March 12, 2018. ECF No. 35. Defendant filed a reply to Plaintiff's  
11 opposition to the cross-motion on March 26, 2018. ECF No. 37.

12 The Court denied the Motion to Dismiss on March 31, 2018. ECF No. 39.

13 A hearing on Plaintiffs' Motions for Judgment on the Administrative Record and for  
14 Summary Judgment was held on August 29, 2018. ECF No. 44. At the hearing, the Court ordered  
15 that Defendant file a supplement to the argument raised at the hearing by August 31, 2018, while  
16 Plaintiffs were to file a supplement to their motions two weeks after. ECF No. 44. The Court also  
17 ordered expert testimony regarding the Orton-Gillingham methodology. *Id.* Defendant filed its  
18 Supplemental Response in support of its cross-motions for summary judgment and in accordance  
19 with the Court's order on August 31, 2018. ECF No. 45. Defendant file an Errata to its  
20 Supplemental Response on September 6, 2018. ECF No. 46. Plaintiffs filed a reply to the Errata  
21 on September 20, 2018. ECF No. 50.

22 On September 23, 2018, the Court denied Plaintiff's Motions for Judgment on the  
23 Administrative Record and Motion for Summary Judgment on Counts II and III without prejudice,  
24 permitting the parties to refile the motions after the forthcoming evidentiary hearing. ECF No. 51.

25 On February 12, 2019, the evidentiary hearing was held, at which Drs. Kelli Sandman-  
26 Hurley and Catherine M. Scott testified. ECF No. 56.

27 Plaintiffs filed the instant motion on March 19, 2019. ECF No. 58. Defendant responded  
28 on April 2, 2019, then filed an Errata to its response on April 12, 2019. ECF Nos. 64, 65. Plaintiffs

1 replied on April 16, 2019. ECF No. 66.

2 Defendant filed the instant motion on March 19, 2019. ECF No. 59. Defendant then filed  
3 an Errata to its motion on March 22, 2019. ECF No. 60. Plaintiffs responded on April 2, 2019.  
4 ECF No. 63. Defendant replied on April 16, 2019. ECF No. 67.

### 5 6 **III. FACTUAL FINDINGS**

7 The Court finds the following factual findings based upon the record. O.R. presents with a  
8 history of hydrocephalus at birth and multiple developmental delays. Her diagnosed learning  
9 disabilities include “Executive Function Deficit; Attention Deficit Hyperactivity Disorder;  
10 Developmental Dyslexia; Developmental Mathematics Disorder; a Nonverbal Learning Disorder;  
11 Generalized Anxiety Disorder; Dysthymic Disorder; and Mixed Receptive-Expressive Language  
12 Disorder.

13 A multidisciplinary team (“MDT”) within the Clark County School District (the “District”)  
14 initially evaluated O.R. on December 19, 2007 when she was five years old, classified her under  
15 the category of “Other Health Impairment,” and recommended she attend the ECSE preschool self-  
16 contained program for the remainder of the 2007-2008 school year. Id. O.R. was withdrawn from  
17 District programming in April 2008.

18 O.R. was evaluated by Pettigru Counseling Associates in December 2009 and 2013.

19 O.R. attended Adelson Educational Campus through the spring of 2014 and the Prentice  
20 School in October 2013. Both are private schools.

21 In January 2014, O.R.’s parents requested that the District reevaluate O.R. for eligibility  
22 for special education in a District program. The MDT conducted an evaluation and prepared a  
23 report on March 11, 2014. Plaintiffs provided the two Pettigru evaluations and reports for the  
24 evaluation.

25 The parties met for an Eligibility/IEP meeting on March 11, 2014. The MDT concluded  
26 that it did not have enough data from O.R.’s current school to determine whether she might also  
27 be eligible for special education and related services under the category of “Specific Learning  
28 Disability.” The MDT concluded that O.R. was eligible under the category of “Other Health

1 Impairment” on the basis of her hydrocephalus diagnosis. With regard to the accommodations and  
2 modifications to be provided to O.R., the 2014 IEP included, *inter alia*, the instruction that a  
3 “multisensory approach to teaching” was to be used throughout the school day. Plaintiffs disagreed  
4 with the 2014 IEP and placed O.R. at Adelson Educational Campus, with intent to seek  
5 reimbursement.

6 O.R. was evaluated by Dr. Daniel DaSilva of the Morris Psychological Group of New  
7 Jersey, who prepared a neuropsychological report for the District’s consideration in August 2015.

8 Plaintiffs contacted the District again while O.R. was at Adelson in the spring of 2016.  
9 There were two meetings in May 2016 to develop the 2016 IEP. On May 12, 2016, Plaintiffs  
10 informed the District they would continue to place O.R. at Eagle Hill, a private school, for  
11 Extended School Year and Adelson for the 2016-2017 school year unless the District proposed an  
12 appropriate program within ten business days. On May 27, 2016, Plaintiffs filed a request for a  
13 Due Process Hearing. The IEP was completed on June 8, 2016. With regard to accommodations  
14 and modifications to be provided to O.R., the 2016 IEP included, *inter alia*, “multisensory  
15 instruction that will incorporate the simultaneous use of two or more sensory pathways” during  
16 teacher presentations and student practice in Special Education classes.

17 Neither the 2014 nor 2016 IEP identified a specific methodology or program or structured  
18 curriculum format that teachers were obligated to utilize in meeting O.R.’s unique needs.

19 **a. Disputed Facts**

20 The parties dispute whether the 2014 MDT and IEP team had sufficient information to  
21 classify O.R. as having a Specific Learning Disability, and not only as having “Other Health  
22 Impairment.” Plaintiffs contend that the Pettigru evaluations established that O.R. exhibited “an  
23 unusual pattern of weaknesses in performance relative to her age and her intellectual  
24 development.” ECF No. 58 at 18. The teams should have employed an alternative method available  
25 under the Nevada Administrative Code of determining O.R.’s eligibility for Specific Learning  
26 Disability, rather than rely on the “Response to Intervention” approach (“RTI”), for which the  
27 teams claimed they did not have enough data to complete. Defendant counters that the District has  
28 employed the RTI approach exclusively since 2007 and did not have the required data from O.R.’s

1 private school to employ that approach to determine whether O.R. had a “Specific Learning  
2 Disability.”

3 Relatedly, the parties also dispute whether the IEP teams reviewed the Pettigru and DaSilva  
4 evaluations. Plaintiffs assert that the IHO’s findings that the District’s witnesses were not credible  
5 undermines their testimony that they reviewed the evaluations. By contrast, Defendant states that  
6 the SRO correctly concluded that these witnesses were credible and therefore their testimony that  
7 they considered the evaluations establishes that they did so.

8 Finally, the parties dispute whether the 2014 and 2016 IEPs included the components of  
9 the Orton-Gillingham approach.

#### 11 **IV. LEGAL STANDARD**

##### 12 **A. Judicial Review under IDEA**

13 “In an action challenging an administrative decision, the IDEA provides that ‘the court  
14 shall receive the records of the administrative proceedings, shall hear additional evidence at the  
15 request of a party, and, basing its decision on the preponderance of the evidence, shall grant such  
16 relief as the court determines is appropriate.’” Ojai Unified Sch. Dist. v. Jackson, 4 F.3d 1467,  
17 1471 (9th Cir. 1993) (quoting 20 U.S.C.A. § 1415(e)(2)). “Thus, judicial review in IDEA cases  
18 differs substantially from judicial review of other agency actions, in which courts generally are  
19 confined to the administrative record and are held to a highly deferential standard of review.” Id.  
20 (citations omitted). “Nevertheless, when reviewing state administrative decisions, courts must give  
21 due weight to judgments of education policy.” Id. at 1472 (internal quotations and citation  
22 omitted). “Therefore, the IDEA does not empower courts to substitute their own notions of sound  
23 educational policy for those of the school authorities which they review.” (internal quotations and  
24 citation omitted). “How *much* deference to give state educational agencies, however, is a matter  
25 for the discretion of the courts.” Id. (quoting Gregory K. v. Longview Sch. Dist., 811 F.2d 1307,  
26 1311 (9th Cir.1987)). “We can accord some deference to the ALJ’s factual findings, but only where  
27 they are “thorough and careful . . . .” M.C. by & through M.N. v. Antelope Valley Union High  
28 Sch. Dist., 858 F.3d 1189, 1194 (9th Cir. 2017).

1            “[I]n most situations, due weight must be given to the final decision of the state  
2 authorities,” which in a two-tiered system is that of the SRO. Amanda J. ex rel. Annette J. v. Clark  
3 Cty. Sch. Dist., 267 F.3d 877, 888 (9th Cir. 2001) (citations omitted). But “when an SRO overturns  
4 the credibility determinations of an IHO, due weight to the decision of the SRO is not warranted.”  
5 Id. at 888. Thus, “in a two-tiered state administrative system due weight should be accorded to the  
6 final state determination—that of the SRO—unless the SRO's decision deviates from the  
7 credibility determination of a witness whom only the HO observed testify.” Id. at 889.

## 8            **B. Motion for Summary Judgment**

9            Summary judgment is appropriate when the pleadings, depositions, answers to  
10 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no  
11 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”  
12 Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

13            When considering the propriety of summary judgment, the court views all facts and draws  
14 all inferences in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim,  
15 747 F.3d 789, 793 (9th Cir. 2014).

16            If the movant has carried its burden, the non-moving party “must do more than simply  
17 show that there is some metaphysical doubt as to the material facts . . . . Where the record taken  
18 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine  
19 issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation  
20 marks omitted).

## 21            **V. DISCUSSION**

### 22            **A. IDEA Violation**

#### 23            **1. Legal Standard**

24            The Individuals with Disabilities Education Act (“IDEA”) guarantees children with  
25 disabilities a free appropriate public education (“FAPE”). M.C., 858 F.3d at 1193 (citing 20 U.S.C.  
26 § 1400(d)(1)(A)). A FAPE is defined by the statute as special education and related services that  
27 “(a) have been provided at public expense, under public supervision and direction, and without  
28

1 charge; (b) meet the standards of the State educational agency; (c) include an appropriate  
2 preschool, elementary school, or secondary school education in the State involved; and (d) are  
3 provided in conformity with the individualized education program required under section 1414(d)  
4 of [the statute].” 20 U.S.C. § 1401. “A FAPE must be tailored to the unique needs of the  
5 handicapped child by means of an individualized educational program (IEP).” M.C., 858 F.3d at  
6 1194.

7 An IEP means a written statement for each child with a disability that is developed,  
8 reviewed, and revised in accordance with 20 U.S.C.A. § 1414. That includes, *inter alia*—

9  
10 (I) a statement of the child's present levels of academic achievement and functional  
11 performance, including— (aa) how the child's disability affects the child's involvement  
12 and progress in the general education curriculum; (bb) for preschool children, as  
13 appropriate, how the disability affects the child's participation in appropriate activities; and  
14 (cc) for children with disabilities who take alternate assessments aligned to alternate  
15 achievement standards, a description of benchmarks or short-term objectives;

16  
17 (II) a statement of measurable annual goals, including academic and functional  
18 goals, designed to—(aa) meet the child's needs that result from the child's disability to  
19 enable the child to be involved in and make progress in the general education curriculum;  
20 and (bb) meet each of the child's other educational needs that result from the child's  
21 disability . . .

22  
23 (IV) a statement of the special education and related services and supplementary  
24 aids and services, based on peer-reviewed research to the extent practicable, to be provided  
25 to the child, or on behalf of the child, and a statement of the program modifications or  
26 supports for school personnel that will be provided for the child—(aa) to advance  
27 appropriately toward attaining the annual goals; (bb) to be involved in and make progress  
28 in the general education curriculum in accordance with subclause (I) and to participate in  
extracurricular and other nonacademic activities; and (cc) to be educated and participate  
with other children with disabilities and nondisabled children in the activities described in  
this subparagraph . . . .

20 U.S.C.A. § 1414.

“When formulating an IEP, a school district must comply both procedurally and  
substantively with the IDEA, so that the process will be informed not only by the expertise of  
school officials, but also by the input of the child’s parents or guardians.” M.C., 858 F.3d at 1194.  
“[A court] must determine first whether ‘the State complied with the procedures set forth in the  
Act’ and, second, whether ‘the individualized educational program developed through the Act's

1 procedures [was] reasonably calculated to enable the child to receive educational benefits.”  
2 Amanda J., 267 F.3d at 890 (quoting Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982)).  
3 “If these requirements are met, the State has complied with the obligations imposed by Congress  
4 and the courts can require no more.” Id.

5 “20 U.S.C. § 1415 enumerates the procedural safeguards of the IDEA, the importance of  
6 which ‘cannot be gainsaid.’” Amanda J., 267 F.3d at 891 (quoting Rowley, 458 U.S. at 205).  
7 “Procedural compliance is essential to ensuring that every eligible child receives a FAPE, and  
8 those procedures which provide for meaningful parent participation are particularly important.”  
9 Id. Violation of the procedural requirements may constitute the denial of a FAPE, but mere  
10 technical procedural violations “will not render an IEP invalid.” Id. at 892 (internal quotations and  
11 citation omitted). However, “procedural inadequacies that result in the loss of educational  
12 opportunity, or seriously infringe the parents' opportunity to participate in the IEP formulation  
13 process, or that caused a deprivation of educational benefits, clearly result in the denial of a FAPE.”  
14 Id. (internal quotations and citations omitted); see also 20 U.S.C. § 1415(f)(3)(E)(ii) (2005) (stating  
15 that procedural violations may only lead to finding that a child did not receive a FAPE if they: “(I)  
16 impeded the child’s right to a free appropriate public education; (II) significantly impeded the  
17 parents’ opportunity to participate in the decisionmaking process regarding the provision of a free  
18 appropriate public education to the parents’ child; or (III) caused a deprivation of educational  
19 benefits.”)

20 Substantively, “[i]n order for [a child] to have received a FAPE, the IEP must have (1)  
21 addresse[d] [their] unique needs, (2) provide[d] adequate support services so [that they] can take  
22 advantage of the educational opportunities, and (3) [been] in accord with the individualized  
23 education program.” M.C., 858 F.3d at 1200 (internal quotations and citations omitted).

## 24 **2. Discussion**

### 25 *a. SRO Decision*

26 The SRO concluded that the IHO erred because she “ignored relevant and persuasive  
27 testimony and evidence from the District, placed undue weight on the one witness presented by  
28 the appellees at the hearing, misapplied the law governing the District’s duty to provide FAPE,



1 determined the private schools were appropriate based on scant evidence, reached beyond the  
2 notices issues in her decision, and demonstrated little knowledge of the IDEA . . . .” Ex. 1 at 18,  
3 ECF No. 1-2. Specifically, the SRO found, *inter alia*, that with regard to asserted IDEA procedural  
4 violations by the District, the IHO erred in concluding that the IEP team did not meaningfully  
5 consider the evaluations provided by Plaintiffs, thereby impeding Plaintiffs’ ability to  
6 meaningfully participate in the development of the IEP. *Id.* at 23-35. Regarding substantive  
7 violations of the IDEA, the SRO determined that the IHO had erred in concluding that the IEPs  
8 required the inclusion of the Orton-Gillingham methodology or similar program in order to meet  
9 O.R.’s needs. *Id.* at 35-45. Finally, the SRO found that the IHO had erred in excluding the  
10 testimony of two District witnesses, *id.* at 52, and failed to apply the burden of proof when  
11 determining whether O.R.’s placement in private school was appropriate, *id.* at 54.

12 While the parties make several arguments, the primary dispute at the center of this action  
13 is whether the IEP team was required to include the Orton-Gillingham methodology, or a similar  
14 program, in O.R.’s IEP. Plaintiffs contend that O.R.’s “unique needs” require the inclusion of a  
15 program, while Defendant counters that the underlying components were included in the IEP, but  
16 that the IEP team was not obligated to name a specific methodology.

17 Plaintiffs argue, *inter alia*, that the SRO erred when she rejected the IHO’s credibility  
18 determinations to find that the IEP teams meaningfully considered the evaluations provided by  
19 Plaintiffs and did not predetermine that they would not include a methodology in the IEPs. ECF  
20 No. 58 at 21. Defendant counters that the SRO did not err in overruling the IHO’s credibility  
21 determinations because the determinations were not supported by the documentary evidence, the  
22 qualifications of Plaintiffs’ expert, or the applicable statutory requirements. ECF No. 65 at 10-11.

23 The IHO made a number of credibility determinations to reject the assertions made by  
24 Defendant’s witnesses, who included members of the MDT and IEP teams as well as those who  
25 oversaw them, that they had considered the evaluations. *See* Ex. 2 at 9-15, ECF No. 1-3. In  
26 particular, the IHO found that the evaluations plainly indicated that O.R.’s unique needs mandated  
27 the inclusion of a specific methodology, and because the IEPs only included “multisensory”  
28 instruction, the IEP teams could not have meaningfully considered the evaluations or Plaintiffs’

1 concern in accordance with their procedural obligations under the IDEA. In overturning the IHO’s  
2 findings that the MDT and IEP teams did not meaningfully consider the evaluations provided by  
3 Plaintiffs, the SRO rejected the IHO’s credibility determinations, finding that the testimony of the  
4 witnesses that they had considered the evaluations, coupled with the inclusion of “multisensory  
5 instruction” in the IEPs, along with the similarity between the MDT report and the independent  
6 evaluations, made it clear the IEP teams had indeed considered the evaluations as required.

7 *b. The District Violated the IDEA*

8 The Court finds that the District violated the IDEA both substantively and procedurally  
9 with respect to O.R.

10 The Court does not defer to the SRO’s determination that the IEP teams considered the  
11 evaluations provided by Plaintiffs, because in reaching that decision, the IHO necessarily  
12 “overturn[ed] the credibility determinations” of the IHO. Amanda J., 267 F.3d at 888. Among the  
13 procedural obligations required by the IDEA is the requirement that the IEP team “review existing  
14 evaluation data on the child, including . . . evaluations and information provided by the parents of  
15 the child. . . .” 20 U.S.C.A. § 1414(c)(1)(A)(i). Another procedural obligation in developing the  
16 IEP is the requirement that the IEP team “consider . . . the concerns of the parents for enhancing  
17 the education of their child . . . .” Id. at § (d)(3)(A)(ii).

18 First, the Court finds that the IHO properly concluded that the IEP teams did not adequately  
19 review the evaluations provided by Plaintiffs nor meaningfully consider Plaintiffs’ concerns for  
20 enhancing the education of their child. The record clearly indicates that during the development of  
21 both IEPs, Plaintiffs were not provided information regarding *any* programs provided by the  
22 District that would adequately address O.R.’s unique needs. This lack of basic and essential  
23 communication represents a procedural failure of the District apart from the identification of any  
24 particular teaching methodology. Specifically, in light of the recommendations cited in the  
25 evaluations, Defendant failed to consider “the concerns of the parents” by refusing to discuss with  
26 them during development of the IEP the types of programming provided by the District that had  
27 the capacity to address O.R.’s unique needs. O.R.’s parents had presented compelling professional  
28 evidence that was unrefuted or challenged by the District which established that O.R. required a

1 teaching methodology with particular facets. The District failed to provide any response to the  
2 specific needs of O.R. except to essentially say to the parents—trust us to provide her with what  
3 she needs. This is not sufficient.

4 The District ignored the central findings and recommendations of the professional  
5 evaluations of O.R. The evaluations did not only call for multisensory instruction. Rather, they  
6 stressed the importance of the delivery mechanism by which O.R. would receive that instruction.  
7 The 2009 Pettigru evaluation stated, “Methodology will be a key factor in improving [O.R.’s]  
8 academic standing. [O.R.] will respond best to instructional programs that provide simultaneous,  
9 multisensory instruction (VAKT), and are also systematic and cumulative.” Ex. J-12 at 22, ECF  
10 No. 18. The 2013 Pettigru evaluation repeats this instruction verbatim, and additionally states that,  
11 “Unless [O.R.] has multimodality teaching, i.e., a combination of visual, auditory, tactile, and  
12 kinesthetic stimuli, she will most likely have difficulty in academic settings, especially as the  
13 academic tasks become more abstract.” Ex. J-13 at 6, ECF No. 18. Dr. DaSilva’s report states that  
14 “[O.R.] will continue to require intensive multimodal, research-based learning programs for  
15 reading comprehension and math.” Ex. J-15 at 20, ECF No. 18. Dr. DaSilva elaborated on this  
16 recommendation in his testimony before the IHO. In response to the question as to whether it  
17 matters how the multisensory or multimodality approach is implemented, he testified that it did,  
18 that “it should be a program approach . . . there should be a methodology to it. There should be a  
19 philosophy to it and one that is applied with really rigorous consistency.” Tr., Vol. III at 533:10-  
20 14, Due Process Hearings, ECF No. 18. Dr. DaSilva went on to illustrate that the provision of  
21 multiple methodologies throughout the day can result in confusion for a child, *id.* at 534:1-7, and  
22 that it is therefore important to ensure “the techniques are being used with consistency and fidelity  
23 throughout the day,” *id.* at 534:8-10.

24 Thus, it is evident from the undisputed evaluations, which stress the importance of  
25 “methodology” and the use of “research-based learning programs,” that the IEP team failed to  
26 consider the evaluations in any meaningful way. The Court is not persuaded by the SRO’s finding  
27 that the documentary evidence independently supports a determination that the IEP teams  
28 considered the evaluations because they included components of Orton-Gillingham by including

1 the provision of “multisensory instruction.” As discussed *supra*, the issue is not only the *type* of  
2 instruction but the way in which it is delivered. The professional evaluations made clear that  
3 whatever methodology used must be one directed to O.R.’s specific deficits and must be  
4 consistently and faithfully implemented. The switching of methodologies or mixing of  
5 methodologies, even if they were VAKT, would not benefit O.R. and could impede or negatively  
6 affect her educational development. While defendants are not generally required to include a  
7 methodology in the IEP, the District’s own Procedures Manual makes plain that “in rare  
8 circumstances, a student’s individual needs may require a certain methodology if the IEP team  
9 determines that it would be necessary for the student to receive FAPE.” Ex. P-44 at 123, Due  
10 Process Hearing—Petitioner’s Exhibits, ECF No. 18. Had the IEP team considered these  
11 evaluations and their recommendations as required, they would have recognized that this was one  
12 of those “rare circumstances.” Similarly, the IEP teams failed to consider Plaintiffs’ concerns, as  
13 the IEP teams failed to respond to their inquiries about which programs, if not Orton-Gillingham,  
14 the District was able to provide that would address O.R.’s unique needs. See Tr., Vol. IV at 711:21-  
15 23 (rejecting Defendant’s attempt to call a witness who would testify as to the particular programs  
16 offered by the District because the Court “d[idn’t] have any testimony that any programs were  
17 explained to the parents during the IEP meetings or at any time). Consequently, Defendant violated  
18 its procedural obligations under the IDEA.

19 Second, and relatedly, the Court finds that the District substantively violated the IDEA.  
20 For the reasons already stated regarding the District’s procedural violation, and as the record and  
21 the evaluations make clear, O.R. required a specific methodology in order to receive a FAPE. This  
22 is not to say that she necessarily required the Orton-Gillingham methodology, but she did require  
23 an equivalent methodology that was a) research-based, b) systemic, c) cumulative, and d)  
24 rigorously implemented. The Court finds that the District did not even have any program  
25 equivalent to Orton-Gillingham in terms of offering a multimodal teaching methodology. Thus,  
26 Defendant’s alleged representation about a “multisensory” program in the IEP was illusory as the  
27 District had no such program or methodology. The District did not even have the requisite  
28 knowledge, in terms of MDT, to properly identify or create a program. The record supports the

1 IHO's determination that no District personnel had requisite knowledge of Orton-Gillingham to  
2 determine whether their recommended IEP incorporated its specific tenets. Moreover, using only  
3 some of the specific methods in Orton-Gillingham and mixing them with other methods is  
4 precisely the type of mixing of methodologies that the Pettigru evaluation indicated would confuse  
5 and impede O.R. in her educational development.

6 It is evident that these procedural and substantive violations resulted in the denial of a  
7 FAPE. Not only did they "seriously infringe the parents' opportunity to participate in the IEP  
8 formulation process," but they also resulted in the loss of educational opportunity for O.R. As  
9 made plain by the evaluations and their recommendations, O.R. cannot learn without a consistent  
10 and structured approach to multisensory instruction throughout the school day. Failing to identify  
11 a methodology that would ensure that the *same* approach is consistently utilized throughout the  
12 day by *all* of O.R.'s instructors necessarily means that O.R. will not have the opportunity to learn  
13 as she needs to.

14 The Court grants Plaintiffs' Motion for Judgment on the Administrative Record and denies  
15 Defendant's Motion for Summary Judgment as to Count I.

16 **B. Section 504 of the Rehabilitation Act**

17 Section 504 of the Rehabilitation Act states, *inter alia*, that "No otherwise qualified  
18 individual with a disability in the United States . . . shall, solely by reason of her or his disability,  
19 be excluded from the participation in, be denied the benefits of, or be subjected to discrimination  
20 under any program or activity receiving Federal financial assistance . . . ." 29 U.S.C. § 794 (2016).  
21 "Like the IDEA, section 504 applies to public schools that receive federal financial assistance."  
22 A.G. v. Paradise Valley Unified Sch. Dist. No. 69, 815 F.3d 1195, 1203 (9th Cir. 2016) (citing 29  
23 U.S.C. § 794(b)(2)(B)). Section 504 requires federal agencies to promulgate regulations to carry  
24 out its purpose. 29 U.S.C. § 794(a). The regulation governing public education is 34 C.F.R. §  
25 104.33, which states that, "A recipient that operates a public elementary or secondary education  
26 program or activity shall provide a free appropriate public education to each qualified handicapped  
27 person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's  
28 handicap."

1 “Section 504 establishes an implied private right of action allowing victims of prohibited  
2 discrimination, exclusion, or denial of benefits to seek the full panoply of remedies, including  
3 equitable relief and [compensatory] damages.” Mark H. v. Lemahieu, 513 F.3d 922, 930 (9th Cir.  
4 2008) (internal quotation and citation omitted).

5 “A plaintiff bringing suit under section 504 or Title II of the ADA must show: (1) she is a  
6 qualified individual with a disability; (2) she was denied ‘a reasonable accommodation that [she]  
7 needs in order to enjoy meaningful access to the benefits of public services;’ and (3) the program  
8 providing the benefit receives federal financial assistance. A.G., 815 F.3d at 1204 (citing Mark H.  
9 v. Hamamoto, 620 F.3d 1090, 1097 (9th Cir. 2010)). “Reasonable accommodation does not require  
10 an organization to make fundamental or substantial alterations to its programs. Reasonableness  
11 depends on the individual circumstances of each case, and requires a fact-specific, individualized  
12 analysis of the disabled individual's circumstances and the accommodations that might allow him  
13 to enjoy meaningful access to the program. An accommodation is reasonable if it is reasonable on  
14 its face, i.e., ordinarily or in the run of cases. Mere speculation that a suggested accommodation is  
15 not feasible falls short of the reasonable accommodation requirement; the Rehabilitation Act  
16 creates a duty to gather sufficient information from the disabled individual and qualified experts  
17 as needed to determine what accommodations are necessary.” Mark H., 620 F.3d at 1098 (internal  
18 quotations and citations omitted) (alterations omitted).

19 A plaintiff must also prove a mens rea of intentional discrimination, which may be met by  
20 showing deliberate indifference. A.G., 815 F.3d at 1204 (citing Lemahieu, 513 F.3d at 938). Under  
21 Ninth Circuit case law, “[d]eliberate indifference requires both knowledge that a harm to a  
22 federally protected right is substantially likely, and a failure to act upon that . . . likelihood.” Id.  
23 (internal quotation and citation omitted). “The plaintiff establishes the requisite knowledge (or  
24 notice) on behalf of the defendant when she shows that she alerted the public entity to [her] need  
25 for accommodation (or where the need for accommodation is obvious, or required by statute or  
26 regulation).” Id. (internal quotation and citation omitted). “Thus, a public entity can be liable for  
27 damages under § 504 if it intentionally or with deliberate indifference fails to provide meaningful  
28 access or reasonable accommodation to disabled persons.” Id. (citing Lemahieu, 513 F.3d at 938).

1 Plaintiffs assert that Defendant’s refusal to include Orton-Gillingham or a similar  
2 structured literacy program in the IEPs, despite being on notice that O.R. needed that  
3 programming, constituted denial of a reasonable accommodation necessary for O.R. to receive the  
4 benefit of a public education. ECF No. 58 at 25. Testimony at the evidentiary hearing established  
5 that the cost of training teachers in the method is minimal and that Orton-Gillingham is efficacious;  
6 therefore, it is reasonable. Id. Plaintiffs also argue that the findings of the IHO make clear that  
7 Defendant teachers did not demonstrate a working knowledge of the Orton-Gillingham method  
8 and that O.R. needed Orton-Gillingham or a similar method. Id. at 27. Refusal to investigate the  
9 feasibility of providing Orton-Gillingham in light of explicit notice that O.R. required it amounted  
10 to deliberate indifference. Id. at 27-8.

11 Defendant counters that its compliance with the IDEA means it has also satisfied the  
12 requirements of Section 504 and Title II of the ADA. ECF No. 65 at 11. Furthermore, they contend  
13 the record does not establish deliberate indifference for failure to include Orton-Gillingham or  
14 similar programming, because evidence available to the IEP teams at the time indicated the  
15 provision of these programs was not a reasonable accommodation, since research was not settled  
16 on the efficacy of Orton-Gillingham. Id. (citing Inst. Of Educ. Sciences, What Works  
17 Clearinghouse, Orton-Gillingham-based Strategies (Unbranded) (July 2010),  
18 [https://ies.ed.gov/ncee/wwc/Docs/InterventionReports/wwc\\_ortongill\\_070110.pdf](https://ies.ed.gov/ncee/wwc/Docs/InterventionReports/wwc_ortongill_070110.pdf)).

19 The parties do not dispute that O.R. is a qualified individual with a disability or that the  
20 District receives federal financial assistance. The Court’s analysis above regarding the IDEA claim  
21 illustrates that O.R. needed a methodology in order to “enjoy meaningful access” to a public school  
22 education.

23 The Court finds that the record establishes that failure to offer the Orton-Gillingham  
24 methodology or an equivalent methodology was unreasonable. The testimony at the evidentiary  
25 hearing established that training in the Orton-Gillingham method requires one week of full training  
26 at a cost of between \$1,500 and \$2,000, after which the trainee must complete a practicum of  
27 thirty-six to sixty hours of supervised one-on-one time with a student at an additional cost, that  
28 may be completed up to a year after the training. ECF No. 57 at 31-33. The Court finds that the

1 cost and time required for this training does not constitute a “fundamental or substantial alteration”  
2 to Defendant’s programming.<sup>1</sup> Moreover, as to the efficacy of Orton-Gillingham, the Court finds  
3 that Defendant’s own expert acknowledged that Orton-Gillingham and Lindamood-Bell, another  
4 program indicated for students with dyslexia, are accepted methodologies for addressing issues of  
5 dyslexia. The Court further finds that the record establishes that Orton-Gillingham came into  
6 practice in the 1950’s and has been successfully implemented throughout the United States. The  
7 record further establishes that this training and the associated methodologies would have benefited  
8 many other students, including those with dyslexia, and could have been easily disseminated  
9 throughout the District using “train the trainer” sessions.

10 Finally, the Court finds that the record establishes Defendant’s deliberate indifference.  
11 Plaintiffs notified Defendant of O.R.’s need for the identification and implementation of a  
12 methodology, and Defendant failed to act despite knowing that O.R. would be deprived of  
13 educational opportunity without adequate programming. The IHO found in part that Defendant’s  
14 witnesses “did not demonstrate a working knowledge of the Orton-Gillingham Method,” and  
15 therefore could not have adequately ensured that the IEPs contained components of the program.  
16 ECF No. 1-3 at 14. The Court has already indicated, *supra*, that it finds this conclusion to be  
17 supported by the record in this case. Moreover, as the Court has already noted, O.R. required more  
18 than mere components. She required the implementation of consistent programming throughout  
19 the day. The IEP teams’ failure to recognize this, despite having notice in the form of  
20 recommendations provided in the evaluations and discussion with O.R.’s parents, demonstrates  
21 deliberate indifference. The record therefore establishes that Defendant violated Section 504 of the  
22 Rehabilitation Act.

23 Accordingly, the Court grants Plaintiffs’ Motion for Judgment on the Administrative  
24 Record and denies Defendant’s Motion for Summary Judgment as to Count II.

### 25 **C. Title II of the ADA**

26 \_\_\_\_\_  
27 <sup>1</sup> Indeed, it appears that the District found it appropriate to provide such training in the context of  
28 this litigation, possibly to avoid a negative outcome. ECF No. 57 at 58:1-19. It appears to have  
done so timely. This further supports the Court’s finding of the reasonableness of the  
accommodation.



1           “Title II of the ADA, the title applicable to public services, provides that ‘no qualified  
2 individual with a disability shall, by reason of such disability, be excluded from participation in or  
3 be denied the benefits of the services, programs, or activities of a public entity, *or be subjected to*  
4 *discrimination by any such entity,*’ and requires that the DOJ promulgate regulations to implement  
5 this provision.” K.M. ex rel. Bright v. Tustin Unified Sch. Dist., 725 F.3d 1088, 1096 (9th Cir.  
6 2013) (quoting 42 U.S.C. §§ 12132, 12134); see also 28 C.F.R. § 35.130(a). “[P]ublic schools are  
7 among the public entities governed by Title II.” K.M., 725 F.3d at 1097.

8           “Although Title II is different from section 504 in several respects . . . the elements of a  
9 valid Title II claim do not differ in any material sense from those of a valid section 504 claim and  
10 the two may be addressed together.” A.G., 815 F.3d at 1203–04; see also Martin v. California  
11 Dep’t of Veterans Affairs, 560 F.3d 1042, 1047 n.7 (9th Cir. 2009) (“Because ‘[t]here is no  
12 significant difference in analysis of the rights and obligations created by the ADA and the  
13 Rehabilitation Act,’ we have consistently applied ‘the same analysis to claims brought under both  
14 statutes,’ and again do so here.” (internal citations omitted)). However, unlike Section 504’s  
15 deliberate indifference standard, “Title II’s prohibition of discrimination or denial of benefits ‘by  
16 reason of’ disability establishes a ‘motivating factor’ causal standard for liability when there are  
17 two or more possible reasons for the challenged decision and at least one of them may be  
18 legitimate.” K.M., 725 F.3d at 1099. Consequently, “if the evidence could support a finding that  
19 there is more than one reason for an allegedly discriminatory decision, a plaintiff need show only  
20 that discrimination on the basis of disability was a ‘motivating factor’ for the decision. By contrast,  
21 [t]he causal standard for the Rehabilitation Act is even stricter, requiring a plaintiff to show a  
22 denial of services solely by reason of disability.” Id. (internal quotations and citations omitted).

23           Accordingly, as both the Section 504 and Title II claims do not differ and the Court has  
24 already found that Defendant’s conduct satisfied the stricter *mens rea* standard of deliberate  
25 indifference under the Section 504 claim, the Court incorporates its reasoning as to the Section  
26 504 claim to find that Defendant violated Title II of the ADA. Consequently, the Court grants  
27 Plaintiffs’ Motion for Judgment on the Administrative Record and denies Defendant’s Motion for  
28 Summary Judgment.

1                                   **D. Reinstatement and Reimbursement**

2           Plaintiffs request that the Court reinstate the IHO’s award of tuition and transportation  
3 reimbursement. They also request reimbursement of expenses above and beyond the IHO’s award,  
4 which they contend they are entitled to under the “stay put” provisions of 20 U.S.C. § 1415(j), and  
5 in light of a balancing of the equities.

6           As stated above, on November 14, 2016, the IHO found that the District failed to provide  
7 O.R. with a FAPE. The IHO determined that Plaintiffs were entitled to tuition and transportation  
8 reimbursement for O.R.’s time at the Prentice School and Adelson Campus from June 2014  
9 through the 2016-2017 school years. In total, the IHO awarded Plaintiffs **\$63,334.30**. ECF No. 1-  
10 3 at 36. Plaintiffs allege that the IHO’s decision resulted in a change in placement which vested  
11 O.R. with “stay put rights” in “a placement that could provide structured literacy programming to  
12 meet her needs” through the pendency of this appeal. Accordingly, they request reimbursement of  
13 all expenses associated with placing O.R. in the appropriate schools that could meet her needs, up  
14 through the 2020-2021 school year.

15           Plaintiffs request reimbursement for tuition and bus transportation at Adelson from 2017-  
16 2018 in the sum of **\$23,150.00**. ECF No. 74-1 at ¶ 7. Further, Plaintiffs allege that after the 2017-  
17 2018 school year, Adelson could no longer meet O.R.’s needs, and so Plaintiffs were forced to  
18 find another school that could provide O.R. with the structured literacy programming she required.  
19 Plaintiffs allege that they were unable to locate an appropriate school within commuting distance  
20 from their home in Las Vegas, and as a result, they sent O.R. to the Purnell School in Pottersville,  
21 New Jersey, for the 2018-2019, 2019-2020, and 2020-2021 school years. Plaintiffs request  
22 reimbursement in the sum of **\$267,874.42** for tuition and travel expenses arising from enrollment  
23 at the Purnell School. ECF No. 74-1 at ¶ 10.

24           Plaintiffs also request a number of other reimbursements arising from other schooling,  
25 summer camp programming, psychological services and educational testing, teacher training, and  
26 associated transportation costs. Plaintiffs argue that such reimbursement is proper because the  
27 failure to provide a FAPE is not limited to traditional schooling, but also covers related services—  
28 including counseling, psychological services, speech and language services, and assessment

1 procedures—that are ordinarily free of cost within the context of a FAPE. Accordingly, Plaintiffs  
2 request reimbursement for the following:

3 (a) Summer tuition, summer speech and language sessions, and associated travel expenses  
4 for the Eagle Hill School in Hardwick, Massachusetts, during the summers of 2014-  
5 2017, totaling **\$52,196.70**. ECF No. 74-1 at ¶ 6.

6 (b) Costs for counseling services, teacher counseling and training, psychological services  
7 in the form of consulting with other staff members in planning programs for O.R., and  
8 tutoring services, totaling **\$34,460.20**. ECF No. 74-1 at ¶ 11.

9 (c) Expenses arising from various psychological services, including administering  
10 psychological and educational tests and other assessments on O.R., and interpreting  
11 assessment results, totaling **\$15,975.00**. ECF No. 74-1 at ¶ 12.

12 Finally, while the IHO only established that Plaintiffs were entitled to reimbursement for  
13 expenses associated with the Prentice School beginning in June 2014, Plaintiffs contend they  
14 incurred expenses beginning with the start of the 2013-2014 school year, totaling **\$51,720.74**. ECF  
15 No. 74-1 at ¶ 4. Plaintiffs identify expenses arising from tuition, tutoring, and speech therapy, as  
16 well as from costs of living—such as rent, utilities, groceries, home furnishings, and nanny,  
17 housekeeper, and babysitter expenses. Plaintiffs argue that reimbursement back to 2013 is  
18 appropriate because they sought reevaluation of O.R. as early as January 2, 2014, and they  
19 provided the District with notice of their intent to seek reimbursement as early as March 17, 2014.  
20 They further allege that when parents are unable to locate appropriate programming locally, they  
21 are entitled to reimbursement for lodging or residential programming and related costs. They argue  
22 that the costs of living associated with their time at the Prentice school—going back to 2013—  
23 should thus be reimbursed. Plaintiffs’ total reimbursement request amounts to **\$506,482.06**. ECF  
24 No. 74-1 at ¶ 13.

25 Defendant rejects Plaintiffs’ contention that the IHO decision effectively changes the  
26 pendency placement of O.R. to the private school she was unilaterally placed in. Defendant  
27 counters, without any reference to controlling law, that the current educational placement “is the  
28 last IEP that was not disputed by the parties,” and thus, the pendency placement should be based

1 on the December 2007 IEP. Defendant further argues that the record does not support a finding  
2 that the Prentice or Purnell private school placements are reasonable or appropriate. Finally,  
3 Defendant contends that Plaintiffs' requests for reimbursement of additional tutoring, apartment  
4 rental, utilities and furnishings, and costs associated with groceries, housekeepers, and babysitters  
5 are unreasonable.

6 The Court finds that Plaintiffs' unilateral placement suffices as the "current educational  
7 placement" for the purposes of reimbursement. 20 USC § 1415(j) provides that during the  
8 pendency of IDEA proceedings, "unless the State or local educational agency and the parents  
9 otherwise agree, the child shall remain in the then-current educational placement of the child."  
10 When the child's parents seek a unilateral change in placement and move their child from an IEP-  
11 specified program to an alternative setting, the parents are initially responsible for bearing the costs  
12 of the child's new placement. The State may become responsible for reimbursing those costs,  
13 however, if a later administrative review process determines that the alternative placement is  
14 reasonable and appropriate for the child. See Sch. Comm. of Burlington v. Dep't of Educ., 471  
15 U.S. 359, 372 (1985) (stating that an administrative decision in favor of the parents' private school  
16 placement "would seem to constitute agreement by the State to the change of placement"); Douglas  
17 v. Cal. Off. Of Admin. Hearings, 540 Fed. Appx. 312, 315 (9th Cir. 2016) ("If 'a State review  
18 official in an administrative appeal agrees with the child's parents that a change of placement is  
19 appropriate, that placement must be treated as an agreement between the State and the parents for  
20 the purposes of the stay put provision (quoting 34 C.F.R. § 300.518(d)).

21 Here, the IHO rendered an administrative decision in Plaintiffs' favor, thereby constituting  
22 an agreement by the State to change placement. Further, as Plaintiffs note, it would be  
23 unreasonable to set the "stay put" placement based on the December 2007 IEP, as Defendant  
24 requests. In 2007, O.R. was five years old and placed in a self-contained preschool in the District;  
25 by the time this Court heard oral argument on Plaintiffs' right to reimbursement, O.R. was a senior  
26 in high school bound for college. Fixing the December 2007 IEP as the proper "stay put" placement  
27 defies reason and offends the IDEA's principal interest in placing disabled children in their  
28 appropriate educational settings.

1 Further, reimbursement under the “stay put” placement protections survives the pendency  
2 of appeal. See Joshua A. v. Rocklin Unified Sch. Dist., 559 F.3d 1036, 1040 (9th Cir. 2009) (stating  
3 that the protections of the “stay put” provision reflect Congress’s intent to protect disabled children  
4 from the “irreparable harm inherent in the premature removal . . . to a potentially inappropriate  
5 educational setting”); M.R. v. Ridley Sch. Dist., 744 F.3d 112, 124 (3rd Cir. 2014) (stating that a  
6 student secured the right to reimbursement through the pendency of appeal when the hearing  
7 officer ruled in her favor, notwithstanding the district court’s reversal of the administrative  
8 decision). As such, the proper placement—as determined by the IHO—survived the SRO’s  
9 reversal. Plaintiffs are thus entitled to reimbursement for costs associated with enrollment at  
10 Adelson between 2017-2018.

11 The Court further agrees with Plaintiffs that the equities favor a finding that O.R.’s “stay  
12 put” placement is now Purnell. Under the IDEA, the Court has the inherent equitable authority “to  
13 order school authorities to reimburse parents for their expenditures on private special education  
14 for a child if the court ultimately determines that such placement . . . is proper under the Act.”  
15 Florence Cty. Sch. Dist. Four v. Carter ex rel Carter, 510 U.S. 7, 12 (1993). Plaintiffs submitted  
16 uncontroverted evidence that Purnell provides the required Orton-Gillingham programming  
17 necessary for O.R. to receive a FAPE. Purnell was not addressed during the administrative process  
18 because it *could not have been*; at the time, Adelson met O.R.’s needs and Plaintiffs had no reason  
19 to enroll O.R. at Purnell. Indeed, after learning that O.R. could not return to Adelson after the  
20 2017-2018 school year, Plaintiffs first approached Defendant with the offer to pay to train the  
21 District’s employees to provide structured literacy programing to O.R., and Defendant refused.  
22 Plaintiffs looked for schools within the area but could not find a program that would meet O.R.’s  
23 needs. Defendant cannot now argue that Plaintiffs are barred from seeking reimbursement for a  
24 school that provided the requisite programming for O.R., when it had the opportunity—at minimal  
25 cost—to implement that programming in-district. This Court determines that the equities favor a  
26 finding that Purnell is O.R.’s current “stay put” placement.

27 The Court next addresses Plaintiffs’ other requests for reimbursement. First, with respect  
28 to the Eagle Hill School, the Court finds that Plaintiffs are entitled to reimbursement totaling

1 **\$52,196.70.** The IHO found that it could not award relief to Plaintiffs for the costs incurred in  
2 relation to the Eagle Hill School, because no testimony was provided describing the academic  
3 program at Eagle Hill and whether it provided O.R. with the requisite programming to constitute  
4 a FAPE. Plaintiffs have since supplemented the record with regards to this issue; namely, by  
5 attesting that Eagle Hill provided structured literacy instruction to O.R. Further, Plaintiffs seek  
6 reimbursement for Eagle Hill as damages pursuant to Section 504 and Title II of the ADA.  
7 Compensatory damages are available under both Title II of the ADA and Section 504 of the  
8 Rehabilitation Act. Lemahieu, 513 F.3d at 930; Ferguson v. City of Phoenix, 157 F.3d 668, 674  
9 (9th Cir. 1998). As stated above, Plaintiffs have satisfied both the “deliberate indifference”  
10 standard for the purposes of establishing liability under § 504, and the “motivating factor”  
11 requirement for establishing liability under Title II. As such, Plaintiffs are entitled to compensatory  
12 damages to cover the costs of tuition and travel expenses for O.R.’s enrollment at Eagle Hill  
13 School.

14 Next, the Court finds that Plaintiffs are entitled to the costs associated with counseling  
15 services, teacher counseling and training, psychological services in the form of consulting with  
16 other staff members in planning programs for O.R., and tutoring services. See ECF No. 74-1 at ¶  
17 11. A “free appropriate public education” includes “special education and related services,” and  
18 related services are defined to include:

19 such developmental, corrective, and other supportive services  
20 (including speech-language pathology and audiology services,  
21 interpreting services, psychological services, physical and  
22 occupational therapy, recreation, including therapeutic recreation,  
23 social work services, school nurse services designed to enable a  
24 child with a disability to receive a free appropriate public education  
25 as described in the individualized education program of the child,  
26 counseling services, including rehabilitation counseling, orientation  
27 and mobility services, and medical services, except that such  
28 medical services shall be for diagnostic and evaluation purposes  
only) as may be required to assist a child with a disability to benefit  
from special education . . . .

29 20 U.S.C. § 1401 (emphasis added).

30 Plaintiffs specifically request reimbursement for various cognitive and behavioral therapies, social  
31 skills therapies, speech therapies, and tutoring services provided to O.R. These services plainly

1 fall within the “related services” covered by a FAPE. This Court further grants Plaintiffs’ request  
2 for reimbursement for the Orton-Gillingham trainings and other methodological trainings that  
3 Plaintiffs had to provide to teachers at schools outside of the District. See ECF No. 74-1 at ¶ 12.  
4 Had O.R. been provided a FAPE within the District, these expenses would not have been incurred;  
5 and as stated earlier, Plaintiffs even offered to pay the District for these trainings before seeking  
6 options elsewhere.

7 Finally, the Court does not find that Plaintiffs are entitled to reimbursement for the  
8 outstanding alleged expenses associated with the Prentice School beginning in 2013. See ECF No.  
9 74-1 at ¶ 4. The IHO properly limited reimbursement based on the date that Defendant offered  
10 Plaintiffs an IEP. Further, the cases cited by Plaintiffs in support of reimbursement for costs of  
11 rent, groceries, furnishings, and childcare are inapplicable here, as those cases involved residential  
12 schools; here, there is no suggestion that the Prentice School was a residential program. Further,  
13 those cases did not sweep so broadly—while the parents in those cases were reimbursed for the  
14 cost of boarding and food, here Plaintiffs request reimbursement for airport parking, nannies,  
15 housekeepers, and babysitter expenses incurred in Nevada while Plaintiffs were out-of-state with  
16 O.R. The Court finds reimbursement of those costs to be unreasonable.

17 In sum, the Court orders that the IHO’s decision and reimbursement calculation be  
18 reinstated (**\$63,334.30**). ECF No. 1-3 at 36. The Court also finds that Plaintiffs are entitled to  
19 reimbursement for enrollment at Adelson from 2017-2018 (**\$23,150.00**), ECF No. 74-1 at ¶ 7, as  
20 well as enrollment at Purnell through the end of the 2021 school year (**\$267,874.42**), ECF No. 74-  
21 1 at ¶ 10. The Court further orders that Plaintiffs are entitled to reimbursement for summer tuition,  
22 summer speech and language sessions, and associated travel expenses for the Eagle Hill School  
23 during the summers of 2014-2017 (**\$52,196.70**). ECF No. 74-1 at ¶ 6. Finally, the Court orders  
24 that Plaintiffs be reimbursed the cost of all related services (**\$50,435.20**). ECF No. 74-1 at ¶¶ 11-  
25 12. Defendant shall reimburse Plaintiffs in the sum of **\$456,990.60**.

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**VI. CONCLUSION**

**IT IS THEREFORE ORDERED** that Plaintiffs' Motion for Judgment on the Administrative Record, as Supplemented (ECF No. 58) is **GRANTED** and Defendant's Motion for Summary Judgment (ECF No. 59) is **DENIED**.

**IT IS FURTHER ORDERED** that Defendant shall reimburse Plaintiffs in the sum of **\$456,990.60**. The Clerk of Court shall enter judgment accordingly and close this case.

DATED October 12, 2021.



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**RICHARD F. BOULWARE, II**  
**UNITED STATES DISTRICT JUDGE**