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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**
12

13 O.R., BY AND THROUGH HER PARENTS,
14 SIG AND LORI ROGICH AND SIG AND
15 LORI ROGICH, INDIVIDUALLY,

16 Plaintiffs

Case No.: 2:17-cv-01541

17 v.

COMPLAINT

18 CLARK COUNTY SCHOOL DISTRICT,

19 Defendant

20 **A. INTRODUCTION**

21 1. This action arises under the Individuals with Disabilities Education Act, 20
22 U.S.C. § 1400, *et seq.* (“IDEA”), Title II of Americans with Disabilities Act, 42 U.S.C. § 12131,
23 *et seq.* (“ADA”) and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section
24 504”). This is an appeal from the decision, dated March 8, 2017, of the Decision on Appeal by
25 the Nevada State Review Officer (“*SRO Dec.*”), attached as Exhibit 1. The SRO reversed a
26 decision of Independent Hearing Officer, dated November 14, 2016 (“*IHO Dec.*”), attached as
27 Exhibit 2. The IHO determined that Plaintiffs Sig and Lori Rogich (“Parents”) had demonstrated
28 the failure of the Clark County School District (“District” or “Clark County”) to provide a free
appropriate public education (“FAPE”) to O.R. and were therefore entitled to tuition and

1 transportation reimbursement for June 2014, the 2014-2015, 2015-2016 and 2016-2017 school
2 years. *IHO Dec.* at 31.

3 2. In June 2014, the District proposed an Individualized Educational Program
4 (“IEP”) that failed to take into account and address O.R.’s needs as identified in her most recent
5 evaluations and did not offer a free, appropriate public education. The District next proposed an
6 IEP in May 2016 that failed to take into account and address O.R.’s needs as identified in her
7 most recent evaluations and did not offer a free, appropriate public education.
8

9 **B. JURISDICTION AND VENUE**

10 3. Jurisdiction is based upon 28 U.S.C. § 1331, as this action arises under the
11 Constitution and laws of the United States. Jurisdiction is also based upon IDEA, 20 U.S.C. §§
12 1415(i)(2), (i)(3)(A), (i)(3)(B)(i)(I), ADA, 42 U.S.C. §12133 and Section 504, 29 U.S.C. §
13 794(a).
14

15 4. Plaintiffs have fully exhausted their administrative remedies as required by the
16 IDEA, 20 U.S.C. § 1415(f) and (g).
17

18 5. This civil action is timely filed under 20 U.S.C. §1415(i)(2)(B), as the decision of
19 the State Review Officer was rendered on March 8, 2017, and this action is filed within 90 days of
20 that decision. Nevada state law contains no explicit time limitation for bringing such an action.
21

22 6. Venue in this district is proper under 28 U.S.C. § 1391(b). All parties are resident
23 in or maintain offices in Clark County, Nevada, within the District of Nevada.

24 **III. PARTIES**

25 7. O.R. was born in 2002. She lives with her Parents, within the boundaries of the
26 Clark County School District.
27
28

1 8. Plaintiffs, Sig and Lori Rogich are residents of Las Vegas, Clark County, in the
2 State of Nevada.

3 9. Throughout her education, O.R. has been eligible for special education and related
4 services under the IDEA, and no party disputes her eligibility for these services. Comprehensive
5 psychoeducational evaluations, conducted in 2009 and 2013, resulted in the following diagnoses,
6 among others, for O.R.: Learning Disorder NOS (Nonverbal Learning Disorder-NLD; Reading
7 Disorder (Developmental Dyslexia); Mathematics Disorder; Disorder of Written Expression;
8 Generalized Anxiety Disorder. She also has medical conditions that impact her ability to learn.
9 Therefore, she has impairments that substantially limit her in major life activities, and thus is
10 entitled to the protections of Section 504 and the ADA.
11
12

13 10. Clark County School District is a Local Education Agency with its offices at 5100
14 W. Sahara Avenue, Las Vegas, Nevada 89146. The District is responsible for providing special
15 education and related services to all eligible children within its borders. It is responsible for
16 honoring the substantive and procedural rights of eligible children and their parents under the
17 IDEA, Section 504 and the ADA.
18

19 11. The District is a recipient of federal financial assistance.

20 12. The District is a public entity responsible for compliance with the guarantees of
21 the ADA.
22

23 **IV. PROCEDURAL HISTORY**

24 13. On May 26, 2016, the District received a Due Process Complaint (“DPC”)
25 challenging the appropriateness of a May 27, 2014 IEP, filed on behalf of O.R. *IHO Dec.* at 1.
26 The IHO denied the District’s motion to dismiss the complaint on statute of limitation grounds
27
28

1 when she found that the facsimile transmissions and the District’s “received” stamps indicated
2 that the District received the DPC on May 26, 2016. *Id.*

3 14. At a Prehearing Conference on September 29, 2016, the parties stipulated to
4 amend the DPC to challenge the appropriateness of the IEP offered on June 8, 2016.
5

6 15. On October 4, 2016, Parents filed a Motion to Compel Discovery asking for
7 program descriptions and methodologies proposed for O.R. or that may be otherwise relevant to
8 this matter. The IHO denied the Motion, holding that if the 2016 IEP had identified a specific
9 reading program, then Parents would be entitled to the information. Because the IEP identified
10 no such program(s), Parents were not entitled to the information.
11

12 **V. THE LEGAL FRAMEWORK**

13 **A. IDEA**

14 16. “To meet its substantive obligation under the IDEA, a school must offer an IEP
15 reasonably calculated to enable a child to make progress appropriate in light of the child’s
16 circumstances.” *Andrew F. v. Douglas County Sch. Dist. RE-1*, No. 15-827, slip op. at 11.
17

18 17. “In determining what it means to ‘meet the unique needs’ of a child with a
19 disability, the provisions governing the IEP development process are a natural source of
20 guidance: It is through the IEP that ‘[t]he [FAPE] required by the Act is tailored to the unique
21 needs of’ a particular child.” *Id.* at 13 (citation omitted). IDEA’s provisions do not impose only
22 procedural requirements, or a checklist of items the IEP must address. *Id.* The requirements “are
23 there for a reason and their focus provides insight into what it means, for purposes of the FAPE
24 definition, to ‘meet the unique needs’ of a child with a disability.” *Id.* (citing 20 U.S.C. §
25 1401(9),(29)).
26
27
28

1 18. IDEA contemplates that the fact-intensive exercise of developing an IEP “will be
2 informed not only by the expertise of school officials but also by the input of the child’s
3 parents.” *Id.* at 11. Procedures that provide for meaningful parental participation are particularly
4 important. *M.C. v. Antelope Valley Union High Sch. Dist.*, No. 14-56344, 2017 U.S. App. LEXIS
5 5347, at *4 (9th Cir. March 27, 2017).
6

7 19. The requirements for an appropriate IEP include:

- 8 a. “It is constructed *only after* careful consideration of the child’s present
9 levels of achievement, disability, and potential for growth.” *Id.* at 12
10 (citing 20 U.S.C. §§ 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv)) (emphasis
11 supplied).
- 12 b. Every IEP must begin with an accurate description of the child’s present
13 level of achievement, including explaining “how the child’s disability
14 affects the child’s involvement and progress in the general education
15 curriculum.” *Id.* at 13 (citing 20 U.S.C. § 1414(d)(1)(A)(i)(I)(aa)).
- 16 c. The IEP then sets out “measurable annual goals” designed to enable the
17 child to be involved in and make progress in the general education
18 curriculum. *Id.* (citing 20 U.S.C. § 1414(d)(1)(A)(i)(II), (IV)).
- 19 d. The school district must conduct periodic evaluations that assess the child
20 in all areas of suspected disability; are “sufficiently comprehensive to
21 identify all of the child’s special education and related service needs,” and
22 provide “relevant information that directly assists” in determining the
23 child’s educational needs. 20 U.S.C. §§ 1414(a)(1)(C)(i)(II),
24 1414(a)(2)(A), 1414(b)(2)(A)(ii), 1414(b)(3)(B); 34 C.F.R.
25 §§300.304(c)(1)(ii—iv), (2), (4), (6), (7).
- 26 e. The school district must provide services (including specially designed
27 instruction, supplementary aids and services, program modifications and
28 supports for school personnel, based on peer-reviewed research to the
extent practicable) that enable the student to advance appropriately toward
attaining meaningful annual goals, to be involved in and progress in the
general education curriculum and to participate in extracurricular and
nonacademic activities. 20 U.S.C. §§ 1414(d)(1)(A)(i)(IV), 1414(d)(3).
- f. The school district must plan for the student to make reasonable progress
toward the goals in the student’s IEP, and, if the student fails to make
reasonable progress, must make changes in the goals or the services in the

1 IEP to enable the student to make progress. 20 U.S.C. §§ 1414(c)(1)(B),
2 1414(d)(4); 34 C.F.R. § 300.324.

3 20. “The IEP must aim to enable the student to make progress. After all, the essential
4 function of an IEP is to set out a plan for pursuing academic and functional advancement. See 20
5 U.S.C. § 1414(d)(1)(A)(i)(I)-(IV). . . A substantive standard not focused on student progress
6 would do little to remedy the pervasive and tragic academic stagnation that prompted Congress
7 to act.” *Andrew F.*, slip op. at 11.
8

9 21. The progress contemplated by the IEP must be “appropriate in light of the child’s
10 circumstances.” *Id.* at 12, 15. If it is not a reasonable prospect for a child to achieve on grade
11 level without a modified curriculum, “his educational program must be appropriately ambitious
12 in light of his circumstances, just as advancement from grade to grade is appropriately ambitious
13 for most children. . . .The goals may differ, but every child should have the chance to meet
14 challenging objectives.” *Id.* at 14.
15

16 22. In reviewing an IEP, hearing officers and courts defer to school authorities “based
17 on the application of expertise and the exercise of judgment.” *Andrew F.*, slip op. at 16. “By the
18 time any dispute reaches court, school authorities will have had a complete opportunity to bring
19 their expertise and judgment to bear on areas of disagreement. A reviewing court may fairly
20 expect those authorities to be able to offer a cogent and responsive explanation for their
21 decisions that shows the IEP is reasonably calculated to make progress appropriate in light of his
22 circumstances.” *Id.*
23
24

25 **B. SECTION 504 AND THE ADA**
26

27 23. Section 504 and the ADA prohibit school districts such as Clark County from
28 discriminating on the basis of disability.

1 24. Section 504 requires “the provision of an appropriate education” to students with
2 disabilities. An appropriate education under Section 504 “is the provision of regular or special
3 education and related aids and services that (i) are designed to meet individual educational needs
4 of handicapped persons as adequately as the needs of non handicapped persons are met and (ii)
5 are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and
6 104.36.” 34 C.F.R. § 104.33(b).

8 25. Section 504 “is broader than the IDEA; it is concerned with discrimination in the
9 provision of state services to all individuals with disabilities.” *A.G. v. Paradise Valley Unified*
10 *Sch. Dist.*, 815 F.3d 1195, 1203 (9th Cir. 2016).

12 26. A school district violates Section 504 and the ADA if it denies a qualified
13 individual with a disability a reasonable accommodation that the individual needs in order to
14 enjoy meaningful access to the benefits of public services.

15 27. It is a denial of reasonable accommodation and a violation of the ADA and
16 Section 504 if (1) a student needs disability-specific services to enjoy meaningful access to the
17 benefits of a public education, (2) a school district was on notice that the [student] needed those
18 disability-specific services, but did not provide those services, and (3) disability-specific services
19 were available as a reasonable accommodation. *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097 (9th
20 Cir. 2010).

22 **VI. STANDARD OF REVIEW**

24 28. “Judicial review in IDEA cases ‘differs substantially from judicial review of other
25 agency actions, in which courts are generally confined to the administrative record and are held
26 to a highly differential standard of review.” *M.C. v. Antelope Valley Union High Sch. Dist.*, No.
27

1 14-56344, 2017 U.S. App. LEXIS 5347, at *3 (9th Cir. March 27, 2017) (quoting *Ojai Unified*
2 *Sch. Dist. v. Jackson*, 4 F.3d 1467, 1471 (9th Cir. 1993)).

3 29. Federal courts review whether the state has provided a FAPE *de novo*. *Id.*

4 30. Federal courts afford some deference to the administrative fact finder when the
5 decision below is “thorough and careful.” *Id.* In a state where there is a second tier administrative
6 hearing officer, such as the SRO in this case, federal courts defer to the SRO *unless* the SRO
7 overturns the credibility determinations of the hearing officer. *Amanda J. v. Clark County Sch.*
8 *Dist.*, 267 F.3d 877, 888-889 (9th Cir. 2001).

9
10 **VII. FACTS**

11 31. In 2007, the District determined that O.R. was eligible for special education and
12 related services under the category “Other Health Impairment.” *IHO Dec.* at 6, FF 1; *SRO Dec.*
13 at 5.

14 32. O.R. attended the District kindergarten program for most of the 2008-2009 school
15 year, until Parents enrolled her in a private school. *IHO Dec.* at 6, FF 2; *SRO Dec.* at 5.

16 33. In December 2009 and March 2013, Pettigru Counseling Associates evaluated
17 O.R. The District presented no testimony challenging the accuracy of any assessment admitted
18 into evidence. *IHO Dec.* at 6-7, FF 3.

19 34. The March 2013 evaluation listed the following diagnoses for O.R.: Learning
20 Disorder NOA (Nonverbal Learning Disorder-NLD); Reading Disorder (Developmental
21 Dyslexia); Mathematics Disorder; Disorder of Written Expression; Generalized Anxiety
22 Disorder; Dysthymic Disorder; Developmental Coordination Disorder (in partial remission);
23 Mixed Receptive-Expressive Language Disorder (in partial remission); Phonological Disorder
24 (in remission). *IHO Dec.* at 7, FF 4.

1 35. In light of O.R.'s nonverbal learning disorder and the myriad of other disorders
2 listed in the previous paragraph, the 2013 evaluation indicated that O.R. requires a specific
3 teaching methodology to receive an appropriate education. *IHO Dec.* at 7, FF 5.

4 36. After listening to the witnesses, assessing their credibility, and reviewing the
5 evidence, the IHO found that the recommendations in the 2009 and 2013 assessments were
6 "comprehensive, addressing [O.R.'s] psychological, educational and social needs." *IHO Dec.* at
7 8, FF 9.

8 37. Parents provided the Pettigru assessment to the District in January 2014. After
9 completing its own evaluation, the District proposed an IEP in May 2014.

10 38. Regarding the May 2014 IEP, the IHO found:

- 11
- 12 a. The one reading comprehension goal in the IEP was contrary to the
13 recommendations in the comprehensive Pettigru assessment. *IHO Dec.* at
14 8-9, FF 10A.
- 15 b. The IEP reflects that Parents requested teachers trained in Orton-
16 Gillingham methodologies and placement in a private school until the
17 training is completed. The basis of its rejection of this request on the fact
18 that the "IEP includes salient components from Orton-Gillingham in the
19 accommodations/modifications and goals to provide a multi-sensory
20 approach." *IHO Dec.* at 9, FF 10F.
- 21 c. Based on credibility assessments related to the testimony of the Early
22 Childhood Teacher and Child Find Administrator, who met O.R. for ten
23 minutes in 2014, the IHO determined that the District had access to O.R.'s
24 assessments and school reports for the development of the 2014 IEP, but
25 failed to give them due weight. *IHO Dec.* at 9, FF 11.
- 26 d. The Early Childhood Teacher "did not demonstrate an understanding of
27 [O.R.'s] unique academic needs as set forth in the Assessments that were
28 available to the District." *IHO Dec.* at 10, FF 13.
- e. The District's school psychologist "conceded that [O.R.] needed a multi-
sensory program but would not name a program(s) the District used. *IHO*
Dec. at 10, FF 14 The IHO rejected the school psychologist's complaint
that the IEP Team did not receive data for programming as not credible, in
light of the documentation provided by Parents. *IHO Dec.* at 10, FF 15.

- f. The IHO rejected as not credible the Compliance Monitor’s testimony that the District did not have O.R.’s present levels of functioning in 2014, in light of the documentation provided by Parents. *IHO Dec.* at 11, FF 18, 19, 20.
- g. The IHO found that Parents’ witness, a pediatric neuropsychologist, was credible. *IHO Dec.* at 11, FF 21, 22.
- h. The IHO found his analysis of the 2014 IEP relevant and accepted his expert opinion on the appropriateness of that IEP. *IHO Dec.* at 11-12, FF 23.
- i. Based upon her assessment of the witnesses who testified, the IHO found that “the District predetermined that under no circumstances would a methodology be put into” O.R.’s IEP. *IHO Dec.* at 12, FF 25.
- j. Parents provided the requisite ten-day notice of disagreement with the IEP and intention of the right to seek reimbursement. *IHO Dec.* at 12, FF 26.

39. Regarding the June 2016 IEP, the IHO found:

- a. The District’s Transition Specialist became familiar with O.R. when she learned that there was a new report to review. *IHO Dec.* at 13, FF 28.
- b. The IHO credited the Transition Specialist’s explanation for the delay of the IEP meeting until May 2016. *IHO Dec.* at 13, FF 29.
- c. The Transition Specialist reviewed the private neuropsychologist’s report. *Id.*
- d. The private neuropsychologist, like the previous evaluators, recommended the Orton-Gillingham multi-modal approach for all subjects, not just reading. *IHO Dec.* at 13-14, FF 32.
- e. The IHO concluded that the District witnesses did not demonstrate a working knowledge of Orton-Gillingham, the methodology recommended for O.R. *IHO Dec.* at 14, FF 33.
- f. The IHO did not find the Special Education Teacher who testified to be credible. She did find the private neuropsychologist to be credible. *IHO Dec.* at 14, FF 36.
- g. Parents cooperated in developing the IEP. Parents gave timely notice in the beginning of May 2016 of their intention to place privately and seek

1 reimbursement. They participated in IEP meetings on May 19 and May
2 27, 2016. *Id.*

- 3 h. The goals and benchmarks in the 2016 IEP provide “evidence that the
4 [Parent provided] assessments were not considered” in the IEPs
5 development. *IHO Dec.* at 15, FF 38D.

6 40. The IHO granted a motion *in limine* filed by Parents and precluded the District
7 from presenting witnesses who could testify about available reading programs within the District.
8 Prior to the hearing, the District had resisted producing information about available reading
9 programs and the Hearing Officer did not compel disclosure, finding that the IEP did not identify
10 any particular reading program. In light of the District’s position that Parents were not entitled to
11 information about available methodologies, the IHO correctly precluded this testimony.

12 41. The SRO erred in relying upon the testimony regarding available methodologies
13 within the District, at the appeal stage, of two witnesses, for the following reasons:

- 14 a. The SRO erred in reversing the IHO’s order precluding witnesses from
15 testifying. As the Court recognized in *Andrew F.*, “[b]y the time any
16 dispute reaches court, school authorities will have had a complete
17 opportunity to bring their expertise and judgment to bear on areas of
18 disagreement.” *Slip op.* at 16. Having refused to offer a cogent and
19 responsive explanation to parents of available methodologies during the
20 IEP process, the District was not entitled to present evidence on those
21 methodologies at the hearing.

- 22 b. The two witnesses offered inconsistent testimony.

23 1) The Special Education Director of Silvestri Middle School testified
24 that:

25 a. “Read 180 would have addressed her deficits in reading,
26 fluency and comprehension, vocabulary and writing
27 through the structures that that program.” Tr. 02/06/17
28 (relevant excerpts attached as Exhibit 3) at pp. 15-16 .

b. “Touch Math has instruction from counting, addition,
subtraction, up to some higher order skills, such as pre-
algebra. It covers math and time. And areas in which she

1 need support was in addition, word problems, money and
2 some counting.” Tr. 02/06/17 at p. 21.

3
4 c. The programs are research-based because “per law we were
5 unable to utilize programs within the district that were not
6 research base, programs were vetted through the curriculum
7 department in order to be used District-wide and within
8 classrooms. Compare Tr. 02/06/17 at pp. 15-16 to p.
9 18:24-19:3.

10 d. While the district has “done significant training for teachers
11 in implementing the Read 180 program”, she did not know
12 who would be teaching O.R. She also did not know
13 whether all of the teachers were trained in Touch Math as
14 well. See Tr. 02/06/17 at p. 66-67. She “could not
15 specifically state how much training they did or did not
16 receive”. Id. at 67: 22-68:2.

17 2) The Director of Professional Development with Student Support
18 Services, on the other hand testified to the following:

19 a. “I wouldn’t probably think she would need Read 180
20 because those areas are in normal range. I think she needs not
21 so much a program but direct instruction in reading, in fluency,
22 comprehension.” Tr. 02/06/17 at p. 118.

23 b. “I do not believe she needed a [research based program], a
24 purchased program. I think she needed specially designed
25 instruction to help her in those areas.” Id. at 118: 20-119:1.

26 c. “Teachers have a variety of training. So everybody who
27 has a teacher license has like a reading course. In Clark
28 County we have long-term subs. So they typically have two
years of college.” She continued: “We offer professional
development as a regular course because we have a lot of staff
with varying experiences. So if a teacher needs more training,
then as a school District, we get that training to the person.
But I don’t know her teachers specifically she would have been
assigned to. She continued: “[Long term subs} are all over
the Valley. There’s been a teacher, special education teacher
shortage since as long as I’ve been around.” Id. at 119: 4 –
120:1.

d. “There are again other approaches, Touch Math, I’m
probably not going to recommend because kids get too

1 dependent on the touch points, and there are some approaches
2 that work more on being proficient fluent again.” Tr. 02/06/17
3 at p. 124: 13-21.

4 42. When an SRO’s decision is inadequately reasoned, and it conflicts with a better-
5 reasoned IHO opinion, federal courts should defer to the IHO. *R.E. v. N.Y.C. Dep’t of Educ.*, 694
6 F.3d 167, 189 (2d Cir. 2012). In this case, this Court should rely upon the IHO opinion because
7 the SRO’s decision reversing the IHO is not thorough and careful for the following reasons:

- 8 a. The IHO determined that school employees did not consider evaluations
9 provided by the parents. This is a credibility determination of the District
10 witnesses. The SRO heard no live testimony relating to this area of dispute.
11 She only heard testimony regarding methodologies available in the
12 District. The SRO points to nothing in the record to support her decision to
13 reverse the IHO’s credibility determination that school officials failed to
14 consider the private evaluations. Further, the failure to consider recent
15 evaluative data constitutes a serious violation of IDEA’s procedures.
- 16 b. The SRO erred in relying upon retrospective testimony about what
17 methodologies could have been implemented, when the parents had no
18 way of knowing, when they made their placement decision, what
19 techniques would be used. *See R.E.*, 694 F.3d at 193-194 (because SRO’s
20 reliance on teacher’s retrospective testimony inappropriate and IHO’s
21 decision sufficiently supported, federal court deferred to IHO
22 determination that IEP did not offer FAPE).
- 23 c. The SRO erred in discounting the private neuropsychologist’s testimony,
24 in part, based on the fact that he “was not familiar with programs available
25 in the District.” *SRO Dec.* at 42. The private neuropsychologist lacked
26 familiarity with the programs that would be implemented because the IEP
27 did not specify any particular program and the District had failed to offer
28 “a cogent and responsive explanation for their decisions” that showed that
the IEPs were “reasonably calculated to enable [O.R.] to make progress
appropriate in light of the circumstances.” *Andrew F.*, slip op. at 16. It was
error to allow the District to fail to provide information and then fault the
neuropsychologist for not considering that information.
- d. The SRO decision to reverse the IHO’s ruling that the goals and objectives
were not appropriate was not thorough and careful. The IHO correctly
found that the objectives were contrary to the Pettigru recommendations.
IHO Dec. at 8-9. The SRO states, in a conclusory manner, that the Pettigru
report contained “no contrary recommendations.” However, the Pettigru

1 report makes 29 separate recommendations that thoroughly address the
2 type of instruction and instructional strategies that O.R. requires to
3 perform her best and make cognitive and academic gains.

4 e. The SRO erred in reversing the IHO's determination that the District had
5 not provided sufficient supervision for the social skills goals. *SRO Dec.* at
6 49. After listening to the testimony of the District's Transition Specialist,
7 making credibility determinations based upon that testimony, and
8 reviewing the IEPs that did not provide explicitly for supervision and
9 guidance by an adult in all classes, the IHO correctly determined that O.R.
would not receive sufficient supervision and guidance in "specials" that
were general education classes. *See IHO Dec.* at 16. There is nothing in
the record to support the SRO's reversal of this finding.

10 f. The SRO erred in reversing the IHO's determination that the Parents'
11 placement was appropriate. The IHO relied upon the Modifications and
12 Accommodations Plan from the private school and the private
13 neuropsychologist's assessment. *IHO Dec.* at 17-18. The evidence
14 established that the methodologies used by the private schools conferred
15 educational benefit, as the testimony proved that she had made meaningful
16 progress both academically and socially. The District elicited no evidence,
17 and the SRO cites none, to the contrary.

18 **COUNT I**
19 **IDEA**
20 **DENIAL OF FAPE**
21 **All Plaintiffs v. Clark County School District**

22 43. Plaintiffs incorporate the previous paragraphs as if fully set forth herein.

23 44. The IHO correctly determined that the IEPs at issue denied a FAPE to O.R.

24 45. The SRO's decision reversing the IHO was not thorough and careful, because the
25 SRO set aside the IHO's credibility determinations in reaching her decision.

26 46. The SRO's decision reversing the IHO was not thorough and careful, because the
27 SRO supplemented the record with evidence relating to reading programs that were not included
28 in the original IEPs. During the hearing process, when Parents requested information about those
reading programs, Clark County refused to provide that information. Having refused to provide

1 the information during the IEP and hearing process, the District cannot use evidence related to
2 those programs at the SRO level to provide a “cogent and responsive explanation for their
3 decisions.” *Andrew F.*, slip op. at 16.
4

5 **COUNT II**
6 **SECTION 504**
7 **O.R. v. Clark County School District**

8 47. Plaintiff O.R. incorporates the previous paragraphs as if fully set forth herein.

9 48. The District has intentionally and purposefully violated the rights of O.R. secured
10 by Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 and 34 C.F.R. §
11 104.4 by

- 12 a. denying O.R. the opportunity to participate in and benefit from federally
13 assisted regular education services, programs and activities, in violation of
14 29 U.S.C. § 794(a) and 34 C.F.R. § 104.4(a)(b)(I);
15 b. failing to provide O.R. an opportunity to participate in and benefit from
16 education and related services that is at least equal to the opportunity
17 afforded to students without disabilities in violation of 34 C.F.R.
18 104.4(b)(1)(iii), (2).

19 **COUNT III**
20 **ADA**
21 **O.R. v. Clark County School District**

22 49. Plaintiff O.R. incorporates the previous paragraphs as if fully set forth herein.

23 50. The District has intentionally and purposefully violated the rights of O.R. secured
24 by the ADA, 42 U.S.C. § 12131 et seq. and 28 C.F.R. § 35.130, by:

- 25 a. subjecting O.R. to discrimination and retaliation, in violation of 28 C.F.R.
26 § 35.130(a) and 42 U.S.C. § 12203;
27 b. excluding O.R. from participating in and denying her the benefit of
28 District services, programs, and activities on this basis of her disability, in
violation of 28 C.F.R. § 35.130(a);

- 1 c. denying O.R. the opportunity to participate in and benefit from aids,
2 benefits and services on a basis equal with that afforded others, in
3 violation of 28 C.F.R. § 35.130(b)(1)(ii);
- 4 d. failing and refusing to make reasonable modifications in policies, practices,
5 or procedures when the modifications are necessary to avoid
6 discrimination against O.R., in violation of 28 C.F.R. § 35.130(b)(7);
- 7 e. limiting O.R. in the enjoyment of rights, privileges, advantages, or
8 opportunities enjoyed by others receiving the aid, benefit, or service, in
9 violation of 28 C.F.R. § 35.130(b)(1)(vii);

10 **RELIEF REQUESTED**

11 WHEREFORE, Plaintiffs respectfully request that the Court receive the record of
12 the administrative proceeding and such additional evidence as may be required to render a just
13 decision and award the following relief:

- 14 a) Reverse the decision of the SRO and hold that the District did not provide a FAPE to
15 O.R. in violation of the IDEA and Section 504 and discriminated against O.R. in
16 violation of Section 504 and the ADA;
- 17 b) Reinstate the IHO's award of tuition and transportation reimbursement to plaintiffs;
- 18 c) Award plaintiffs their reasonable attorney's fees and expert witness costs, including
19 the fees and costs incurred in this action;
- 20 d) Award such other relief as the Court deems necessary and appropriate.

21 DATED this 6th day of June, 2017.

22
23 ROGICH LAW FIRM, PLLC

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