

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

LOS ALAMITOS UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2021020128

and

LOS ALAMITOS UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2021030289

DECISION

JULY 30, 2021

On February 3, 2021, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Los Alamitos Unified School District, called Student's Case. On March 8, 2021, OAH received a due process hearing

request from Los Alamitos Unified School District, naming Student, called Los Alamitos's Case. On March 5, 2021, the parties sought a continuance of the due process hearing on Student's Case. OAH granted that request on March 5, 2021, and the hearing was continued to April 27, 2021.

By Order dated March 12, 2021, the cases were consolidated for hearing, with statutory timelines to be calculated from Student's Case. Student filed an amended complaint that was deemed filed on April 16, 2021.

Administrative Law Judge Christine Arden heard this matter via videoconference using the Microsoft Teams application on June 8, 9, 10, 15 and 16, 2021. Parents represented Student at the hearing. Parents attended all hearing days on Student's behalf. Student's advocate, Kay Hurst, listened to the hearing via telephone on a portion of each of the hearing days. Attorney Tracy Petznick Johnson represented Los Alamitos Unified School District at the hearing. Grace Delk, Los Alamitos's Special Education Director, and Kayley Peacock, Los Alamitos's Coordinator of Special Education, attended the hearing on behalf of Los Alamitos on various days.

At the parties' request the matter was continued to July 14, 2021, to allow the parties time to submit written closing briefs. The record was closed, and the matter was submitted on July 14, 2021.

ISSUES

LOS ALAMITOS'S ISSUE:

Were Los Alamitos's October 9, 2020 Triennial Multidisciplinary and Functional Behavioral Assessments and Assessment Report Appropriate?

STUDENT'S ISSUES:

1. Did Los Alamitos deny Student a free appropriate public education, called a FAPE, by failing to comprehensively assess Student pursuant to the October 9, 2020 psychoeducational assessment?
2. Did Los Alamitos deny Student a FAPE by failing to offer Student an appropriate placement in the least restrictive environment?
3. Did Los Alamitos deny Student a FAPE by failing to provide Student with occupational therapy services during the statutory period beginning on February 4, 2019?
4. Did Los Alamitos deny Student a FAPE by failing to offer Student a behavior intervention plan pursuant to the September 29, 2020 individual education program, called an IEP?
5. Did Los Alamitos deny Student a FAPE by failing to offer Student a one-to-one aide pursuant to the September 29, 2020 IEP?
6. Did Los Alamitos deny Student a FAPE by failing to properly implement Student's October 25, 2019 IEP during Covid-19 school closures?
7. Did Los Alamitos deny Student a FAPE by failing to properly implement Student's September 29, 2020 IEP during Covid-19 school closures?
8. Did Los Alamitos deny Student a FAPE by failing to provide all of Student's educational records pursuant to a November 19, 2020 records request?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as the IDEA, its regulations, and California statutes and regulations.

(20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. §1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Los Alamitos requested the hearing on one issue in the consolidated matters and had the burden of proof as to that issue. Student requested the hearing in the consolidated matters and had the burden of proof as to Student's issues 1 through 8. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel

develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.) The special education and related services are provided in conformity with the IEP. (20 U.S.C. §§ 1401(9)(D) & 1414(d)(1)(A)(IV).)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

Student was six years old and in first grade at the time of hearing. At all relevant times Student either lived within the geographic boundaries of Los Alamitos, or attended school at Los Alamitos pursuant to an inter-district transfer permit. At the time of hearing Student was eligible for special education under the primary category of Autism.

LOS ALAMITOS'S ISSUE: WERE LOS ALAMITOS'S OCTOBER 9, 2020 TRIENNIAL MULTIDISCIPLINARY AND FUNCTIONAL BEHAVIORAL ASSESSMENTS AND ASSESSMENT REPORT APPROPRIATE?

Los Alamitos contends its 2020 multidisciplinary and functional behavior assessments of Student properly assessed Student in all areas of suspected disabilities. Los Alamitos further contends the assessments met the legal requisites for reevaluations of children eligible for special education, and that the assessment report dated

October 9, 2020 met all legal requisites. Los Alamitos further contends, since the assessments and the report were appropriate, Student is not entitled to publicly funded independent educational evaluations.

Student contends Los Alamitos' triennial multidisciplinary assessment and functional behavior assessment failed to accurately assess Student. Student further contends the assessments were invalid because the results did not accurately reflect Student's abilities and deficits. Student further contends that because the assessments were not appropriate, Student is entitled to publicly funded independent educational evaluations.

COMPREHENSIVE ASSESSMENTS ARE REQUIRED

In assessing a child with a disability, the assessments must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).) Tests must be selected and administered to produce results that accurately reflect the student's aptitude, achievement level, or any other factors the test purports to measure. (Ed. Code, § 56320, subd. (d).) School districts are required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that would assist in determining the educational needs of a child. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).)

A failure to properly assess is a procedural violation of the IDEA. (*Department of Educ., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F. Supp. 2d 1190, 1196; *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032 (*Park*).) In a due process case brought by a school district to defend its assessments as appropriate, a

procedural violation results in a denial of a FAPE only if that violation resulted in the loss of an educational opportunity to the pupil or it interfered with the opportunity of the parents to participate in the formulation process of the individualized education program. (Ed. Code, § 56505, subd. (j).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).)

Among the most important procedural safeguards are those that protect the parent's right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, §56341.1, subds. (a)(2), (d)(3) & (f).)

STUDENT'S BACKGROUND

INITIAL IEP

Student moved into the Los Alamitos's geographical area from Australia in 2018 when he was four years old. By the time Student was two years old, Parents suspected Student had developmental delays in communication and social skills. Parents were referred to Los Alamitos for an initial assessment of Student for special education eligibility in August 2018. A medical doctor in California diagnosed Student with autism spectrum disorder in September 2018.

Consistent with the autism diagnosis, in preschool Student demonstrated delays in social and behavioral functioning, language, and communication skills. On October 30, 2018, a Los Alamitos IEP team reviewed Los Alamitos's assessment of Student and found Student eligible for special education with a primary eligibility of autism, and a secondary eligibility of speech and language impairment. Student's IEP dated October 13, 2018, offered him goals, placement in a preschool regional autism program, called RAP, and 60 minutes weekly of speech therapy, consisting of two 20-minute group sessions and one 20-minute individual session.

Student's initial occupational therapy assessment indicated his grasping skills were below average, and his visual motor integration abilities were poor. However, he used good pressure when handling materials and required no adaptive materials. His grasp on pencils and markers was mature and he was able to operate a scissors properly with prompting. His fine motor skills were emerging and his fine motor deficits were minor. Because occupational therapy was embedded in the RAP classes and Student's fine motor skills were improving, Los Alamitos did not offer Student individual occupational therapy services at that time.

Student attended the preschool RAP located at Weaver Elementary School during the 2018-2019 school year. Parents were satisfied with Student's progress in the preschool RAP.

THE REGIONAL AUTISM PROGRAM

Grace Delk, Los Alamitos's director of special education, supervised the RAP. The RAP classes were all staffed with a very low ratio of staff to students. Most children in RAP were diagnosed with autism. The RAP served students from preschool through high school at multiple school campuses. The preschool RAP was located at Weaver

Elementary School, and the RAP for kindergarteners through fifth graders was located at Los Alamitos Elementary School, called LAE.

RAP classes use a modified general education curriculum suited to each individual child. The modifications allow RAP students to access the curriculum at their own pace and grade levels. The RAP provides supplemental behavioral supports for its students. The RAP teachers and classroom aides each had behavior training, including in applied behavior analysis, called ABA, strategies specially tailored to support autistic students. The staff was trained to use positive behavior interventions, which were embedded into the RAP classes. The RAP teachers and aides used systematic teaching methods, including pre-teaching and scaffolding, repeated practice of new skills, increased predictability and scheduling, visual aids, and behavioral rewards, such as a token board.

Each class in the RAP received support and consultation from a board-certified behavior analyst, called a BCBA, from the Greater Anaheim Special Education Local Plan Area, called the Anaheim SELPA. Those BCBAs regularly observed the RAP classes and conferred with the RAP teachers about recommended behavioral strategies and techniques. Based on information gathered during observations, the BCBAs also collaborated with the RAP teachers about how to assist individual children in the RAP classes with their motor deficits. Speech language pathologists and occupational therapists also regularly consulted with the RAP teachers, as the program was also embedded with speech and language, and occupational therapy supports. Students in the RAP had mainstreaming opportunities with neurotypical peers in music class and in Makers Space, which was a creative hands-on science and technology class. RAP students also ate lunch and shared a playground with neurotypical peers.

KINDERGARTEN

Student attended Martha Chavarin's kindergarten RAP class at LAE during the 2019-2020 school year. Chavarin holds a California mild/moderate education specialist teaching credential, with an autism authorization. She was Student's RAP teacher in kindergarten and again for the first two trimesters of first grade. Chavarin had eight years of experience teaching elementary level special education classes. She also had a master's degree in educational technology, making her particularly well suited to teach virtual/distance learning programs. Her testimony at hearing was very credible and convincing. She testified candidly with confidence and objectivity, gave detailed responses to questions without hesitation, and knew Student well.

In kindergarten Student continued to demonstrate significant maladaptive behaviors at school. His main behavioral issue was avoidance of nonpreferred activities, such as academic tasks, particularly those requiring him to write. Student frequently avoided these tasks by plopping to the floor, throwing tantrums, shouting, rolling on the floor, and crying. He eloped often throughout the school day, and transitions were difficult for him. While in kindergarten Student's crying decreased, but his plopping to the floor and eloping behaviors increased. Student needed prompting for toileting at school. He could follow one-step and two-step instructions. His vocabulary was limited, but growing. He was able to say some sentences and familiar scripts and exhibited an intent to communicate.

OCTOBER 19, 2019 IEP

Los Alamitos held Student's annual IEP team meeting on October 19, 2019, to review Student's educational program and progress. Student's IEP team developed an IEP that offered him goals in the areas of compliance, transition, waiting, emotional

regulation, receptive and expressive language, and pragmatics. He was also offered 1,300 minutes weekly of specialized academic instruction and placement in the RAP class. Los Alamitos IEP team members, including Mother, decided RAP continued to be the least restrictive environment in which Student could access his education. His kindergarten RAP class had approximately one staff member for every two children. The level of instruction in Student's class was analogous to the level of a moderate-to-severe special day class.

Student required a small, extremely structured environment, and a more functional curriculum, modified from the general education curriculum, which concentrated on daily life skill experiences that would foster his independence. Student also needed an individualized program tailored to his learning style with extended support to help him manage his maladaptive behaviors. Student had significant difficulties with attention and impulse control, which affected his ability to access the general education curriculum. Chavarin, and Anaheim SELPA BCBA, Jeffrey Salmons, who conducted a functional behavior assessment of Student in Fall 2020, both credibly opined Student's maladaptive behaviors were moderate, and not so severe as to require a behavior intervention plan. The program accommodations offered Student in his IEP, along with the structure and behavioral supports embedded into the RAP were enough to manage Student's behaviors.

The section of the October 25, 2019 IEP labelled "Indicate Disability/ies" stated Student had been diagnosed as having attention deficit hyperactivity disorder, called ADHD. His secondary eligibility for special education in that IEP was Other Health Impairment due to his attention deficits. Notes in that IEP indicated he also continued to meet eligibility criteria under the secondary category of speech and language impairment. At hearing Father testified Student was never medically diagnosed with

ADHD. Whether or not Student was formally diagnosed with ADHD was not material because the evidence clearly established Student had significant attention deficits.

The IEP team determined the limited interaction with typical peers in the RAP was offset by Student's significant needs for direct instruction and additional behavioral supports which were not available in general education classrooms. The October 19, 2019 IEP also offered Student 60 minutes a week of speech therapy, consisting of two 20-minute individual sessions, and one 20-minute group session. That IEP also offered Student transportation to and from school, and extended school year. Mother consented to the October 25, 2019 IEP at the end of the meeting, which Mother attended. This was the last IEP Parents consented to as of the time of hearing and was the operative IEP through the dates of hearing.

MULTIDISCIPLINARY ASSESSMENT OF STUDENT PURSUANT TO THE JANUARY 21, 2020 ASSESSMENT PLAN

In January 2020, Father observed Student in his RAP kindergarten class and in some of the general education settings in which Student participated. Parents requested an IEP meeting to discuss changing Student's placement to general education. An IEP meeting was held on January 17, 2020, and Father expressed his concern that Student was not being exposed enough to neurotypical peers. Father thought an increase in Student's inclusion with neurotypical peers would improve Student's communication skills. The IEP team wanted to re-assess Student before it considered Father's request to change Student's placement. Father also requested Student be given a functional behavior assessment, referred to as an FBA. The IEP team agreed to conduct an FBA and move up Student's triennial IEP, or three-year

educational program review, to Fall 2020, and comprehensively re-evaluate Student in preparation for that IEP.

Los Alamitos school psychologist, Danielle Grissom, provided Parents with an assessment plan dated January 21, 2020, which proposed a comprehensive assessment of Student in the areas of academic achievement, health, intellectual development, language/speech communication development, motor development, social emotional/behavior, adaptive behavior and functional behavior. These constituted all of Student's areas of suspected disability. Grissom received Parent's written consent to the assessment plan on February 13, 2020.

The Los Alamitos team of assessors included Grissom; Chavarin; speech language pathologist, Sadie Madjidi; occupational therapist, Jenna Bastain; school nurse, Dominique Jorgenson; and Salmons. Members of the assessment team each reviewed Student's cumulative educational records, including prior assessments and IEPs. They also reviewed three outside private assessments provided by Parents. Those reports indicated Student had a private ABA aide for 25 hours a week at home from November 2018, to December 2019, and for 23 and one-half hours a week at home in February and March 2020. The private reports informed Los Alamitos Student had received private occupational therapy and speech and language therapy services outside of school.

LEGAL REQUISITES FOR ASSESSMENTS

If a child with a disability has been found eligible for special education, a school district must ensure that reevaluations of that child are conducted if warranted by the child's educational or related service needs, or if requested by a parent or teacher. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) The IDEA provides for reevaluations, referred to as reassessments in California law, to be

conducted not more frequently than once a year unless the parent and school district agree otherwise, but at least once every three years unless the parent and school district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).)

Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(a)(1)(B)(i); Ed. Code, § 56321, subd. (a)(2).) The school district must hold an IEP to review the assessment report, which must be developed within a total time not to exceed 60 days, excluding days between the student's regular school sessions, terms, or days of school vacations in excess of five school days, from the date of receipt of the parent's written consent for assessment, unless the parent agrees to an extension in writing. (Ed. Code, §§ 56043, subd. (f)(1) & 56344, subd. (a).)

Individuals who are both knowledgeable of the student's disability and competent to perform the assessment must conduct assessments of students' suspected disabilities. (Ed. Code §§ 56320, subd. (g); 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].)

School district assessors must review existing evaluation data on the child, including (i) information provided by the parents, (ii) current classroom based, local or state assessments, and classroom-based observations, and (iii) observations by teachers and related service providers. (20 U.S.C. § 1414(c)(1); 34 C.F.R. §300.305(a)(1).)

Additionally, when conducting assessments, assessors must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) No single measure or assessment shall be the sole criterion for determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (34 C.F.R. § 300.304(c)(6).) The assessor must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical, and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).)

The assessments used must be selected and administered so as not to be discriminatory on a racial or cultural basis, and be provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally. It must be used for purposes for which the assessments are valid and reliable, and administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).)

Assessments must be selected and administered to best ensure that if the child has impaired sensory, manual or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills, unless those skills are the factors the test purports to measure. (34 C.F.R. §300.304(c)(3); Ed.

Code, § 56320(d).) Assessment tools and strategies must provide relevant information that directly assists persons in determining the educational needs of the child. (20 U.S.C. § 1414(b)(4); 34 C.F.R. §300.304(c)(7); see also Ed. Code, § 56320, subd. (b)(1).)

The personnel who assess the student shall prepare a written report that shall include the following elements:

- whether the student may need special education and related services,
- the basis for making that determination,
- the relevant behavior noted during observation of the student in an appropriate setting,
- the relationship of that behavior to the student's academic and social functioning,
- the educationally relevant health, development and medical findings, if any,
- if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage, and
- consistent with superintendent guidelines for low incidence disabilities affecting less than one percent of the total statewide enrollment in grades K through 12, the need for specialized services, materials, and equipment. (Ed. Code, § 56327; see also 34 C.F.R. § 300.305(1) and (2).)

The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).) The IEP team must consider the most recent assessments in determining the child's educational program. (34 C.F.R. § 300.324(a)(1)(iii); Ed. Code, § 56341.1, subd. (a)(3).)

A student may be entitled to an independent educational evaluation if he or she disagrees with an evaluation obtained by the school district and requests an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. §300.502

(a)(1); Ed. Code, § 56329, subd. (b).) If a parent requests an independent educational evaluation, the school district must either fund the evaluation at public expense, or file a due process complaint and obtain a final decision that its evaluation was appropriate. (34 C.F.R. § 300.502(2); Ed. Code, § 56329, subd. (c).) In this case, when Student filed his due process complaint, which included his first issue challenging the comprehensiveness of the 2020 psychoeducational of Student, Los Alamitos deemed that to be a challenge to the appropriateness of its assessments. Shortly after that Los Alamitos filed its complaint seeking a ruling from OAH that the 2020 triennial assessments of Student and the final report dated October 9, 2020 about the assessments were legally appropriate. Student's proposed resolutions, as summarized in the May 28, 2021 Order Following Prehearing Conference for Hearing by Videoconference, includes independent educational evaluations.

ASSESSMENTS STARTED IN FEBRUARY 2020

After receiving Parents' consent to the January 21, 2020 assessment plan credentialed school psychologist Grissom promptly sent Parents a health history questionnaire and rating scales from some standardized instruments to gather information for Student's assessment. She asked Parents to complete the requested responses and return their completed forms to her.

Grissom was responsible for administering the portions of the psychoeducational assessment which addressed the areas of intellectual development, social-emotional, and adaptive behavior, including attention. Credentialed special education teacher, Chavarin, was responsible for administering the academic achievement portion of the psychoeducational assessment. Grissom was also responsible for reviewing the results

of the assessments conducted by other members of the assessment team and compiling them into a final report.

In February and the first half of March 2020, Grissom completed the cognitive assessment of Student, observed him in his RAP kindergarten classroom and at recess, and reviewed Parents' responses to some of the rating scales. Due to the COVID-19 pandemic, Los Alamitos schools closed for in-person instruction starting March 16, 2020. Los Alamitos did not allow in-person contact between children and district employees, including assessors, as a health and safety precaution. On March 16, 2020, Los Alamitos stopped conducting assessments altogether. Only some portions of the psychoeducational assessment, and the health assessment were completed before this Spring 2020 emergency school closure.

The administration of Student's pending assessments not already completed by mid-March 2020, did not resume until August 31, 2020, the first day of the 2020-2021 school year. During Spring 2020 the requisite timelines for assessing children under the IDEA were not changed. There was no evidence Los Alamitos requested Parents to consent to an extension of the statutorily mandated 60-day time period to complete the assessments and hold an IEP meeting to review the results. By the time schools closed on March 16, 2020, 29 days had elapsed from the date Parents had returned their written consent to the January 21, 2020 assessment plan to Grissom. When the emergency school closure occurred in mid-March 2020, most of the assessments identified on the January 21, 2020 assessment plan had not yet been completed.

ASSESSMENT ADMINISTRATION RESUMED IN FALL 2020

On August 31, 2020, the remaining assessments of Student which had not yet been completed were in the areas of academic achievement, language and speech,

occupational therapy, and functional behavior. The administration of the outstanding assessments resumed in Fall 2020. All assessments conducted in Fall 2020, except the FBA, were administered in-person at district facilities. Health and safety protocols were followed during the assessments conducted in-person.

Over the summer of 2020, Parents enrolled Student in the 100 percent virtual learning program, called LosAl@Home, for the 2020-2021 school year. Student's placement for the 2020-2021 school year was in the first grade RAP classroom provided through the LosAl@Home program. Students in that classroom ranged from first grade through fifth grade. Assessors who needed to observe Student in class as an element of the assessment, observed Student participating in school virtually because his placement was in a virtual setting. The assessors' findings, conclusions, and recommendations were memorialized in written reports drafted by the members of the assessment team, and compiled into one report by Grissom. The final report entitled Multidisciplinary and Functional Behavioral Assessment Report dated October 9, 2020, is referred to as the MDA Report.

ALL ASSESSMENTS

When assessing Student, all Los Alamitos assessors used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student, including information from Parents and his teacher. None of the assessors used a single assessment tool as the sole criterion for determining whether Student continued to meet eligibility for special education. The assessors used technically sound instruments to assess Student, which addressed the relative contribution of cognitive and behavioral factors, as well as physical and developmental factors.

The assessments used to evaluate Student were selected and administered so as not to be discriminatory on a racial or cultural basis. The assessments were all provided to Student in a language and form most likely to yield accurate information on what Student knew and could do academically, developmentally, and functionally. All instruments administered were used for purposes for which the assessments were valid and reliable. All the assessors were trained and knowledgeable to give the assessments they administered. Each assessor administered all testing instruments in accordance with instructions provided by the producers of the assessments.

PSYCHOEDUCATIONAL EVALUATION

The psychoeducational portion of the assessment was administered by Grissom and Chavarin, both of whom were credentialed and well qualified to conduct their assigned portions of the assessment. Both were familiar with Student, and knowledgeable about autism and its impacts on school performance. Grissom consulted with staff for Student's RAP classes as part of her job duties as a school psychologist, and had been at Student's January 17, 2020 IEP team meeting when Father raised the issue of the appropriateness of Student's placement in the RAP class. Chavarin had been Student's teacher in kindergarten and in first grade.

In February and March 2020, Grissom reviewed Student's records, observed Student in his classroom and at recess, and interviewed Student's teacher and Parents. Grissom administered rating scales to both teacher and Parents to gather information on how Student's autism, behavior and attention affected his development and functional performance. Grissom also administered a test of cognitive ability to Student. In September 2020, Chavarin administered to Student a test of academic achievement.

TEACHER'S AND PARENTS' RESPONSES TO RATING SCALES

Parents completed a questionnaire in February 2020 that evaluated Student's developmental levels. Parents' February 2020 responses ranked Student in the below average range for both cognition and communication. Parents' responses ranked Student's gross and fine motor skills, social emotional functioning, and adaptive functioning in the delayed range.

On September 29, 2020, after Parents disagreed with the assessors' conclusions, Mother revised some of her responses to those rating scales in October 2020. Mother's October 2020 revised responses to the cognitive rating scales rated Student's cognitive skills as above average. Her earlier responses had rated him as below-average cognitively. Due to the tremendous inconsistency between Parents' February 2020 responses, and Mother's October 2020 responses, Mother's later responses to the rating skills lacked credibility.

In February 2020, Mother and Chavarin, Student's kindergarten teacher, completed another rating scale which rated Student's overall adaptive skills in communication, daily living skills, and socialization. Mother rated Student overall in adaptive skills in the moderately low range. Chavarin, who was teaching Student in-person at that time, rated him in the low range. Mother rated Student in the moderately low range in communication, and Chavarin rated Student in the low range in communication. Mother rated Student's daily living skills in the moderately low range, and Chavarin rated his daily living skills as falling in the low range. Both Mother and Chavarin rated Student in the low range in socialization.

COGNITIVE FUNCTIONING

Because Student had speech and language delays and autism, Grissom applied a non-verbal index to Student's cognitive testing results in order to accurately estimate Student's cognitive potential. This measure significantly reduced language demands on Student during testing. Grissom noted Student was engaged and put forth effort during this assessment. During the assessment Student spoke to Grissom in English and understood Grissom's instructions, which were given in English. The non-verbal index placed Student's cognitive level within the low to low-average range.

Student's overall results in mental processing and in short term memory fell in the below average range. Student performed within the high end of the below average range in efficiently retrieving learned information. Student performed within the below-average range on visual-spatial abilities. Student's cognitive level results fell within the low to low-average range.

Student performed within the low to low-average range in reading. He scored in the low to very low range in math, and in the very low range for writing. These scores were consistent with the results on the academic achievement assessment conducted in Fall 2020 by Chavarin. Grissom identified reading as an area of Student's relative strength. Student's standardized cognitive assessment scores generally fell between the below-average and lower extreme range. Grissom convincingly opined that the assessment results were a valid estimate of Student's current level of cognitive functioning. Student understood the directions to the assessments given to him by Grissom in English. He was able to attend and participate in the assessment, but needed breaks, which Grissom gave him.

The language survey questionnaire Mother had completed in 2018 when she enrolled Student at Los Alamitos indicated English was Student's first language and the primary language spoken at home. The assessors had relied on this information when assessing Student. Since Student spoke only English at school, there was no reason for the assessors to doubt that English was Student's first language. At the IEP team meeting to review the multidisciplinary assessment results on September 29, 2020, Parents told the team that Student was exposed to Bulgarian and Greek, Parents' native languages, before he learned English. At hearing Father suggested the assessors' assumption English had been the first language to which Student had been exposed, may have negatively affected Student's assessment results. Grissom credibly opined that this new information did not invalidate the assessment results, since Student understood the testing directions provided in English and Student had responded to the assessor in English.

In September 2020, Grissom interviewed Chavarin, who was Student's teacher for a second year. Chavarin reported Student was functioning at a learning readiness level. Student was starting to recognize sight words and was developing a concept of print. He knew the alphabet and corresponding letter sounds. He demonstrated good pre-writing strokes. He could write some letters and could recite numbers up to 120 with only a few mistakes. Student was not able to answer "who, what, where" questions about a familiar story. Student required adult facilitation to remind him of some directions.

SOCIAL, EMOTIONAL, BEHAVIORAL AND ADAPTIVE FUNCTIONING

In February and early March 2020, Grissom gathered information about Student's social, emotional, behavioral, and adaptive skills, by reviewing Student's records,

including private agency assessments, observing him in class and at recess, and interviewing Parents. Both Mother and Chavarin completed an instrument which addressed Student's attention levels, called the ADHD test. According to Mother's responses on the ADHD test, Student was unlikely to have ADHD. However, according to Chavarin's responses on the ADHD test, Student was in the very likely range for having ADHD.

While observing Student in class in early March 2020, Grissom noted Student regularly needed prompting before he could attend to tasks. Grissom also observed at recess Student needed adult facilitation in order to interact socially with other children. The children in Student's RAP class shared a playground at recess with children from general education classes, although there was no evidence Student interacted with neurotypical peers during recess. Parents told Grissom Student needed improvement in his social and communication skills. Other children frequently did not understand Student, which frustrated him. Student reacted to frustration with negative behaviors.

When assessing Student, Grissom used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student, including information from Parents and his teacher. Grissom did not use a single assessment tool as the sole criterion for determining whether Student continued to meet eligibility for special education. Grissom used technically sound instruments to assess Student, which addressed the relative contribution of cognitive and behavioral factors, as well as physical and developmental factors.

The assessments used to evaluate Student were selected and administered so as not to be discriminatory on a racial or cultural basis. The assessments were all provided to Student in a language and form most likely to yield accurate information on what

Student knew and could do academically, developmentally, and functionally. All instruments administered were used for purposes for which the assessments were valid and reliable. Grissom was trained and knowledgeable to give the assessments she administered to Student. Grissom administered all testing instruments in accordance with instructions provided by the producers of the assessments.

ACADEMIC ACHIEVEMENT ASSESSMENT

Chavarin conducted the academic achievement portion of the psycho-educational assessment of Student in September 2020. Chavarin was well-qualified and trained to conduct an academic achievement assessment. Chavarin had previously assessed many students in the area of academic achievement. Chavarin used a variety of tools to gather information about Student's academic performance, including a standardized assessment, observation during testing, and record review. Her assessment was not affected by economic, cultural, or environmental factors.

The academic achievement assessment included a battery of tests, referred to as clusters, which measured Student's academic performance compared to other same age students, in the areas of broad reading, basic reading skills, reading comprehension, reading fluency, broad mathematics, math calculation skills, math problem solving, broad written language, and written expression. Student scored in the low-average range in basic reading skills, but in the low range in reading comprehension. Student scored in the low range in math calculation skills, and the very low range math problem solving and written language skills.

The psychoeducational assessment, conducted jointly by Grissom and Chavarin, complied with the legal requisites for assessing children under the IDEA, except that it was not timely completed.

SPEECH AND LANGUAGE ASSESSMENT

Speech language pathologist, Madjidi, conducted the speech and language assessment of Student in September 2020. Madjidi had a master's degree and a bachelor's degree in Communicative Disorders, and was granted a certificate of competency in speech-language pathology by the American Speech and Hearing Association. She was licensed in California as a speech language pathologist and held a California credential in speech-language pathology services. Before beginning her employment at Los Alamitos as a speech language pathologist, she worked as a speech therapist at a private clinic. She had worked with many children with autism, and was knowledgeable about autism and its impact on children in the school setting. She testified confidently and knowledgeably at hearing.

Madjidi conducted the formalized testing in the speech pathologist's office with Student in person, observing health and safety protocols. Madjidi gathered feedback regarding Student's communication skills from Parents and Chavarin. Parents completed a questionnaire regarding Student's speech, language, and overall communication. Parents responded that Student's communication skills were poor, and that Student lived in a multi-lingual home and was exposed to English, Greek and Bulgarian.

Chavarin's questionnaire responses reported her concerns about Student's pronunciation. She thought Student's social understanding of language was limited, but he could understand basic commands and basic social speaking. She reported he engaged in parallel play, but needed facilitation from adults before he would interact with peers. He did not exhibit many nonverbal expressions, other than grinning, smiling, and crying.

Student's oral mechanism was adequate to produce speech. Madjidi administered a test to evaluate Student's articulation. Student received a below-average score in a word production subtest, as he was not able to properly pronounce some consonants and blended consonant sounds. On another subtest, Student was not able to accurately repeat the words when retelling a story told to him. Madjidi observed Student's voice and fluency appeared adequate.

To assess Student's understanding and use of language Madjidi tested Student's auditory comprehension and expressive communication, which were both in the significantly below average range. Madjidi also observed Student in a virtual speech therapy session.

Madjidi concluded Student's receptive language was delayed. He had difficulty comprehending basic concepts and answering questions about a story read to him. He also demonstrated expressive language deficits in syntax and morphology. He was able to make requests and statements, and greet others, but engaged in echolalia, or simply repeating what he had heard. He had deficits in pragmatics, or social language. Most of his expressive language was labeling and repeating words said to him. He exhibited communicative intent, especially when he wanted attention. Even though he had some articulation problems, he was intelligible in conversation.

English was the only language Student spoke during the assessment, and he understood Madjidi, who spoke to him in English. Madjidi opined convincingly that the information Parents provided after she had assessed Student, that the first languages he was exposed to were Bulgarian and Greek, rather than English, did not invalidate the speech and language assessment results. Student understood English and spoke English during the assessment, so no interpreter was needed.

Madjidi conducted an informal language sample during the assessment. The results of that sampling indicated Student's expressive vocabulary was below-average. He did not use age-appropriate vocabulary or appropriate pronouns. He had difficulty answering questions about a story. Madjidi concluded Student needed goals in both receptive language and expressive language. She worked with the speech therapist providing services to Student to develop those goals. Student met the criteria for special education eligibility under the category of Speech and Language Impairment. Madjidi did not know the language requirements for general education classes, but expressed concern that Student might not have the skills to follow and understand the language used in a general education classroom.

The speech and language assessment conducted by Madjidi complied with the legal requisites for assessing children under the IDEA, except the assessment was not timely completed.

FUNCTIONAL BEHAVIOR ASSESSMENT

BCBA Salmons conducted the FBA of Student in September 2020. Salmons' professional behavior training was primarily in ABA. Salmons had been certified as a BCBA for nine years, and had extensive experience working with and assessing children both in their homes and in school settings. Salmons, who was a very credible witness, stated not every child eligible for special education who has behavior goals is given an FBA. Most behavior issues are addressed by classroom staff without a FBA, which must be specifically prescribed by an IEP team. In this instance Parents requested the FBA, and the IEP team agreed to assess Student's functional behavior.

Salmons was trained to conduct FBAs, which addressed problem behaviors that impeded students' progress in school. He had conducted many FBAs on children both

in school settings and in home settings. Many of the children Salmons assessed had autism. Salmons also had significant experience providing ABA services both in homes and in schools. In addition to conducting FBAs, Salmons also provided consultation services regarding behavior issues, particularly for autistic students, to special education teachers and staff in schools served by the Anaheim SELPA.

Salmons convincingly opined that a completed FBA may, or may not, result in a behavior intervention plan. Only children with extreme behaviors, that cannot be addressed by the professional staff assigned to a classroom or a program, were given behavior intervention plans.

No standardized instruments were administered during the FBA, which is customary practice. FBAs are conducted by observing the child in school, collecting behavior data during those observations, and analyzing the data to figure out why a child is engaging in negative behaviors that impede his progress at school.

Salmons reviewed Student's records first and then interviewed Parents and Student's teacher, Chavarin. Father described Student's language abilities as speaking in full sentences and functional. Father described Student's problem behaviors as resulting from Student's frustration, and consisting of verbal protests, screaming, crying, and flopping to the ground, usually when he was asked to engage in nonpreferred activities, and when he did not get his way. When Student behaved negatively Parents tried to redirect him. If that did not work, they ignored him until he deescalated.

Chavarin described Student's language abilities as limited to short utterances, such as "I want ...," and echolalia. She noted Student had not shown interest in social play. Chavarin described Student's problem behaviors as follows: difficulty attending, crying, protesting, eloping and tantrums. These usually occurred when Student was

presented with new materials or tasks, when too many people were speaking at once in a class, routines were broken, and during whole group instruction. The RAP class staff responded to those behaviors by presenting visuals, modeling appropriate behavior, giving positive reinforcement, and building positive behavior momentum.

Salmons observed Student virtually while Student attended his first grade RAP class and speech therapy in LosAI@Home, Student's virtual instruction program in the 2020-2021 school year. Salmons observed Student from 30-to-44 minutes on six different school days, during virtual instructions on a variety of subjects, and during online speech therapy. These observations occurred at different times during the school day. Salmons did not go into Student's home to observe him because it was prohibited to do so by his employer due to the pandemic.

When observing Student during the RAP class, Salmons could see only Student and Chavarin on his computer screen. Salmons could not see other children in the virtual class, or anyone who was with Student at home during those observations. Student was assisted by his private ABA aide or another adult during the observations, but Salmons was unable to see that adult on his computer screen. Salmons also was not able to see what Student was writing. Salmons acknowledged this was a shortcoming of observing a child in a virtual placement, such as LosAI@Home, but Salmons believed the data collected provided valuable information about the functions of Student's behavior.

During the observations Salmons collected behavior data on the environment, the antecedent conditions which occurred immediately before Student behaved negatively, Student's negative behaviors, and the consequences of those behaviors. Student's negative behaviors consisted of verbal protests, attempts to leave his chair, flopping out of his chair to the ground, and eloping out of his chair. Salmons could not

see the consequences, if any, for Student's negative behaviors, which Salmons conceded was a limitation of observing Student virtually.

The collected behavior data revealed Student's problem behaviors increased during the following: at the beginning and near the end of lessons; during math and writing activities; when the teacher was giving instructions; a task with multiple step instructions; when Student had to wait; when Student was asked to show the teacher his work; and when there were distractions. Salmons concluded Student was more likely to engage in negative behaviors at the beginning and end of a class, and when he was asked to engage in nonpreferred tasks. During the six observations, Student refused to engage in the teacher's or therapist's instructions or assigned tasks at an average rate of three to four times per hour. Student's negative behaviors decreased during tasks with single-step instructions and when there were limited distractions. Salmons noted Student had significant difficulty attending to nonpreferred activities, and he required prompting before he would attend to or engage in nonpreferred tasks, like math and writing.

Salmons concluded Student needed to build skills, particularly in being attentive, before his behaviors would stop impeding his progress at school. Salmons recommended a contingency management system, such as a token board, be used with Student. Salmons further recommended school staff check-in on Student often and give him frequent positive reinforcements for good behavior, in order to teach Student appropriate behavior skills. Salmons noted Student needed growth in attending and responding in order to make progress at school.

Student's negative behaviors were moderate, and not severe. Salmons confidently and knowledgeably testified Student's behaviors could be managed through

program accommodations, and without a behavior intervention plan. The RAP class was embedded with the behavior interventions that were necessary to manage Student's negative behaviors and teach him new behavior skills. These embedded behavior interventions in the RAP classes included: having a staff trained in ABA, using a token system for positive reinforcement, and employing visual schedules often. Salmons was familiar with the RAP and opined the structure provided in the RAP classes was designed to address Student's type of negative behaviors. Additionally, RAP staff was specially trained to manage the types of behaviors Student exhibited. For those reasons, Salmons stated Student did not need a behavior intervention plan, as his behaviors could be managed and improved by the program accommodations offered to him, and by the structure and behavior interventions embedded in a RAP classroom.

Salmons did not recommend a one-to-one aide be assigned to Student in a RAP class. Salmons stated Student was more likely learn to function independently if an aide was not assigned to him. Student did much better with individual instruction, than he did with group instruction. Salmons opined convincingly that Student needed to improve his behaviors and observational learning skills before he would be able to succeed in a general education class, where whole group instruction is the primary form of instruction.

Salmons stated that despite not being able to observe Student in-person, the results of the FBA were valid. Salmons' analysis of the behavior data accurately characterized for Parents and Student's IEP team Student's behaviors which impeded his progress in school, and the circumstances under which those behaviors occurred. Salmons recommended another FBA be conducted when Student began attending school in-person and could be observed in that setting.

OCCUPATIONAL THERAPY ASSESSMENT

Jenna Bastain, a California licensed occupational therapist, conducted the occupational therapy assessment of Student in September 2020. Bastain had over 18 years of experience conducting occupational therapy assessments of children. Bastain had a master's degree in occupational therapy and was certified as an occupational therapist by the National Board of Occupational Therapy. Bastain regularly took continued education courses in occupational therapy to maintain her California license.

Bastain worked with preschoolers through fifth graders in the RAP program. She had worked with Student before she assessed him in September 2020 because she had previously collaborated with staff in RAP classes regarding Student's fine motor skills. Bastain credibly opined that, prior to the pandemic school closures that occurred in March 2020, Student did not need individual occupational services. Bastain was at Student's initial IEP meeting in October 2018. She believed Student did not need direct individual occupational services when he was initially placed in the RAP preschool class because it was embedded with occupational therapy and the curriculum and supports in that placement would meet Student's occupational therapy needs.

Bastain administered multiple tests and used a variety of assessment strategies to gather information about Student's motor and sensory functioning and deficits. She observed him in an educational setting and had Parents and Chavarin complete questionnaires about Student's sensory and fine motor skills. Father brought Student to a school campus for the assessment, which was conducted in-person. Health safety protocols were observed during the assessment.

Student was cooperative during testing. He was not able to complete all of the tasks. He did not initially understand some of the instructions and needed prompting.

Bastain noticed Student exhibited some problems with writing and cutting that he did not have in the prior school year, and that Student was anxious about writing activities. Bastain concluded Student's motor skills had regressed from where his motor skills had been before the COVID-19 school closure. Student spoke in English during the assessment and understood the directions Bastain gave in English. When Bastain had previously seen Student in class he spoke in English. The fact that Parents spoke Greek and Bulgarian at home did not invalidate the occupational therapy assessment conducted by Bastian. In light of the Student's regression in fine motor skills and emerging anxiety about writing, Bastian concluded Student would benefit from individual school based occupational therapy services.

The occupational therapy assessment conducted by Bastain complied with the legal requisites for assessing children under the IDEA, except it was not timely completed.

HEALTH ASSESSMENT

School nurse Dominique Jorgenson completed Student's health assessment in March 2020. Jorgenson had a bachelor's degree in nursing, was licensed as a registered nurse, and received her California school nurse services credential in 2016. Jorgenson reviewed Student's school health records, interviewed Mother, and performed in-person vision and hearing screenings. The health assessment concluded Student was in good health and was diagnosed with autism spectrum disorder. The health assessment

conducted by Jorgenson complied with all requirements under the IDEA, except the MDA Report, which included the health assessment results, was not timely provided to Parents.

LOS ALAMITOS FAILED TO TIMELY COMPLETE THE ASSESSMENTS

Los Alamitos received Parents' written consent to the assessment plan on February 13, 2020. Within 60 days of that date Los Alamitos was required to provide the assessment report to Parents, and hold an IEP team meeting to consider the assessments. ((Ed. Code, §§ 56043, subd. (f)(1) & 56344, subd. (a).) Therefore, the assessments should have been completed and an IEP team meeting to address the results should have occurred by April 13, 2020. That did not happen because Los Alamitos closed its schools and stopped conducting all assessments between March 16, 2020, and August 30, 2020, due to the COVID-19 pandemic.

Since Los Alamitos knew it could not timely complete the assessments it should have sought Parents' agreement to extend the requisite timelines. There was no evidence Los Alamitos asked Parents to agree to an extension. The March 21, 2020 USDOE Supplemental Fact Sheet, Addressing the Risk of COVID in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities, reminded public educators the IDEA deadlines still applied throughout the pandemic. That USDOE guidance specifically advised school districts: "[a]s a general principle, during this unprecedented national emergency, public agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate."

At an IEP team meeting in May 2020, Parents asked the team when the assessments, particularly the FBA, would be completed. Parents were clearly interested

in reviewing the assessment results as soon as possible. Los Alamitos's members of the IEP team told Parents the assessment process would resume when in-person instruction was back in session. In May 2020, the assessments already failed to comply with all legal requisites because they had not been completed within 60 days of the date Los Alamitos received Mother's written consent to the assessment plan.

The assessments were completed in September 2020. The assessment results were reviewed and a draft MDA report was presented to the IEP team at an IEP meeting on September 29, 2020. Parents recommended certain revisions to the draft report at that meeting. Those revisions were made to update the draft multidisciplinary report and the report was finalized, resulting in the final MDA Report.

OTHER THAN TIMELINESS, THE ASSESSMENTS MET ALL LEGAL REQUISITES

Each of the assessors on the assessment team collected information about Student from a variety of sources and through a variety of instruments. All the assessors also reviewed Student's cumulative school records, which included his grades, progress reports, previous assessments, and IEPs. Each of the assessors collected information about Student in interviews with Student's teacher and Parents, and from the assessors' observations of Student at school, both in class, in speech therapy sessions, and at recess. Fourteen different standardized instruments were used to assess Student. No single procedure was used to analyze his continued eligibility for special education, or to determine appropriate educational programs and services for him. Each of the instruments used during the assessments were validated for the specific purposes for which they were used, and all of the assessment results were obtained through a valid

administration of the tests administered in accordance with the publishers' instructions. Each of the assessors were qualified and trained to use the instruments they used during the assessments.

The assessors each wrote a report about their assessments, findings and recommendations. Those reports were included in the final MDA Report. Each member of the assessment team testified at hearing and credibly opined that the assessment results accurately depicted Student's present levels of cognitive, academic and adaptive functioning. Each of the assessments included in the triennial multidisciplinary assessment of Student in 2020 complied with the legal requisites for assessing children under the IDEA, except that the assessments were not completed within 60 days of the district's receipt of Parents' consent to the assessment plan.

THE MULTIDISCIPLINARY ASSESSMENT REPORT

Los Alamitos's final MDA Report determined Student met criteria for eligibility for special education under both the autism, and the speech and language impairment categories, and recommended specialized academic instruction and related services in speech therapy and occupational therapy. The MDA report also explained clearly the basis on which the assessors had made those determinations. Student's relevant behaviors when the assessors observed him in class, at recess, and in speech therapy were noted in the MDA Report. The MDA Report also addressed the relationship of Student's observed behavior to his academic and social functioning at school. The MDA report discussed the educationally relevant health, development, and medical findings about Student. All the assessors noted that Student was not affected negatively by any

environmental, cultural, or economic disadvantages. Student did not have low incidence disabilities. Student's needs for specialized services, materials, and equipment, if any, were addressed in the MDA Report.

PARENTS' REQUEST TO UPDATE RATING SCALE RESPONSES

When the assessment results were presented at an IEP meeting on September 29, 2020, Parents expressed their disagreement with the assessment results and asked if they could revise some of their rating scale responses. Parents also informed the team Student was exposed to Bulgarian and Greek, before English. The IEP team agreed Parents could submit another set of rating scale responses which would be incorporated into the assessment results and final MDA Report. Parents submitted some new rating scale responses to Grissom in early October 2020. Parents also updated the language survey by stating that Student was first exposed to Bulgarian and Greek, instead of English, and that he spoke English and Greek at home. The MDA Report was subsequently updated accordingly to incorporate this new information.

The assessors each credibly opined that the new information regarding the first languages to which Student was exposed, did not render the assessment results invalid. Student understood the testing instructions provided in English and Student replied to questions asked by the assessors in English. Student spoke only English at school. Both Parents spoke English, in addition to their native languages, and at home Father usually spoke with Student in English to support Student's communication development at school. English was Student's primary language, and non-verbal tests were used, or the results were interpreted using a non-verbal index, when Student's language deficits were likely to impact assessment performance.

THE MULTIDISCIPLINARY ASSESSMENTS AND MDA REPORT WERE NOT APPROPRIATE BECAUSE THEIR UNTIMELINESS INTERFERED WITH PARENTS' OPPORTUNITY TO PARTICIPATE

Los Alamitos failed to timely complete the triennial assessments, review the results at an IEP team meeting, and provide the MDA Report to Parents within 60 days of the date it received Parents' written consent to the assessment plan. Timeliness is the only legal requisite the assessments and MDA Report failed to meet. The emergency nature of school closures in Spring 2020, is the reason the assessment process halted on March 16, 2020. Nonetheless, the assessments were required to be completed and reviewed at an IEP team meeting, and the MDA Report was to be provided to Parents by April 13, 2020. The District made no attempt to reach any consensus with Parents regarding an extension of the statutory timelines.

The assessments were not reviewed until September 29, 2020. Because the team did not finish its review of the assessments on September 29, 2020, it met again twice, on October 9, and 22, 2020, to continue its review and discuss the offer of FAPE. The failure of Los Alamitos to complete the assessments and hold an IEP meeting to discuss them timely by April 13, 2020, interfered with the opportunity of the Parents to participate in the formulation process of Student's IEP. (Ed. Code, § 56505, subd. (j).) Timely completion of assessments is an important element of the reevaluation process. Parents need information in a timely fashion because early interventions are important to a child's progress, particularly with autistic children. See, *Amanda J v. Clark County School District* (2001), 267 F.3d 877, at 893-894. In this case the assessment results were five and a half months late, which is a significant delay because the results were needed to consider Parents' request, made in January, 2020, to change Student's placement.

Because the triennial assessments conducted in 2020, and the provision of the MDA Report to Parents, were untimely and failed to comply with Ed. Code, § 56043, subd. (f)(1), the assessments were not appropriate. The assessments and the MDA Report otherwise met all legal requisites. Therefore, Los Alamitos failed to meet its burden of proof on its sole issue in this case. Student prevailed on Los Alamitos's issue.

STUDENT'S ISSUE 1: DID LOS ALAMITOS DENY STUDENT A FAPE, BY FAILING TO COMPREHENSIVELY ASSESS STUDENT PURSUANT TO THE OCTOBER 9, 2020 PSYCHOEDUCATIONAL ASSESSMENT?

Student contends the psychoeducational assessment conducted by Los Alamitos in 2020 was not comprehensive and the results did not accurately describe Student's abilities and deficits. Los Alamitos contends its psychoeducational assessment of Student was comprehensive, and the results of the assessment were valid and accurate.

For the reasons and the law addressed above in the analysis of Los Alamitos's issue in these consolidated matters, Los Alamitos did not deny Student a FAPE by failing to comprehensively assess Student in the psychoeducational assessment documented in the MDA Report dated October 9, 2020. The psychoeducational assessment met all procedural requirements, except timeliness of completion and IEP team review. The MDA Report was appropriately revised and updated to include new information provided by Parents in late September and early October 2020. The weight of the evidence established that the 2020 psychoeducational assessment comprehensively assessed Student. Also, the MDA Report accurately and comprehensively described Student's developmental abilities and functional performance.

The assessments comprehensively assessed Student. The untimeliness of the assessment results, the IEP team meeting to review the assessments, and delivery of the MDA Report to Parents, were the narrow grounds on which the assessments and results were found to be not appropriate in Los Alamitos's sole issue in this case. The assessments and MDA were otherwise valid and legally compliant.

Student did not meet his burden of proof on Student's issue 1. Los Alamitos prevailed on Student's Issue 1.

STUDENT'S ISSUE 2: DID LOS ALAMITOS DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT AN APPROPRIATE PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT?

Student contends Los Alamitos denied him a FAPE by offering him placement in the RAP in both the October 25, 2019 IEP, to which Mother consented, and the September 29, 2020 IEP, to which Parents did not consent, rather than placement in a general education classroom. Student contends he would have had access to a general education curriculum, and the opportunity to model higher functioning peers in the areas of language, behavior, and social skills in a general education class. Student further contends he could have received educational benefit with the support of an aide in a less restrictive placement than in a RAP classroom.

Los Alamitos contends its offer of placement in the RAP in both the October 25, 2019 IEP, and in the September 29, 2020 IEP, was the least restrictive environment in which Student could have received educational benefit.

LAW APPLICABLE TO PLACEMENT

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to constitute a FAPE under the IDEA, the offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

School districts are required to provide each special education student with a program in the least restrictive environment. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers, and that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a) (2006); Ed. Code, § 56031.)

In determining the educational placement of a child with a disability, a school district must ensure that the placement decision is made by a group of persons,

including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The decision must take into account the requirement that children be educated in the least restrictive environment.

Placement must be determined annually, based on the child's IEP and as close as possible to the child's home, and unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs, and a child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116 (2006).)

To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit has balanced four factors. The first factor is whether the educational benefits of placement full-time in a regular class are outweighed by placement of a child in a more restrictive placement. The second factor is whether the nonacademic benefits are outweighed by a more restrictive placement. The third factor is what effect the student will have on the teacher and other children in a general education class. The fourth factor is the costs of mainstreaming the student. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*).

If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is

appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050.) The continuum of program options includes, but is not limited to:

1. regular education;
2. resource specialist programs;
3. designated instruction and services;
4. special classes;
5. nonpublic, nonsectarian schools;
6. state special schools;
7. specially designed instruction in settings other than classrooms;
8. itinerant instruction in settings other than classrooms; and
9. instruction using telecommunication instruction or instruction in the home, in hospitals, or other institutions.

(Ed. Code, § 56361.)

THE RAP WAS THE LEAST RESTRICTIVE ENVIRONMENT IN WHICH STUDENT COULD OBTAIN EDUCATIONAL BENEFIT

Chavarin was Student's teacher in the RAP kindergarten in the 2019-2020 school year. Los Alamitos did not give grades on the report cards for the third trimester of the 2019-2020 school year due to the COVID-19 emergency school closure. Instead of grades, teachers indicated on report cards that a child either "Meets Standards," or "Needs Review." Student's report card for the last trimester of the 2019-2020 school

year indicated he “Needs Review.” This meant Student had not met the standards of his kindergarten RAP class that school year. This dispels Student’s argument the RAP class was not academically rigorous enough for him.

Chavarin was also Student’s teacher for the first two trimesters of the 2020-2021 school year in the LosAl@Home RAP first grade class. That class was a 100 percent virtual instruction program, which Parents elected for Student for the 2020-2021 school year. Around February 1, 2021, Student’s first grade teacher changed to Sarah Medina. At the time of hearing Medina was no longer a Los Alamitos employee and was unavailable to testify.

Chavarin also conducted the triennial academic achievement assessment of Student in September 2020. Consequently, Chavarin was a very knowledgeable and credible witness as to Student’s abilities, deficits, academic levels, and adaptive functioning. Chavarin testified Student needed adult support to follow simple instructions in both the 2019-2020, and the 2020-2021 school years. She regularly used a prompt hierarchy to get Student to attend to tasks. Student had difficulty with observational learning. He was not able to communicate well with peers and required adult facilitation before he would interact with peers. He also had difficulty with transitions. Student’s behaviors often impeded his ability to learn. For example, Student often flopped to the floor and otherwise eloped when he was presented with nonpreferred tasks, which were most academic activities, especially those requiring him to write and involving math.

In the 2019-2020 school year Student needed adult assistance to put things away in his cubby. Prior to the school closure in March 2020, there were always five-to-seven adults in Student’s kindergarten RAP class with a maximum of nine or ten students.

None of the adults were assigned to a particular child because, according to Chavarin, research established that aide assignments to individual children tended to create dependence. BCBA, Ben Rodriguez, regularly consulted with Chavarin on behavior issues in the RAP class. Chavarin also consulted with an occupational therapist regarding the motor skill and sensory needs of children in the class.

Student sometimes cried in the kindergarten RAP class. At the end of kindergarten Chavarin recommended Student continue in the RAP because he needed a classroom environment which supported his progress on goals, particularly the goals on attending and compliance. Student's progress in the RAP was typical in both the 2019-2020 and the first two trimesters of the 2020-2021 school years.

After school closed on March 16, 2020, until the end of the school year, Student did not log into the virtual whole group instruction provided. He also did not turn in any assignments during that period. Student also did not turn in any of the written work assigned by Chavarin in the first 2 trimesters of the 2020-2021 school year, so he also failed to meet those expectations of his first grade LosAl@Home RAP class.

The educational benefits Student may have gained from placement in a general education class were far outweighed by Student's need to be in a very small class with a low adult to child ratio. Student needed the embedded behavior supports and the individually modified general education curriculum provided in the RAP classes. These important supports would not be available to Student in a general education placement, even if he was assigned a one-to-one aide, whose main duty would be to prompt Student and offer him positive enforcement, not to provide him with instruction. Chavarin convincingly opined a general education classroom would not have been appropriate for Student during either kindergarten or first grade. The general education

classes had over 25 children in each class. Student was easily distracted, particularly if too many people spoke in a classroom at the same time, which would occur often in a large general education classroom. Student's attention and behavior deficits made it necessary for him to be placed in a small classroom with a low adult to child ratio, and limited distractions. Student had difficulty with observational and whole group instruction, which occurred regularly in general education classes.

Student also required the behavior supports embedded into the RAP. Specific program accommodations, which addressed Student's behavioral needs, were included in his IEP. The staff in the RAP classes were specially trained in behavior interventions. They regularly provided visual cues, scaffolding, and other supports which allowed Student to access the modified curriculum. Student's academic and communication skills were also not appropriate for a general education class. His receptive language skills may not have been advanced enough to permit him to follow and understand the language and multi-step instructions regularly used in general education classes.

Any non-academic benefits of placement in a general education class, such as the opportunity to socialize with, and model neurotypical peers, were also far outweighed by Student's needs for a small, structured classroom, with a modified curriculum. There was evidence that if Student was placed in a general education class with an aide, the aide would likely have to explain matters again to Student, as he would probably not be able to understand the multi-step instructions, and whole group instruction regularly presented by a teacher to a general education class. Student needed individual instruction, which was not available in a general education class. This likely ongoing interaction between Student and his one-to-one aide in the back of a general education classroom would likely cause considerable distractions for the teacher and other children in a general education class. Neither party provided any evidence regarding

the costs of mainstreaming Student. A balancing of the four factors discussed above, clearly weighs in favor of a finding that placement in the RAP, rather than in general education classes, was the least restrictive environment for Student.

Before school closure in March 2020, Student could sustain attention on a task for five to seven minutes at the most. This was a far shorter period of attention than was required in a general education class. In Fall 2020, Student's crying decreased, but he still could not complete tasks independently. He needed adult prompting to regulate his behaviors. Chavarin was not sure if Student had progressed at all academically in first grade because Parents were regularly using "hand over hand" assistance during the virtual instruction, despite Chavarin's advice against it. Also, during the virtual instruction Chavarin noticed Student received more frequent levels of prompting from his at home ABA aide, than he had been given when he was attending class in-person the previous school year.

Chavarin convincingly opined Student would not be able to access the curriculum in a general education class because the curriculum would not be individually modified for Student as it was in the RAP class. His academic achievement level was significantly below that of the general education students. Additionally, Student's behavior and communication deficits would significantly impede his progress in a general education class. He needed the supports available in the RAP class in order to access his education. Additionally, there was no evidence that Student could obtain educational benefit if he was mainstreamed for longer periods than offered in the October 25, 2019 IEP, and in the September 29, 2020 IEP.

Here, the preponderance of the evidence established Los Alamitos's placement offers in the RAP in both the October 25, 2019 IEP and the September 29, 2020 IEP were

reasonably calculated to meet Student's unique needs and to provide Student with some educational benefit in the least restrictive environment at the applicable times. In both October 2019, and September 2020, Student had significant attention, behavior, and communication difficulties. Chavarin, Grissom and Salmons all convincingly opined Student was properly placed in the RAP during those time periods.

In November 2020, the IEP team offered Student a three week trial integration in a general education class, with the support of a one-to-one aide, for one academic portion of his school day. This would consist of either a morning or afternoon instructional session. Parents disagreed with the terms of that offer for a trial integration. Parents insisted the trial period include more than one academic instructional session during a school day. The IEP team would not agree to having Student in general education for more than one academic instructional period a day during the trial integration. Consequently, Parents did not consent to the IEP team's offer for a trial integration period into a general education classroom. Salmons believed it would be beneficial for Student to have a trial period in a general education class before a change of placement for him into general education was considered.

Parent's expectations that Student's unique needs would be overcome by merely being exposed more frequently to neurotypical peers were not supported by evidence and seemed unrealistic. Student clearly needed the supports provided in a small classroom with a low child to adult ratio. At the relevant times the IEP teams recognized Student's low tolerance for nonpreferred tasks, particularly academics requiring writing. Student required the direct instruction and behavioral interventions offered in the RAP. Student also needed the individually modified curriculum offered in the RAP. Due to Student's lower academic achievement levels he would not be able to access an

unmodified general education curriculum. Additionally, Madjidi questioned whether Student's language levels were advanced enough to be able to understand the language used in a general education classroom.

Los Alamitos's triennial assessment results clearly indicated Student continued to have attention difficulties and required a placement with visual supports, behavior management systems, prompting, adult support, one-on-one instruction, small group instruction, structure, and frequent redirects in order to attend to, and complete his work. Chavarin and Grissom credibly testified that the RAP classroom structure was appropriate for Student in light of his unique needs. The RAP also provided mainstreaming opportunities for a portion of the school day. Therefore, Student had opportunities to model the language, behavior, and social interaction with neurotypical peers.

Father's assertion that the curriculum in the RAP class during the 2020-2021 school year was not challenging enough for Student was not supported by the evidence. Chavarin testified Student's progress in the RAP first grade class was typical. Student presented no credible evidence Los Alamitos had any information which indicated that the offers of placement in the RAP class made in the IEP dated October 25, 2019, and in the IEP dated September 29, 2020, were inappropriate at the applicable times. Student provided no expert testimony to support his position that a general education classroom was the least restrictive environment in which he could obtain educational benefit.

The educational benefits of placement full-time in a general education class would have been very low due to Student's behaviors and the level of support and the structure Student required in order for him to attend to academic tasks and learn.

Along the continuum of placement options, the evidence established Student was properly offered placement in a RAP class as the least restrictive environment in both the October 25, 2019 IEP and in the September 29, 2020 IEP.

Student did not meet his burden of proof on Student's Issue 3. Los Alamitos prevailed on Student's Issue 3.

STUDENT'S ISSUE 3: DID LOS ALAMITOS DENY STUDENT A FAPE BY FAILING TO PROVIDE STUDENT WITH OCCUPATIONAL THERAPY SERVICES DURING THE STATUTORY PERIOD BEGINNING ON FEBRUARY 4, 2019?

Student contends Los Alamitos failed to implement embedded occupational therapy services after the COVID-19 pandemic in-person school closures and move to virtual distance learning. Los Alamitos contends an occupational therapist collaborated with Student's teachers during distance learning throughout the statutory period so that occupational therapy strategies and interventions were embedded into Student's RAP classes in both Student's kindergarten RAP class and in his first grade LosAl@Home RAP class.

At the time of school closure in mid-March 2020, Student's October 25, 2019 IEP was in effect. That IEP offered Student placement in the RAP kindergarten class, which was embedded with indirect occupational therapy supports. Chavarin regularly collaborated with an occupational therapist regarding the fine motor needs of children in the class. The IEP October 25, 2019 IEP team determined Student's mild, fine motor deficits could be effectively addressed through the occupational therapy interventions embedded into the RAP class and direct individual occupational therapy services were not necessary.

Mother testified Student did not receive any occupational therapy interventions embedded into the RAP class after the school closure. However, Student did not log into any of the group instruction online RAP classes from March 18, 2020, through the end of the school year on May 28, 2020. Therefore, Mother's testimony that embedded occupational therapy services were not implemented to Student in his RAP class during that time was not credible. Mother could not have known whether or not occupational therapy interventions and exercises were embedded into the RAP class, and whether the collaboration between Student's teacher and an occupational therapist continued, because Student did not participate in the group instruction provided from mid-March 2020, until the end of the 2019-2020 school year.

The testimony of Chavarin established she regularly collaborated with an occupational therapist regarding occupational therapy exercises and other fine motor interventions for children in her RAP classes. The collaboration resulted in advice from Bastain to Chavarin about fine motor interventions and exercises, which Chavarin implemented in Student's kindergarten RAP class. Chavarin's testimony also established that embedded occupational therapy supports were also provided during the 2020-2021 school year to Student's first grade LosAl@Home RAP class.

Student received these embedded occupational therapy supports when he logged into his virtual LosAl@Home class. Chavarin's observation that Student needed hand-over-hand assistance from either Mother or an ABA aide at home during distance learning, in addition to the assessment results, prompted the September 29, 2020 IEP team to offer Student direct individual occupational therapy services to Student because embedded supports were no longer sufficient.

Student was offered individual occupational therapy services for one hour a week in the IEP dated September 29, 2020, but Parents refused to consent to any part of that IEP. Without Parents' written consent, Los Alamitos was not authorized to implement the individual occupational therapy services offered. Parents claimed they did not understand that they could have signed that IEP with exceptions, which would have allowed Student to receive the occupational services offered. However, the notes of the September 29, 2020 IEP meeting state clearly it was explained to Parents that they could consent to only portions of that IEP. This was also explained in writing to Parents in at least one email communication from Chavarin to Parents dated January 20, 2021.

Also, if Student intended to claim in this issue that he should have been offered individual occupational therapy services in the IEP dated October 25, 2019, no evidence supported that position. There was no evidence Student had fine motor needs that required individual occupational therapy services in October 2019, when the earliest IEP within the statute of limitations in this case was developed. Bastain noted Student's motor skills had regressed between May 2020 and September 2020. This regression was the reason Student was offered individual occupational therapy services in the September 29, 2020 IEP.

The evidence established that, prior to September 29, 2020, Student did not need direct individual occupational therapy services, because his then mild occupational therapy needs were met through the occupational therapy collaboration and services embedded into the curriculum of Student's preschool, kindergarten and first grade RAP classes. Student failed to present evidence that appropriate embedded occupational

services were not implemented in the RAP. Student also failed to present evidence that he should have been offered individual occupational therapy services in the IEP dated October 25, 2019.

Student failed to meet his burden of proof on Student's Issue 3. Los Alamitos prevailed on Student's Issue 3.

STUDENT'S ISSUE 4: DID LOS ALAMITOS DENY STUDENT A FAPE BY FAILING TO OFFER HIM A BEHAVIOR INTERVENTION PLAN IN THE SEPTEMBER 29, 2020 IEP?

Student contends Los Alamitos should have offered him a behavior intervention plan in the September 29, 2020 IEP because his behavior needs required a behavior intervention plan. Los Alamitos contends because appropriate behavior intervention strategies were listed as program accommodations in the September 29, 2020 IEP, and Student's negative behaviors were moderate, and not severe, they could be adequately managed without a behavior intervention plan. Los Alamitos further contends Student's moderate negative behaviors could be managed in an appropriately structured program, such as the RAP, without a behavior intervention plan.

When developing an IEP the IEP team shall, in the case of a child whose behavior impedes his own learning or that of others, consider the use of positive behavioral interventions and supports and other strategies to address that behavior [34 Code of Federal Regulations (CFR) 300.324(a)(2)(i)]. Those strategies must be included in a statement of the special education, related services, supplementary aids and services, and program modifications or supports that will be provided to the child. [20 United

States Code 1414(d)(1)(A)(i)(IV)]. There are no unique requirements regarding how positive behavioral interventions and supports and other behavioral strategies identified by the IEP team are documented. It is not required that these behavioral interventions and strategies be documented in a separate behavior intervention plan.

The September 29, 2020 IEP offered Student seven program accommodations which addressed his problem behaviors. Those accommodations applied when Student was in general education classes, as well as when he was in other education-related settings. The program accommodations were listed in the section of the September 29, 2020 IEP entitled "Supplementary Aids and Services and Other Supports for School Personnel, or For Student, or on Behalf of the Student." These accommodations consisted of specific behavior interventions and strategies intended to mitigate Student's negative behaviors that impeded his ability to learn.

For example, one of those program accommodations noted it was essential to get Student's attention before beginning verbal instruction. Another accommodation addressed Student's need for frequent breaks. Other accommodations addressed Student's needs for minimal distractions, and visual cues. Another accommodation recognized it was necessary to reduce the distractions Student caused to his classmates. Another program accommodation addressed Student's needs for instructions to be repeated, and for an adult to rephrase the responses of other children for Student. There was also an accommodation to allow Student extended time to perform tasks. The seven program accommodations offered in the September 29, 2020 IEP were sufficient to manage Student's moderate behaviors. A separate behavior intervention plan was not necessary to address Student's behaviors.

Both Chavarin and Salmons testified Student's main behaviors were avoidance of academic tasks, particularly those that required him to write, or do mathematics. Both Chavarin and Salmons also noted Student's behavior difficulties were moderate, and not so severe as to require a separate behavior intervention plan. Salmons also credibly opined that if Student was placed in an appropriately structured program, like the RAP, it was not necessary for Student to have a behavior intervention plan. Because Salmons is a highly trained professional in the area of behavioral needs and interventions, and because he was an extremely credible witness at hearing, significant weight was given to his opinion regarding whether Student's behaviors were severe enough to require a separate behavior intervention plan. Significant weight was also given to Chavarin's testimony because she knew Student well.

An example of a circumstance when the law requires a school district to consider whether a behavior intervention plan should be developed for a child is when the child was physically restrained at school due to his unpredictable, spontaneous behavior that poses a clear and present danger of serious physical harm to himself or others. (Education Code Section 56521.1(a) (g) and (h).) Student's moderate negative behaviors were clearly not the type of severe behaviors that required Los Alamitos to consider developing a behavior intervention plan for him.

Student failed to present evidence to support his position that Student's problem behaviors were so severe they could not be managed or modified without a behavior intervention plan. The evidence established Student's behaviors were not severe, but were moderate. Student's behavior problems were the type that could be managed and modified with the accommodations offered in the September 29, 2020 IEP. Also, Student's behaviors had clearly been managed by the interventions and structure embedded into the RAP. For example, the RAP regularly used visual cues, individual

instruction, and an individualized modified curriculum that Student could access. These interventions reduced Student's frustration levels, and mitigated his negative behaviors. Student failed to introduce evidence that his negative behaviors were so extreme that they could not be managed without a behavior intervention plan.

Student failed to meet his burden of proof on Student's Issue four. Los Alamitos prevailed on Student's Issue 4.

STUDENT'S ISSUE 5: DID LOS ALAMITOS DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT A ONE-TO-ONE AIDE PURSUANT TO THE SEPTEMBER 29, 2020 IEP?

Student contends Los Alamitos should have offered him a one-to-one aide because his behaviors were such that he could not access his educational program without a full-time one-to-one aide.

Los Alamitos contends Student did not need a one-to-one aide because he could access his educational program in the RAP without an aide. Los Alamitos further contended that a one-to-one aide would be harmful to Student because it would likely foster Student's dependence on the aide, while Student's independent functioning was a goal.

Student presented no evidence which supported his position that Student's unique needs required he be offered a full-time one-to-one aide in the September 29, 2020 IEP in order for him to obtain educational benefit. Student's placement in the RAP, with its small class size and small adult to child ratio, made it unnecessary for Student to

be assigned a one-to-one aide in order to access the curriculum. Chavarin convincingly testified that one-to-one aides were not assigned to individual children in the RAP class.

Student failed to meet his burden of proof on Student's Issue five. Los Alamitos prevailed on Student's Issue 5.

STUDENT'S ISSUE 6: DID LOS ALAMITOS DENY STUDENT A FAPE BY FAILING TO PROPERLY IMPLEMENT STUDENT'S OCTOBER 25, 2019 IEP DURING COVID-19 SCHOOL CLOSURES?

Student contends Los Alamitos failed to implement his IEP dated October 25, 2019 during the time school was closed for in-person instruction due to the COVID-19 pandemic. Los Alamitos contends it fully implemented Student's October 25, 2019 IEP during the COVID-19 school closures, although teaching methods and delivery of education and services were modified, which was required because of the public health emergency caused by the pandemic.

When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 815 (*Van Duyn*).) Implementation failures are not procedural errors. (*Id.*, at p. 819.) The Ninth Circuit held that state contract law does not apply to the interpretation of an IEP and that only material failures to implement constitute violations of the IDEA. (*Ibid.*)

ORDERS AND GUIDANCE TO SCHOOLS REGARDING COVID-19 SCHOOL CLOSURES IN SPRING, 2020

On March 4, 2020, Governor Gavin Newsom declared a state of emergency in California due to the rapid spread of COVID-19. The governor noted the risk to public health of this highly contagious airborne coronavirus that caused respiratory problems, which could be fatal.

On March 12, 2020, the U.S. Department of Education, called the US DOE, which is the federal agency responsible for developing regulations for and enforcement of the IDEA, outlined the states' responsibility under the IDEA to children with disabilities during the COVID-19 outbreak. (*Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (U.S. Dept. of Education, March 2020).) When an agency interprets its own regulations, a very deferential standard applies, and such an interpretation is controlling unless plainly erroneous or inconsistent with the regulation. (*Federal Express Corp. v. Holowecki* (2008) 552 U.S. 389, 397; *Auer v. Robbins* (1977) 519 U.S. 452, 461 [agency commentary explaining final rule and published with the rule in the Federal Register is entitled to deference].) The US DOE advised that if a school district closed its schools to slow or stop the spread of COVID-19 and did not provide educational services to the general student population, it was not required to provide services to students with disabilities during that same period of time. (*Id.*, at p. 2, *Answer A-1*.) If educational opportunities were provided to the general population during a school closure, then the school district would need to ensure that students with disabilities received a FAPE at that time. (*Ibid.*) The US DOE instructed school districts to determine if each child with disabilities could benefit from online or virtual instruction, instructional telephone calls, and other

curriculum-based instructional activities. However, it cautioned that in doing so, school personnel should follow appropriate health guidelines to assess and address the risk of COVID-19 transmission in the provision of services. (*Id.*, at pp. 3-4, *Answer A-3*.)

On March 19, 2020, due to the rapid spread of COVID-19 throughout California, Governor Newsom mandated that all individuals living in California stay home, except as needed to maintain continuity of operations in federal critical infrastructure sectors. (Governor's Exec. Order No. N-33-20 (March 19, 2020).)

On March 21, 2020, the US DOE issued supplemental guidance, stating school districts must provide a FAPE to students with disabilities during the COVID-19 pandemic, but expressly recognized that education and related services and supports might need to be different in a time of unprecedented national emergency. (*Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* (March 21, 2020, Office of Civil Rights and OSEP) at p. 2.) The US DOE noted that FAPE may include, as appropriate, services provided through distance instruction provided virtually, online or telephonically. (*Id.*, at pp. 1-2.) The guidance emphasized that the IDEA allowed for flexibility in determining how to meet the individual needs of students with disabilities. (*Id.*, at p. 2.) If there were inevitable delays in providing services, it directed IEP teams to make individualized determinations of whether and to what extent compensatory services were due when schools resumed normal operation. (*Ibid.*)

On March 30, 2020, the California Department of Education, called the CDE, issued guidance encouraging school districts to use distance technology to meet its obligations under the IDEA. (*CDE Guidance 3/30/20* (March 30, 2020).)

On April 9, 2020, CDE issued guidance stating not all IEPs needed to be amended to change from in-person instruction to distance learning. Citing to the US DOE's March 21, 2020 guidance, it stated that under the unique circumstances of the COVID-19 pandemic, it was not necessary for a school district to convene an IEP team meeting, or propose an IEP amendment without a team meeting, for the purpose of discussing the need to provide services away from school, because that change must necessarily occur. CDE stated that it was not necessary for a school district to obtain the parent's written consent to provide previously agreed-upon services away from school. The IEPs in effect at the time that in-person instruction stopped remained in effect for students. The CDE directed school districts, to the greatest extent possible, to continue to provide the services called for in the IEPs in alternative ways. (*CDE Guidance*, April 9, 2020.) Although an IEP amendment was not necessary for every child with an IEP, the CDE noted that there might be instances where amending an IEP to reflect the change to distance learning might be necessary, and urged school districts to communicate and collaborate with parents to transition students to distance learning. (*Ibid*)

LOS ALAMITOS'S SCHOOL CLOSURE AND DISTANCE LEARNING IMPLEMENTED FROM MID-MARCH 2020, THROUGH THE END OF THE 2019-2020 SCHOOL YEAR

The last day of in-person instruction at Los Alamitos during the 2019-2020 school year was Friday, March 13, 2020. In response to the COVID-19 pandemic Los Alamitos determined it would provide only virtual instruction for the rest of the 2019-2020 school year. The school closures were intended to comply with various state and Orange County health department orders and Governor Newsom's orders, and to inhibit the spread of COVID-19. Los Alamitos students did not attend school on Monday,

March 16, 2020, and Tuesday, March 17, 2020. Instead, those two days were devoted to in-service training for Los Alamitos's teachers on the topic of providing virtual instruction through the Google Classroom and the Google Meets applications. On Wednesday March 18, 2020, Los Alamitos started providing virtual/distance instruction to all of its students, and continued through the end of the 2019-2020 school year.

On March 24, 2020, Delk sent a letter to the parents of all students eligible for special education. That letter informed parents that no in-person instruction or services would be provided until further notice due to the pandemic. Student's kindergarten RAP class was conducted virtually for the remaining portion of the 2019-2020 school year. Delk's March 24, 2020 letter directed parents to a list of enrichment resources available to all students virtually.

The speech language pathologists contacted the parents of their students who were receiving direct speech and language therapy services and offered them consultation services and exercises and resources to work on at home. Los Alamitos did not provide any direct speech and language therapy services from speech language pathologists from March 16, 2020, until the start of the 2020 extended school year. There were 10 weeks of school left until May 28, 2020, the last day of school for that school year.

During the emergency in-person school closure, from March 18, 2020, through May 28, 2021, Chavarin provided daily live virtual instruction through the Google Classroom application to Student's RAP class on all school days for one hour and 15 minutes, from 11:30 AM to 12:45 PM. Chavarin also scheduled a weekly one-to-one virtual 20-to-30-minute meeting with each student in the class. Student's one-to one

meeting with Chavarin was scheduled for Thursdays, immediately following the whole class instruction. Chavarin also offered her students the option of signing up for additional one-to-one virtual meetings with her.

Chavarin testified credibly that Student did not log into the daily whole class virtual instruction provided through Google Classroom throughout the entire emergency school closure period from mid-March until the end of the 2019-2020 school year. Student also did not turn in any work to Chavarin during that emergency school closure period. Chavarin posted assignments, resources and videos for parents to access on Google Classroom. Students were assigned work to complete on their own outside of the group virtual instruction time. This independent student work was commonly referred to as asynchronous instruction.

Close to the end of the school year Student occasionally logged into the Google Classroom link on Thursdays shortly before the end of the whole group instruction, and then met with Chavarin for his weekly one-to-one meeting. During the few times Student participated in his one-to-one sessions with Chavarin they worked on his goals and the academic content that had been presented in the whole group instruction lessons. Chavarin testified that most of the accommodations on Student's IEP were applied in the virtual instruction, except the use of physical sensory materials. Parents offered no explanation why Student failed to participate in the virtual group instruction offered to all students in the kindergarten RAP class during Spring 2020.

Los Alamitos offered a 100 percent virtual/distance instructional program to all students for the 2020-2021 school year due to the COVID 19 pandemic. This virtual program was called LosAl@Home. During the summer of 2020 Parents enrolled Student in the LosAl@Home program for the 2020-2021 school year.

The California legislature passed State Senate bill 98, called SB98, in response to the pandemic related school closures. The section of SB98 which was codified into California Education Code section 43501, reduced the minimum time required for a school day. Those minimum reduced times for a school day varied by grade. For first graders the minimum length of a full day's instruction was decreased to 230 minutes per day, which included both synchronous and asynchronous instructional time. (Ed Code section 43501(b).) Synchronous instruction was deemed to be when the teacher was providing direct instruction. Asynchronous instruction was deemed to be when students worked independently on assigned work or received instruction from a means other than direct instruction from a teacher, such as watching a video for instruction.

The October 25, 2019 IEP offered Student 1,300 minutes a week of specialized academic instruction and one hour a week of speech therapy, consisting of two 20-minute group speech therapy sessions, and one 20-minute individual speech therapy session. Since Parents consented to that IEP, Student was entitled to the specialized academic instruction and speech therapy services offered in the October 25, 2019 IEP.

The guidance provided by the US DOE to schools in Spring 2020 stated schools should attempt to provide instruction virtually during the COVID-19 emergency school closures in spring 2020. Los Alamitos started its virtual instruction to all students on March 18, 2020. Chavarin's virtual group instruction of Student's kindergarten RAP class was provided every school day from March 18, 2020, through the end of the 2019-2020 school year for one hour and 15 minutes from 11:30 AM through 12:45 PM. Additionally, Chavarin was available to provide virtual instruction to Student in a one-to-one meeting for approximately a half hour every Thursday at 12:45 PM. Student missed most of that group specialized academic instruction because he did not log into

the daily Google Classroom virtual group instructional meeting at any time from March 18, 2020, through the end of the school year. Student only participated in a few of his weekly scheduled one-to-one meetings with Chavarin.

There was no evidence Student did not receive all the virtual speech therapy sessions he was entitled to during the Summer 2020 extended school year session. Katie Kolstad, Los Alamitos speech language pathologist, credibly testified that throughout the entire 2020-2021 school year Student was virtually provided with each of the three 20-minute weekly speech therapy sessions, consistent with the offer of FAPE in his October 25, 2019 IEP. Occasionally, a group speech therapy session became an individual speech therapy session for Student because the other children in the group did not log in to participate. There was no evidence how often that occurred. There was also no evidence that Student failed to receive benefit from those individual speech therapy sessions. Student did not establish that the occasional scheduled group speech therapy session, which was delivered to him as an individual speech therapy session, constituted a material failure to implement Student's IEP.

In the 2020-2021 school year Chavarin's virtual LosAl@Home first grade RAP class received virtual instruction and time was set aside for asynchronous instruction from 8:00 AM to 12:20 PM from August 31, 2020, through November 15, 2020. That amounts to 260 minutes per school day or 1,300 minutes per week of specialized academic instruction. After November 16, 2020, Chavarin's LosAl@Home first grade RAP class received virtual instruction and time was set aside for asynchronous instruction from 8:00 AM to 1:25 PM, with one 30-minute break. That amounts to 295

minutes per school day, or 1475 minutes of specialized academic instruction. Therefore, Student received more than 1,300 minutes a week of specialized academic instruction after November 16, 2020.

Student met his burden of proof and established Los Alamitos denied him a FAPE by failing to properly implement his October 25, 2019 IEP during the COVID19 school closures from March 16, 2020, through May 28, 2020. Student is entitled to receive compensatory education in the areas of speech therapy and specialized academic instruction for educational services that were not implanted during that period.

Student presented no evidence that the October 25, 2019 was not materially implemented during the extended school year session in Summer 2020, or during the 2020-2021 regular school year.

Student met his burden of proof from March 16, 2020 through May 28, 2020 on Student's Issue 6. Student partially prevailed on Student's Issue 6.

STUDENT'S ISSUE 7: DID LOS ALAMITOS DENY STUDENT A FAPE BY FAILING TO PROPERLY IMPLEMENT STUDENT'S SEPTEMBER 29, 2020 IEP DURING COVID-19 SCHOOL CLOSURES?

Student contends Los Alamitos failed to implement the IEP dated September 29, 2020, during COVID-19 school closures.

Los Alamitos contends it did not implement Student's IEP dated September 29, 2020, at any time because it did not have authority to do so because Parents did not consent to the September 29, 2020, even with exceptions.

Because Parents did not consent to implementation of any portion of the September 29, 2020 IEP, Los Alamitos did not have authority to implement it. Los Alamitos continued to implement the October 25, 2019 IEP through the date of hearing because that was the last IEP to which Parents consented.

Student failed to meet his burden of proof on Student's Issue 7. Los Alamitos prevailed on Student's Issue 7.

STUDENT'S ISSUE 8: DID LOS ALAMITOS DENY STUDENT A FAPE BY FAILING TO PROVIDE ALL OF STUDENT'S EDUCATIONAL RECORDS PURSUANT TO A NOVEMBER 19, 2020 RECORDS REQUEST?

Student contends Los Alamitos failed to produce all of Student's educational records in response to his November 19, 2020 request for Student's educational records. Los Alamitos contends it timely produced all of Student's educational records.

Student did not provide any evidence that Los Alamitos failed to produce any of his educational records to Student in response to Student's November 19, 2020, request for his educational records. There was no evidence that Los Alamitos failed to timely produce all of Student's educational records in response to Student's educational records request.

Student failed to meet his burden of prove on Student's Issue 8. Los Alamitos prevailed on Student's Issue 8.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. The issues in this matter are decided as follows:

Los Alamitos's Issue: The Los Alamitos Unified School District's October 9, 2020 Triennial Multidisciplinary and Functional Behavioral Assessments and Assessment Report were not appropriate because they were untimely, and the significant delay interfered with Parents' opportunity to participate in the formulation of Student's IEP. Student prevailed on Los Alamitos's Issue.

Student's Issue 1: Los Alamitos did not deny Student a free appropriate public education, called a FAPE, by failing to comprehensively assess Student pursuant to the October 9, 2020 psychoeducational assessment. Los Alamitos prevailed on Student's Issue 1.

Student's Issue 2: Los Alamitos did not deny Student a FAPE by failing to offer Student an appropriate placement in the least restrictive environment. Los Alamitos prevailed on Student's Issue 2.

Student's Issue 3: Los Alamitos did not deny Student a FAPE by failing to provide Student with occupational therapy services during the statutory period beginning on February 4, 2019? Los Alamitos prevailed on Student's Issue 3.

Student's Issue 4: Los Alamitos did not deny Student a FAPE by failing to offer Student a behavior intervention plan in the September 29, 2020 IEP. Los Alamitos prevailed on Student's Issue 4.

Student's Issue 5: Los Alamitos did not deny Student a FAPE by failing to offer Student a one-to-one aide in the September 29, 2020 IEP. Los Alamitos prevailed on Student's Issue 5.

Student's Issue 6: Los Alamitos denied Student a FAPE by failing to properly implement Student's October 25, 2019 IEP during Covid-19 school closures? Student partially prevailed on Student's Issue 6.

Student's Issue 7: Los Alamitos did not deny Student a FAPE by failing to properly implement Student's September 29, 2020 IEP during Covid-19 school closures. Los Alamitos prevailed on Student's Issue 7.

Student's Issue 8: Los Alamitos did not deny Student a FAPE by failing to provide all of Student's educational records pursuant to a November 19, 2020 records request. Los Alamitos prevailed on Student's Issue 8.

REMEDIES

Student prevailed on Los Alamitos's Issue, and partially prevailed on Student's Issue 6.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an

administrative law judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, n. 11[129 S.Ct. 2484, 174 L.Ed.2d 168].)

A student may be entitled to an independent educational evaluation if he or she disagrees with an evaluation obtained by the public agency and requests an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. §300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an independent evaluation as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2)(A) [requiring procedural safeguards notice to parents to include information about obtaining an independent evaluation].)

School districts may be ordered to provide compensatory education or additional services to students who have been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft appropriate relief for a party. (*Ibid.*) An award of compensatory education need not provide a day-for-day compensation. (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.)

An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific and be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. (*Ibid.*)

REMEDY FOR LOS ALAMITOS'S FAILURE TO TIMELY COMPLETE THE 2020 ASSESSMENTS, PROVIDE PARENTS WITH THE MDA REPORT, AND HOLD AN IEP MEETING TO REVIEW THE RESULTS.

Because Los Alamitos failed to complete the October 9, 2020 Triennial Multidisciplinary and Functional Behavioral Assessments, present the MDA Report to Parents, and hold an IEP meeting to review the assessments within 60 days of the date Los Alamitos received Parent's written consent to the assessment plan, the assessment results and MDA Report were significantly delayed, and, therefore, found to be not appropriate. This delay interfered with Parents' opportunity to participate in the formulation of Student's IEP because Parents did not have access to material information regarding the assessment results until five-and-a-half months after the statutory deadline for completing the assessments had elapsed.

Since the October 9, 2020 Triennial Multidisciplinary and Functional Behavioral Assessments and the MDA Report were not found to be appropriate in this Decision, Student is awarded independent educational assessments to be conducted by assessors chosen by Student, in accordance with Los Alamitos's guidelines for independent educational evaluations in the areas of psychoeducation, health, speech and language, occupational therapy, and functional behavior, at the expense of Los Alamitos.

REMEDY FOR SPEECH THERAPY SERVICES AND SPECIALIZED ACADEMIC INSTRUCTION NOT IMPLEMENTED IN THE 2019-2020 SCHOOL YEAR

SPEECH THERAPY

Los Alamitos failed to implement the one hour a week of speech therapy services offered to Student as part of a FAPE in his October 25, 2019 IEP, from March 16, 2020,

through May 28, 2020, the last day of the 2019-2020 school year. That period constitutes 10 school weeks. All speech therapy services to which Student was entitled were provided to Student during extended school year in Summer, 2020, and during the 2020-2021 school year.

As compensatory speech therapy services Los Alamitos will provide Student with 10 hours of compensatory speech therapy, to be provided by a nonpublic agency of Student's choice. Los Alamitos will contract with the nonpublic agency chosen by Student and directly pay it for the cost of a maximum of ten hours of compensatory speech therapy services used by Student. Student will have two years from the date this Decision is issued to access that block of 10 hours of compensatory speech therapy. Any services not used in that time period will be forfeited.

SPECIALIZED ACADEMIC INSTRUCTION

Student was offered as part of the offer of a FAPE on his October 25, 2019 IEP, 1,300 minutes per week of specialized academic instruction. The amount of direct synchronous specialized academic instruction provided to Student from March 16, 2020, through the end of the 2019-2020 school year amounted to 405 minutes a week, consisting of 375 minutes in group instruction, and one 30 minute one-to-one-teacher meeting. Plus, Student should have spent at least that same amount of time on asynchronous instruction and activities while completing assignments and watching videos or accessing other resources assigned by Chavarin during the daily virtual group instruction and in the weekly one-to-one meeting.

Therefore, 800 to 810 minutes per week were provided to Student in specialized academic instruction, consisting of synchronous and asynchronous instruction, during the period from March 16, 2020, through the end of the school year. This leaves

between 490 to 500 minutes of specialized academic instruction per week that Los Alamitos failed to provide to Student from March 16, 2020, through the end of the 2019-2020 school year. That amount is very close to an insufficiency of eight hours a week of specialized academic instruction for each of the 10 school weeks from March 16, 2020, to May 28, 2020.

Therefore, as a remedy, Los Alamitos shall provide Student with 80 hours of specialized academic instruction as compensatory specialized academic instruction to be provided by a nonpublic agency of Student's choice. Los Alamitos will contract with that nonpublic agency and pay it directly for the cost of a maximum of 80 hours of compensatory specialized academic instruction used by Student. Student will have two years from the date this Decision is issued to access that block of compensatory specialized academic instruction. Services not used in that period will be forfeited. All specialized academic instruction to which Student was entitled during extended school year in Summer 2020, and during the 2020-2021 school year was provided to Student.

ORDER

1. Los Alamitos's October 9, 2020 Triennial Multidisciplinary and Functional Behavioral Assessments and Assessment Report were not appropriate because they were untimely, and, therefore, failed to meet all legal requirements for assessments.
2. Los Alamitos will fund independent educational assessments of Student to be conducted by assessors chosen by Student, in accordance with Los Alamitos's guidelines for independent educational evaluations, in the areas of psychoeducation, health, speech and language, occupational therapy, and functional behavior.

3. Los Alamitos will provide Student with 10 hours of compensatory education in the form of direct one-to-one language and speech therapy services provided by a nonpublic agency of Student's choice.
4. Los Alamitos will provide Student with 80 hours of compensatory education in the form of direct one-to-one specialized academic instruction to be provided by a nonpublic agency of Student's choice.
5. Student has two years from the date this Decision is issued to use the services in Orders 3 and 4 above, and any unused services will be forfeited.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

Christine Arden

Administrative Law Judge

Office of Administrative Hearings