

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021040572
CASE NO. 2021030295

THE CONSOLIDATED MATTERS INVOLVING

BONITA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

DECISION

JULY 19, 2021

On March 8, 2021, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Bonita Unified School District as respondent in OAH Case No. 2021030295. On April 16, 2021, Bonita Unified filed a due process hearing request naming Student as respondent in OAH Case No. 2021040572. On April 22, 2021, OAH ordered the matters consolidated with the consolidated hearing to proceed under Bonita Unified's complaint as the primary matter. Administrative Law Judge Judith L. Pasewark heard these matters in Los Angeles on May 11, 12, 13, 17, 18, 19, 20, and 27, 2021.

Kristin Myers, attorney at law, represented Bonita Unified School District. Danielle Walker, Senior Director of Specialized Services, attended all hearing days on behalf of Bonita Unified. Ashley Turner, attorney at law with Ms. Myers, attended one day of hearing. Diane Weissberg and Jerry Weisberg, attorneys at law, represented Student. Parent attended each hearing day on behalf of Student. Kim Vokolek, the Weissbergs' paralegal, attended each day on Student's behalf.

At the parties' request the matter was continued to July 6, 2021, for written closing briefs. The record was closed, and the matter was submitted on July 6, 2021.

ISSUES

The statutory time period addressed in this decision commenced on March 8, 2019 and ended on March 8, 2021 when Student filed her complaint with OAH. Neither party raised issues regarding exceptions to the statute of limitations.

The issues as determined and finalized in the May 3, 2021 Order Following Prehearing Conference, and confirmed at hearing on May 11, 2021, are as follows:

BONITA UNIFIED'S ISSUE

1. Did the May 22, 2020 annual and triennial individualized education program, and its counterparts, as continued or amended on June 4, 2020, June 17, 2020, September 15, 2020, October 23, 2020, November 30, 2020, January 5, 2021, and January 22, 2021, offer Student a free appropriate public education in the least restrictive environment?

STUDENT'S ISSUES

2. Did Bonita Unified deny Student a FAPE by using February 2020 in-person contact as the basis of developing Student's goals, depriving her of appropriate goals in the May 22, 2020 IEP and its counterparts?
3. Since October 19, 2019, did Bonita Unified deny Student a FAPE by ignoring the private vision assessments and recommendations by Dr. Stephey, Dr. Baker, and Dr. Ballinger to provide vision therapy to Student?
4. Since March 16, 2020 did Bonita Unified deny Student a FAPE by failing to provide Student with instruction that was appropriate to meet Student's unique needs during virtual learning?
5. Since October 19, 2019 did Bonita Unified deny Student a FAPE by ignoring the recommendations by Dr. Braun, Dr. Baker and Lindamood Bell to provide services from Lindamood Bell addressing audio processing?
6. Since October 19, 2019 did Bonita Unified deny Student a FAPE by failing to provide Student with 60 minutes of individual speech services per week per Parent request and instead continue to provide 30 minutes per week of group speech therapy and 30 minutes per week of individual speech therapy per week virtually only?
7. Since October 19, 2019, did Bonita Unified deny Student a FAPE by ignoring the recommendation of Casa Colima for occupational therapy, and by failing to provide independent educational evaluations occupational therapy and assistive technology? and
8. Since June 10, 2019, did Bonita Unified deny Student a FAPE by failing to provide the compensatory services for speech and language services, Central Auditory

Processing Disorder Treatment, known as CAPDOTS, program, and specialized academic instruction that Bonita Unified previously agreed to provide?

Student argued additional issues in her closing brief which were not identified in the Prehearing Conference Order. Therefore, Student's contentions regarding events outside of the statutory period of March 8, 2019 through March 8, 2021, records requests and childcare were beyond the scope of the hearing, and were not analyzed in this decision. (*A.W. v. Tehachapi Unified School Dist.* (E.D. Cal. March 8, 2019, No. 1:17-cv-00854-DAD-JLT) 2019 WL 1092574, *6, *affd.* (9th Cir. 2020) 810 Fed.Appx. 588.)

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, 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 Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education 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

free appropriate public education, referred to as 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.)

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].)

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 individualized education program, referred to as 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 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).)

Bonita Unified filed the primary matter in these consolidated matters and had the burden of proof in Issue One. Student filed the secondary matter and had the burden of proof in Issues Two through Eight.

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).)

Student was nine years old and in third grade at the time of hearing. Student resided within the boundaries of Bonita Unified and attended Oak Mesa Elementary School at all relevant times. Pursuant to Student's last agreed upon IEP dated May 10, 2019, Student qualified for special education under the categories of specific learning disability and speech and language impairment.

ISSUE 1: DID THE MAY 22, 2020 TRIENNIAL IEP AND ITS COUNTERPARTS, AS CONTINUED OR AMENDED ON JUNE 4, 2020, JUNE 17, 2020, SEPTEMBER 15, 2020, OCTOBER 23, 2020, NOVEMBER 30, 2020, JANUARY 5, 2021, AND JANUARY 22, 2021, OFFER STUDENT A FREE APPROPRIATE PUBLIC EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT?

Bonita Unified contends Student's May 22, 2020 triennial IEP, conducted, continued, and amended over eight IEP team meetings between May 22, 2020 and January 22, 2021, offered Student a FAPE in the least restrictive environment. The May 22, 2020 IEP, and its counterparts, identified Student's unique needs based upon relevant information known at the time, determined acceptable present levels of performance to establish valid goals in Student's areas of need, provided sufficient related services to support Student's goals, provided accommodations recommended by Parent and experts, and provided placement in the least restrictive environment.

Student contends the May 22, 2020 IEP, and its counterparts, failed to provide Student with critical direct services, failed to appropriately assess Student, failed to appropriately address Student's needs in the areas of visual processing and audio processing, and failed to provide appropriate speech and language services to address Student's communication needs.

Determination of FAPE has two parts. First, there must be a determination of the school district's compliance with the procedural requirements of the IDEA. Second, there must be a determination that the IEP developed through those procedures was designed to meet the child's unique needs and was reasonably calculated to enable the child to receive educational benefit. (*Rowley, supra*, 458 U.S. at pp. 206-207.)

The IEP is a written document that states the child's present levels of academic achievement and functional performance, creates measurable annual goals for the child, describes the child's progress toward meeting the annual goals and explains the services that will be provided to the child to help him advance toward attaining his goals. (*Timothy O. v. Paso Robles Unified School Dist.*, (9th Cir. 2016) 822 F.3d. 1105, 1111.)

An IEP meeting must be held at least annually. (Ed. Code, § 56343.). A school district must ensure that the IEP team revises the IEP, as appropriate, to address "any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate." (20 U.S.C. § 1414 (d)(4)(A); 34 C.F.R. § 300.324(b)(2).) California law provides that an IEP team "shall meet" whenever "[t]he pupil demonstrates a lack of anticipated progress." (Ed. Code, § 56343, subd. (b).)

An IEP is not judged in hindsight. Its reasonableness is evaluated in light of the information available at the time it was implemented. An IEP must take into account what was, and what was not objectively reasonable when the snapshot was taken, that

is, at the time the IEP was drafted. (*J.G. v. Douglas County School Dist.*, (9th Cir 2008) 552 F.3d 786, 801; *Adams v. State of Oregon* (9th Cir. 1999) 195 F. 2d 1241, 1149 (*citing Fuhrman v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041).)

REQUIRED PARTIES

The IDEA requires that a school district ensure that an IEP team includes:

- 1) the parent of the child;
- 2) no less than one general education teacher if the child is or may be participating in the general education environment;
- 3) no less than one special education teacher of the child, or where appropriate, no less than one special education provider of the child;
- 4) a district representative who is:
 - a. qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
 - b. is knowledgeable about the general education curriculum; and
 - c. is knowledgeable about the availability of district resources;
- 5) an individual who can interpret the instructional implication of evaluation results;
- 6) at the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- 7) whenever appropriate, the child. (20 U.S.C § 1414; 34 C.F.R. 300.321(a); Ed. Code, § 56341, subd. (b).)

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 FAPE to the child. (34 C.F.R. § 300.501(b); Ed. Code, § 56500.4.) School districts are required to take whatever action is necessary to ensure that the parent is given the opportunity to attend and understands the proceedings of the IEP team.

A procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation:

- 1) impeded the child's right to a FAPE;
- 2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
- 3) caused a deprivation of educational benefits.

(20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23 (Target Range)* (9th Cir. 1992) 960 F.2d 1479, 1484.)

ATTENDANCE OF PARENT

After four attempts to schedule Student' triennial IEP team meeting, Bonita Unified initiated Student's triennial IEP team meeting on May 22, 2020 without Parent present. Bonita Unified opened the IEP team meeting for timeline purposes only. The attending IEP team members adjourned the meeting and did not hold discussions or make decisions. The IEP team continued the IEP team meeting to June 4, 2020 when Parent and her attorney were available to attend and participate.

The commencement of the May 22, 2020 IEP team meeting without Parent present constituted a procedural violation of the IDEA. The meeting did not involve substantive discussions or decisions regarding Student and did not infringe on parental

participation or deprive Student of educational benefit. As such it did not constitute a denial of FAPE. All subsequent IEP team meetings in this matter contained the mandatory IEP team members as required by law, including Parent and her attorney.

ATTENDANCE OF SCHOOL NURSE

At hearing, Student contended the school nurse was a required party at Student's IEP team meetings, particularly when Dr. Bea Braun, an audiologist, and Dr. Beth Ballinger, an optometrist, presented their reports.

Brian Iavicoli, the school nurse, did not attend all of Student's IEP team meetings. Iavicoli prepared Student's health summary as part of the triennial psychoeducational assessment and attended the October 23, 2020 IEP team meeting to present his report. He also attended the January 22, 2021 IEP team meeting when Dr. Ballinger presented her assessment report.

The school nurse was not a required party at IEP team meetings pursuant to Education Code, section 56341. Iavicoli attended IEP team meetings when the medical needs of the child were part of the IEP team discussions. Otherwise, he attended IEP team meetings only on an as needed basis. As Iavicoli explained, his duties included vision and hearing screenings. A vision screening constituted a visual acuity test to determine whether the student saw letters on the wall clearly. The hearing screening tested only whether the student heard sounds in each ear. The assessments conducted by Dr. Braun, Dr. Stephey and Dr. Ballinger, went beyond the scope of a health summary, and did not involve Iavicoli's input or recommendations. As example, Dr. Stephey was an ophthalmologist and his findings described visual complications which would not be addressed in a visual acuity test. As such, Iavicoli's attendance at Student's IEP team

meetings to consider the experts' opinions was unnecessary. His restricted medical expertise had no bearing on expert assessments, which were beyond the scope of the health screening.

DELAYS IN ASSESSMENTS

School district evaluations of students with disabilities under the IDEA serve two purposes. They identify students who need specialized instruction and related services because of an IDEA-eligible disability and help IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.)

Evaluations are referred to as assessments in California (Ed. Code, § 56302.5), and the terms are used interchangeably in this Decision.

Once a student is found eligible for special education, they must be reassessed at least once every three years, unless the parent and the school district agree in writing that a reassessment is unnecessary. (Ed. Code, § 56381, subd. (a)(2).) The student also must be reassessed if the school district determines that the educational or related services needs of the child warrant a reassessment, or if the parent or teacher requests a reassessment. However, a student may not be reassessed more than once a year unless the parent and school district agree to more frequent assessment. (34 C.F.R. § 300.303; Ed. Code, § 56381, subds. (a)(1) and (2).)

Reassessment generally requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To start the process of obtaining parental consent for a reassessment, the school district must provide proper notice to the parents. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The

notice consists of the proposed assessment plan and a copy of parental rights and procedural safeguards under the IDEA and companion State law. (*Id.*)

The school district must give the parent 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).) The school district must make reasonable efforts to obtain informed consent to assessment from the parent. (Ed Code, § 56321, subd. (c)(1).)

The Ninth Circuit has stated that if the parents want their child to receive special education under the Act, they are obliged to permit testing by the school district. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1315.)

On October 16, 2019, Mark Rogers, Student Services Director in 2019, received an email from Parent, which complained Student's specialized academic services were not appropriate, and Student needed remediation. Parent requested a complete assessment to determine Student's current levels of performance to redetermine which services would best support her, and pending completion of the assessment, three hours per week of outside educational therapy.

Bonita Unified responded to Parent with a letter of prior written notice dated October 19, 2019. While it denied many of Parent's requests, Bonita Unified agreed to reassess Student, and sent Parent an assessment plan, dated October 23, 2019. The assessment plan proposed school district assessments in the areas of academic achievement, health, intellectual development, speech and language and communication development, motor development, social emotional and behavior, and assistive technology. Parent did not consent to the assessment. Bonita Unified sent Parent a second copy of the assessment plan on January 24, 2020, now seeking to

conduct Student's triennial assessments due in May 2020. Parent did not consent to the triennial assessment plan.

On February 12, 2020, Bonita Unified received the proposed assessment plan from Parent containing additional conditions. Parent added requests for alternate means of assessments to include additional assessments from Dr. Bea Braun, an audiologist, Dr. Douglas Stephey, an optometrist, and Student's physician, Dr. Robert Baker. Dr. Braun and Dr. Stephey conducted independent educational evaluations of Student related to Student's preceding school district assessments. A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an assessment with which the parent disagrees. (34 C.F.R. § 300.502(b)(5).) Student was not entitled to reassessment by Dr. Braun or Dr. Stephey.

On February 21, 2020, Bonita Unified sent Parent a letter of prior written notice indicating it did not agree to the proposed changes to the January 24, 2020 assessment plan. As indicated above, Bonita Unified appropriately explained it was entitled to conduct its own assessments prior to considering additional expert evaluations. Bonita Unified again provided a copy of the unaltered assessment plan and requested Parent's consent without changes. Parent did not provide consent to the assessment plan.

On March 13, 2020, Parent returned an altered assessment plan which contained an extensive list of concerns in each of Student's areas of need, specifically academic achievement, intellectual development, speech and language, motor development/occupational therapy, adaptive behavior, and social/emotional.

A parent's imposition of restrictions on a district evaluation may be viewed as a denial of consent. (See *G.J. v Muscogee County Sch. Dist.* 704 F. Supp.2d 1299, *affd.* (11th Cir. 2012) 668 F.3d 1258.). Similarly, in *Student R.A. v. West Contra Costa Unified*

Sch. Dist., a parent approved an assessment plan on the modest condition that she be allowed to observe the assessment when conducted. (N.D. Cal., Aug. 17, 2015, Case No. 14-cv-0931-PJH) 2015 WL 4914795 [nonpub. Opn.], affirmed (9th Cir. 2017) 696 Fed.Appx. 171.) The District Court found that condition negated the mother's consent, stating, "[t]he request to observe the assessment amounted to the imposition of improper conditions or restrictions on the assessments, which the District had no obligation to accept or accommodate." (Id. at p. 3.)

Specifically, where a Parent does not consent to a school district assessment, there is no assessment on which to disagree as the basis for an independent educational evaluation. A school district assessment is a predicate to a publicly funded assessment.

Due to the lack of unconditional consent to its proposed assessment plan, Bonita Unified was unable to conduct Student's assessments.

COVID-19 DELAYS

On March 16, 2020, all schools in California closed due to the COVID-19 pandemic. The U.S. Department of Education did not waive legal requirements relating to triennial assessments during school closures for COVID-19 and distance learning. (California Department of Education Special Education Guidance for COVID-19, September 30, 2020.)

California enacted emergency legislation in Statutes 2020, chapter 3, section 8, effective March 17, 2020, that suspended timelines regarding the commencement of assessment process in developing an assessment plan in Education Code, section 56043, subdivision (a), and section 56321, subdivision (a), while a student's school was closed. This exception lasted only through July 1, 2020, pursuant to Statutes 2020, chapter 110,

section 56. However, while California provided school districts protection regarding the start of the assessment process as to developing and presenting parents with an assessment plan, California law made no changes to Education Code, section 56043, subdivision (c), which governs the timeline for school districts to complete the assessment after parent's consent to assessment plan and to present the assessment findings at an IEP team meeting. Therefore, as of March 17, 2020, the emergency legislation suspended Bonita Unified's obligation to seek parental approval for the assessment plan through July 1, 2020.

On June 17, 2020, Parent requested that Bonita Unified fund an assessment through Lindamood Bell and fund a vision therapy assessment by Dr. Ballinger. On July 2, 2020, Bonita Unified forwarded a letter of prior written notice to Parent, denying Parent's requests. The letter requested Parent reconsider providing consent to the unmodified January 24, 2020 assessment plan. Bonita Unified complied with the emergency suspension of assessments, and appropriately requested parental consent to the unaltered assessment plan.

Parent provided consent to Bonita Unified's proposed assessment plan on August 24, 2020. As developed on January 24, 2020, the assessment plan offered to assess Student in all areas of suspected disability. Except for providing new expert assessments, Bonita Unified's assessment plan covered the areas of parental concern reported on March 13, 2020 and included assessments for occupational therapy and assistive technology as requested.

The 2020-2021 school year commenced on August 26, 2020, and Bonita Unified commenced Student's assessments at that time. Bonita Unified sought to reassess Student in a timely fashion.

MAY 22, 2020 IEP

As analyzed above, Bonita Unified convened Student's triennial IEP team meeting on May 22, 2020, to comply with timeline requirement, and denote the intended commencement date of Student's annual IEP. The IEP team made no decisions outside the presence of Parent and made no offer of FAPE at this meeting.

JUNE 4, 2020 AND JUNE 17, 2020 IEP TEAM MEETINGS

Bonita Unified reconvened Student's triennial IEP team meeting on June 4, 2020. Parent did not unconditionally consent to the proposed assessment plans and COVID-19 restrictions that prevented in-person assessments as of March 13, 2020. Although the IEP team began the process of conducting Student's triennial IEP on June 4, 2020, time constraints prohibited completion of the IEP until June 17, 2020. Therefore, the June 4 and June 17, 2020 IEP team meetings, are reported herein as one IEP team meeting completed on June 17, 2020, which contained Bonita Unified's first offer of FAPE. Student's attorney vigorously participated in each of the IEP team meetings on behalf of Parent. As reflected in the IEP team notes, Parent's attorney dominated each of the IEP team meetings on behalf of Parent. Therefore, the statements and questions presented by Parent's attorney are attributed to Parent throughout this Decision.

Beginning on April 6, 2020 and continuing until the end of the 2019-2020 school year, Student received asynchronous activities from her general education teacher, Jennifer, and educational specialist, Diana Nairouz.

Logan met with her class virtually once a week through Google Meet, and utilized Google programs to provide students with a schedule of things to do which followed

the curriculum. Completion of assignments was optional. The weekly Google Meet allowed students to see each other and talk about what they were doing from home. Student initially participated and but soon stopped attending. She completed some assignments, but not on a regular basis.

Nairouz sent assignments home to Student each week based upon Student's IEP goals, videos, and resources. She reached out to Parent, sent lesson plans, weekly assignments and educational packets home for Student to complete and return to school. Student did not return assignments to school.

Due to COVID-19 restrictions, Bonita Unified provided the caveat to Parent that the IEP team recommendations, including goals and services, were based on when school was in session, in the physical classroom setting, and not during school closures.

REVIEW OF PROGRESS AND PRESENT LEVELS OF PERFORMANCE

An IEP requires a statement of the student's present level of academic achievement and functional performance (Ed. Code, § 56345, subd. (a)(1).)

The IEP team discussed Student's strengths and weaknesses. All sources, including Parent, reported Student was a happy, sweet child. Mr. Patterson, the school principal, observed Student on campus and saw her interact with peers appropriately on the playground. Ms. Garcia, Student's speech and language pathologist reported Student got along well with others and did well in individual and group settings.

Parent expressed her concerns regarding Student's educational progress to the IEP team. Parent reported concerns about Student's audio processing deficits. Student seemed to be regressing. She did not hear words correctly; spoke in short sentences and simplified her thoughts. Parent reported concerns about Student's visual

assessment. Student complained her eyes hurt when she read; she rubbed her eyes frequently and had frequent headaches. Student also exhibited social anxiety. These complaints increased with distance learning. Parent pointed out Student was having difficulties with virtual learning.

Diana Nairouz presented persuasive testimony regarding Student's special educational needs and services. Nairouz held relevant professional credentials, including a master's degree in education and instructional technology. She held an education specialist instruction credential for mild/moderate disabilities as well as a multiple subject teaching credential. She held a reading interventionist certification for assessment and evidence-based intervention of reading disabilities and dyslexia. Her evidence-based reading intervention included training with Lindamood Bell programs and methodology. Her online teaching endorsement allowed her to create online educational programs.

Nairouz acted as Student's case manager. Her duties included providing specialized academic instruction services, drafting IEP goals, directing the IEP process, and monitoring IEP implementation. Nairouz taught Student in kindergarten and provided her specialized academic instruction and CAPDOTS training in 2019 until Parent removed Student from the specialized academic instruction program. As case manager, Nairouz collected the available data to determine Student's present levels of performance for consideration at IEP team meeting.

The IEP team reviewed Student's most recent DIBELS assessment scores obtained in February 2020. The DIBELS was administered three times per school year to measure progress with reading. Student's overall basic reading and oral reading fluency fell

within grade level standards. Student exhibited significant growth in these areas compared with her scores from the beginning of the school year.

Student's most recent STAR reading assessment, conducted in February 2020, reported Student scored with a grade level equivalency of two years, two months for an average second grader. Student's STAR math scores placed Student at two years, seven months as compared with the average second grader.

Logan, reported on Student's academic progress prior to March 13, 2020. Student met grade level standards in math operations and algebraic thinking; she mastered grade level standards in number and operations in base-10; and she mastered grade level standards in measurement and data. Logan observed that Student demonstrated other math related skills with at least 80 percent accuracy. Thusly, Logan determined Student performed at grade level.

Logan reported Student met grade level standards in writing and language. Logan observed Student demonstrated appropriate handwriting, utilized subject-verb agreement, verbally produced an average of three details to elaborate on a given topic with at least 80-percent accuracy. She reported Student's weaknesses with spelling and independently producing written sentences with correct structure. Logan considered Student's fine motor skills appropriate when compared to her peers. She did not have any concerns about Student's fine or gross motor skills.

Logan reported Student's weakness with engaging in a classroom task based upon a newly taught concept. Student required at least four-teacher prompts to initiate the work.

Based upon her most recent report card, Student earned satisfactory marks or higher for citizenship, class participation, homework, independent reading, and organization. Logan reported Student exhibited no behavioral issues. She was respectful, polite, and followed class and school rules.

While attending school, Student demonstrated appropriate skills taking care of her basic personal needs including eating and toileting. Logan did not observe any difficulties in these areas.

Christina Garcia, Student's speech and language pathologist, reported Student made great progress and had met or exceeded the 2019 goals. Based upon her direct services and observations prior to March 13, 2020, Garcia reported Student could accurately count syllables in three-to-four syllable words independently. She could independently produce and use grade level multi-syllabic words in grammatically complete sentences. Student could correct her errors with no more than one prompt.

After April 6, 2020, Garcia conducted Student's speech and language services through distance learning. She created an interactive program called See/Saw which contained individualized activities to practice speech and language skills. Student did not complete the activities. Garcia noted Student became more hesitant and less engaged in distance learning. Garcia offered to confer with Parent, but she received no response.

Garcia concluded Student demonstrated relative strengths in pragmatics, syntax, morphology, semantics, voice and fluency of speech. She recommended that Student could benefit from continued goal maintenance in the large group classroom setting by demonstrating awareness of sounds in multi-syllabic words and self-monitor her production of multi-syllabic words in reading and speaking during class activities.

The IEP team discussed Student's independent audio processing retest conducted on May 22, 2020, by Dr. Bea Braun, an educational audiologist. This retest presented supplemental information to Dr. Braun's initial independent central auditory processing evaluation report, dated October 13, 2018. While the initial evaluation occurred prior to the statute of limitations in this matter, the information contained in Dr. Braun's evaluation report remained relevant to the matters at hand, including the retest in May 2020.

Dr. Braun held a doctorate in audiology. She was a Fellow with American Academy of Audiology and held California credentials as a speech and language pathologist and audiologist, and in clinical or rehabilitative services. She had extensive experience as an educational audiologist and was well qualified to administer central auditory processing evaluations.

In 2018, Dr. Braun determined Student exhibited a central auditory processing disorder with deficits in dichotic listening, temporal ordering and sequencing, sound blending and low redundancy speech perception. The results were consistent with deficits in auditory integration and auditory decoding. Deficits in integration of auditory and visual information created difficulty in creating a picture of what is heard or read, which led to poor reading comprehension and poor auditory memory. Students with integration deficits required specific demonstration, examples, and repeated practice. Multimodality cues were difficult and repeating instructions was very important.

Student's auditory decoding deficit resulted in poor processing of sound, which impacted auditory discrimination. This created poor phonological awareness, poor vocabulary and grammar development, and difficulty understanding speech in poor listening environments.

Dr. Braun administered a central auditory processing retest on May 22, 2020. The results of this retest indicated Student's continuing deficits in auditory decoding and auditory integration. Student demonstrated poorer sound blending skills which translated into reading and spelling difficulties.

Dr. Braun made several recommendations for classroom strategies and modifications which included preferential seating, noise reduction, repetition, and extra time to complete tasks. She recommended a dichotic listening training program, known as CAPDOTS be administered at school 15 minutes per day. She also recommended utilization a reading program which supported strong phonics development with visual reinforcement provided by several reading programs, such as Lindamood Bell, Orton-Gillingham, or Wilson.

During the June 4, 2020 IEP team meeting, Parent questioned the validity of Student's present levels of performance as they contained no consideration of regression based upon Student's distance learning performance after March 13, 2020. The IEP team explained not enough time had passed to collect relevant data regarding regression, even when reported by Parent.

Logan observed Student during remote classroom meetings and reported no concerns about Student's participation in the remote classroom when Student attended the remote meetings. Student however, stopped participating in distance learning opportunities after Parent notified Bonita Unified that the distance learning format was not working for Student. This limited Bonita Unified's ability to collect further data regarding virtual learning and Parent's claim of regression.

The IEP team determined Student required goals to address her areas of need in reading decoding and comprehension, writing, task initiation and speech and language.

These areas of need were supported by the most recent information available obtained from a variety of sources and included Dr. Braun's findings from her May 2020 retest.

GOALS AND SERVICES

An IEP requires a statement of measurable annual goals including academic and functional goals, designed to do the following: (A) Meet the needs of the student that result from the disability to enable the student to be involved in and make progress in the general education curriculum; and (B) Meet each of the other educational needs of the student that result from the disability. (Ed. Code, § 56345, subd. (a)(2)(A)(B).)

The IEP team created goals in each area of need. Nairouz developed a reading decoding goal for Student, based on Dr. Braun's findings that Student exhibited difficulties decoding one syllable words that included consonant blends. The goal addressed reading decoding and required Student to read and spell one syllable nonsense words, which included consonant blends with 80 percent accuracy. Nairouz designed the goal to utilize the Lindamood Bell Seeing Stars methodology during specialized academic instruction.

The second goal addressed Student's reading comprehension. Nairouz developed this goal on Logan's input and Parent's concerns. The goal required that, after reading a grade-level passage using a text reader, Student would correctly answer at least one comprehension question per passage related to finding facts and details explicitly stated in the text four-out-of-five times, an increase from Student's baseline performance of a correct answer only one-out-of-five times. Student's teacher, Logan provided the goal baseline as she determined in the classroom. Dr. Braun also identified reading comprehension as a weakness and recommended the use of a text reader.

The third goal addressed Student's weakness with writing, as observed in her difficulties with spelling and written sentences. This goal required Student to independently produce five written sentences with correct structure on assignments four-out-of-five times. Nairouz developed this goal in collaboration with Logan. They determined Student's baseline from Logan's observations and Student's graphic organizer.

The fourth goal addressed Student's difficulties independently initiating work without four teacher prompts on newly taught concepts. The goal required Student to engage in classroom tasks based upon a newly taught concept with no more than one teacher prompt four-out-of-five times. Nairouz based this goal on Logan's direct observations and experience with Student.

The fifth goal addressed Student's articulation and multi-syllabic words. Parent disagreed with Student's baseline, which indicated Student could successfully produce and use grade level multi-syllabic words in grammatically complete sentences. This goal required Student to generalize her skills during classroom lessons and activities by producing and using grade-level multi-syllabic words in grammatically complete sentences with 80 percent accuracy.

The five goals appropriately addressed Student's unique areas of need, included recommendations from Dr. Braun and acknowledged Parent's concerns regarding multi-syllabic words.

To support these goals, the IEP team offered Student, 180 minutes per week of specialized academic instruction outside the general education classroom, 25 minutes per day of CAPDOTS training as recommended by Dr. Braun, 30 minutes per week of group speech and language services, and 30 minutes per week of individual speech and

language services, outside of the general education classroom. The offer of related services was sufficient to implement and support Student's goals.

ACCOMMODATIONS

A school district is required to provide a student with individualized appropriate accommodations necessary to measure the academic achievement and functional performance on state and district wide assessments. (Ed. Code, § 56345, subd. (a)(6)(A).) Further, the IEP shall include a statement of the supplementary aids and services to be provided to the student, and a statement of the program modifications or supports for school personnel that will be provided to assist the student in advancing appropriately towards attaining annual goals, be involved and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities. (Ed. Code, § 56345, subd. (a)(4)(A)(B).)

The IEP team developed seventeen accommodations for Student, most of which were already utilized in the classroom setting. Most of the accommodations carried over from the May 10, 2019 IEP. The accommodations included recommendations from Dr Stephey and Dr. Braun. The accommodations included more time on tests and assignments, provision of class notes, seating near point of instruction and provision of visual material used to present the lesson, slow repetition of verbal directions, and frequently checking for understanding. Nairouz reviewed the accommodations and found them appropriate to support Student in the general education setting.

EXTENDED SCHOOL YEAR

School districts are not required to provide summer school programs. Extended school year services must be provided only if the student's IEP team determines, on an

individual basis, that the services are necessary for the provision of FAPE to the child. (34 C.F.R. § 300.106 (a)(3); Ed. Code, § 56345, subd. (b)(3).) States have the discretion to establish policies and procedures for providing extended school year services. Extended school year is not a requirement simply because a student has not met goals, nor is it offered to maximize a student's educational program. The U.S. Department of Education acknowledged that the concept of recoupment and the likelihood of regression are standard criteria for determining eligibility for extended school year and may be the sole criteria for determining extended school year eligibility. (71 Fed. Reg. 46,582 (2006).)

Bonita Unified provided extended school year services to support those areas of a current IEP where the student demonstrated a regression of skills during an extended school break and exhibited a limited ability to benefit from re-teaching of skills after the extended school break pursuant to the terms of title 34 Code of Federal Regulations, Part 300.106(a)(3).

Logan and Garcia reported Student did not exhibit more than typical regression during the school year. Student did not qualify for extended school year services. Garcia could not determine if Student regressed during distance learning, as Student had not returned any of the student-specific activities assigned to her.

Student did not qualify for extended school year. Bonita Unified's offered extended school year to compensate for Parent's allegations regarding regression during school closures. The offer of extended school year for 2020, consisted of 210 minutes per day of specialized academic instruction and 30 minutes per week of speech and language services. At Parent's request, the IEP team agreed to continue CAPDOTS through extended school year, as it could be provided by Parent at home.

Bonita Unified provided extended school year through the distance learning model. Parent continued to voice her opinion that Student was unable to learn in a virtual setting. Student would hide behind the computer camera during extended school year. Logan responded that she had not observed Student hiding during remote meetings. Extended school year was a voluntary program, however, once placed in Student's IEP, Bonita Unified was required to implement the hours denoted for the service. Student only attended two weeks of the extended school program in 2020.

PLACEMENT AND LEAST RESTRICTIVE ENVIRONMENT

Placement is the setting in which a student's individualized education program will be implemented. The IDEA requires that an IEP team consider a continuum or range of placements settings in which the school district can implement the student's IEP. The continuum of placements begins with the general education classroom and progressively proceeds to more restrictive settings. (34 C.F.R. § 300.115(a).) In considering a student's placement, the IDEA requires that a child with a disability must be educated in the regular classroom with nondisabled peers to the maximum extent appropriate. (34 C.F.R. § 300.114(a).)

The IEP team considered a continuum of placement options for Student, including general education, general education with consultation, and general education with weekly services and special day class. The IEP team determined Student required direct specialized services to address her goals and support her in the general education setting.

The IEP team considered the potential harm of providing Student daily pull-out services in a small group setting because it removed Student from participation in the general education classroom. The IEP team determined the benefit of specialized

services supporting Student's goals and maximizing the level of support she needed to access the general education curriculum outweighed the potential harm. A self-contained special day class was too restrictive. Therefore, general education with weekly specialized services represented Student's least restrictive environment.

Based upon the above discussion, the June 17, 2020 IEP contained all procedurally required elements necessary to create an IEP designed to meet Student's unique needs, and the content of the May 22, 2020 IEP as amended on June 17, 2020 was reasonably calculated to enable Student to receive educational benefit as of that date.

SEPTEMBER 15, 2020 IEP

On September 15, 2020 Bonita Unified convened an IEP team meeting to review and consider private assessments from Lindamood Bell and Casa Colina obtained by Parent.

Brendan Marshall, the Lindamood Bell assessor, presented the results of his July 2020 assessment. Mr. Marshall did not testify at hearing. Instead, Kyle Stagnaro, Executive Center Director for Lindamood Bell, Houston, Texas, testified to explain the Lindamood Bell learning program and interpret the assessment information presented to the IEP team. Stagnaro held a bachelor's degree in psychology. She started her career at Lindamood Bell as a clinician and assessor in 2016. Stagnaro did not know Marshall's professional or educational background. Lindamood Bell provides in-house training to its testers and clinicians and does not require an educational background for employment. She acknowledged Marshall receives a bonus based upon annual sales.

Lindamood Bell provided research-validated programs intended to develop skills for reading and comprehension. Lindamood Bell clinics were private, for-profit programs, which involved lengthy pre-testing and post-testing assessment conducted by a Lindamood Bell employee.

Stagnaro reviewed Student's scores and recommendations. Marshall reviewed Dr. Braun's assessments prior to the pre-test. He administered Student's pre-test online, however Stagnaro did not know if the test scores were normed to virtual testing. Marshall administered the Gray Oral Reading Test, which accounted for a large portion of the assessment. However, the Gray Oral was not utilized according to the test manual.

Marshall assessed Student's symbolic imagery, phonemic awareness and integration of imagery into reading. Although he was not an expert in visual processing, Marshall noted his main concern was symbolic imagery which related to Student's weakness deficits in visual processing skills. He identified phonemic swaps as possibly related to Student's articulation errors but did not assess that area. Student's comprehension assessments indicated her functioning within broad typical limits. Marshall opined that Student's comprehension was fairly good for someone who struggled with reading. Based upon the total assessment, Marshall concluded Student's mechanics of reading needed to be address, and Student would benefit from Lindamood Bell's sensory cognitive programs, specifically Seeing Stars and Visualizing/Verbalizing. Seeing Stars was recommended as Student's initial program to raise her fluency. Thereafter Visualizing/Verbalizing would increase her comprehension. The sessions would be conducted in a virtual format due to COVID-19 restrictions. Materials would be shipped to Student, and a virtual facilitator would work one-to-one with Student.

Marshall was unaware of how Lindamood Bell was accessed in schools, however both Gonzalez and Nairouz were trained in Lindamood Bell programs and strategies. They asked Marshall more focused questions on reading fluency and the Seeing Stars program. Bonita Unified did not offer Student the private Lindamood Bell reading program, because Seeing Stars and Lindamood Bell methodology could be provided as part of Student's specialized academic instruction.

Based upon this new information, and using Student's Lindamood Bell scores as baselines, the IEP drafted a new oral reading fluency goal to be added to Student's IEP. Additionally, at Nairouz's request, the IEP team added a new goal for work opposites and prefixes, based upon an informal assessment conducted the previous day.

To implement the additional goals, the IEP team increased Student's specialized academic instruction from 180 minutes to 280 minutes per week. Parent reiterated her belief that Student's specialized academic instruction was ineffective, and additional pull-out services only kept Student out of the general education for longer periods. Instead, Parent asked if the specialized academic instruction could be provided outside the school day. Principal Patterson explained the services could not be implemented after school.

The IEP team considered a private occupational therapy assessment report prepared by Casa Colina. Kelly Lee, an occupational therapist at Casa Colina conducted the assessment and prepared the written report dated July 28, 2020. No one from Casa Colina attended the IEP team meeting. No one from Casa Colina testified at hearing. Jeffrey Verner, Bonita Unified's occupational therapist reviewed the Casa Colina assessment and recommendations with the IEP team. Verner held a master's degree in occupational therapy and provided occupational therapy services and assessments as an

employee of Bonita Unified. He also provided part-time services at Casa Colina as a therapist for adult in-patient rehabilitation.

The assessment report indicated Student cooperated and complied with requests. Student listened and followed directions with verbal encouragement. When needed, Student asked appropriate clarifying questions. However, when in the presence of others, Student became quiet and shy, demonstrating limited social and play skills. She relied heavily on Parent when present in the room.

Lee administered the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition, which measured Student's fine motor skills. Student scored in the average range on all subtests. Student's pencil grip was functional.

Lee administered the Roll Evaluation of Activities of Life, a rating scale which measured Student's ability to care for herself at school, home and in the community. Parent reported significant concerns regarding Student's self-help skills primarily in dressing herself and personal hygiene. Lee did not obtain any information from school. Student scored in the well below average range.

Likewise, Parent completed the rating scale on the Sensory Processing Measure home form, which measured sensory processing by gathering information regarding Student's behavior, coordination, and participation at home and in the community. Student showed some problems with social participation. Lee did not seek rating scales or other information Bonita Unified to determine Student's needs within the educational setting.

Based upon parental input, Student exhibited definite dysfunction with vision. She always became distressed in unusual visual environments, and disliked certain types

of lighting. She frequently walked into objects or people as if they were not there, and had difficulty recognizing the differences in objects based upon their size, shape, or color.

Student exhibited definite dysfunction in hearing. She always seemed disturbed by or intensely interested in sounds not usually noticed by other people. She seemed easily distracted by background noises, and frequently responded negatively to loud noises.

Student also showed some problems with body awareness, balance, and motion, and with planning and ideas.

Lee's assessment report contained findings regarding visual and audio-based deficits which were previously assessed by Drs. Braun and Ballinger. Other findings reported concerns regarding social behavior and attention. The report did not connect these findings to any deficit which required educationally related occupational therapy services. Student demonstrated average fine motor skills. Instead, Lee proposed four goals based upon parental input. Two goals addressed self-care. One goal sought to have Student manage clothing fasteners. The other goal dealt with Student brushing her hair without complaints. Two goals addressed social skills. One goal sought for Student to independently initiate greetings and farewells with peers. The other goal sought to have Student initiate and maintain play with a peer. To support these four goals Lee recommended Student receive 120 minutes per week of occupational therapy consisting of 60 minutes per week of group therapy to address social skills, and 60 minutes per week to address self-care skills.

The IEP team did not adopt the goals and occupational therapy services recommended by Casa Colina. As Verner opined to the IEP team, the Casa Colina

assessment did not indicate a need for educationally based occupational therapy. The self-care goals were based solely on concerns in the home. The social skills goals were more appropriately addressed in other areas, such as group speech and language services. The IEP team did not offer occupational therapy goals and services, nor was there a demonstrated need for school based occupational therapy.

The 2020-2021 school year commenced with distance learning conducted utilizing both asynchronous and synchronous activities. Student participated in directed learning by logging onto Zoom. Nairouz described her specialized academic instruction virtual classroom as interactive. Nairouz could see the students, see their work, and monitor their participation. Nairouz used the IXL program which she described as an excellent program for students with IEPs. IXL covered the curriculum, provided interaction and instant feedback, and assessed a student's ability to work independently.

Brandi Frymer, Student's third grade general education teacher provided full-time direct instruction through Zoom. Individual and group learning occurred in virtual breakout rooms. Student attended virtual classes. She participated in class when called upon and could work in a group setting. Frymer noted Student had a lot of distractions at home and could become very distracted with her environment. When someone was in the room with Student, usually Parent, Student asked her for help or shut down more often. Student initially completed some class assignments, but completely stopped around November 2020.

The IEP team held an extensive discussion of Student's difficulties with distance learning. Parent reiterated her belief that Student's specialized academic instruction was ineffective, and additional pull-out services would only keep Student out of the general education for longer periods. Instead, Parent asked if the specialized academic

instruction could be provided outside the school day. Principal Patterson explained the services could not be implemented after school. Parent repeated the pull-out specialized academic instruction did not meet Student's needs; she was not making progress. Members of the IEP team explained there was no evidence Student made no progress during the first two weeks of school.

Parent described the situation at home during virtual lessons. It was difficult for Student to learn during virtual instruction. Student did not want to talk and did not want to be seen on camera. The sounds and chat boxes were ongoing problems. Parent needed to reteach all concepts at night.

Brandi Frymer, Student's third grade general education teacher provided full-time direct instruction through Zoom. Individual and group learning occurred in virtual breakout rooms. Student attended virtual classes. She participated in class when called upon and could work in a group setting. When someone was in the room with Student, usually Parent, Student asked her for help or shut down more often.

Frymer worked individually with Student in the breakout room. Frymer confirmed Student showed more understanding with one-to-one teaching but she was distracted by what was around her. Student had a lot of distractions at home and could become very distracted by her environment. When distracted, it was hard to get Student to focus and work. Both Frymer and Parent agreed Student referenced Parent in the room rather than Frymer during distance learning.

Nairouz reported the specialized academic instruction class consisted of four students and therefore she had the time to work individually with Student. Student participated in class. She asked and answered questions and completed assignments. Student kept the camera on most of the time. She would turn the camera back on if

directed to do so. Nairouz agreed that Student looked to Parent for answers and responded in a quiet voice. Due to the smaller setting, Student participates more there than in general education. The IEP team suggested Parent leave the room when Student worked individually with the teacher.

Parent gave Bonita Unified a short report from Dr. Yang at Children's Hospital Los Angeles, who provided Student's medical diagnoses as of August 20, 2020. He diagnosed Student with attention and concentration deficit, speech and language development delay, and childhood social anxiety. The IEP team asked if Student was seeing a therapist. Parent reported there were no specific recommendation as Student was undergoing further assessments at Children's Hospital. Parent expressed concerns that Student did not chat with peers, did not socialize at all with others, and did not eat lunch with peers. Student would only speak in class when asked a question by the teacher. The IEP team proposed weekly individual counseling sessions to address the concerns regarding social anxiety. No goals were drafted, as the counseling was diagnostic in nature, pending the completion of the triennial assessments. Parent consented to the addition of weekly counseling.

The September 15, 2020 IEP team obtained more recent information from Parent and teachers regarding Student's present levels of performance. They reviewed and considered the assessments from Lindamood Bell, Casa Colina, and Dr. Yang, and utilized this new information to develop additional goals for Student. The increase in specialized academic instruction appropriately supported the additional goals and Lindamood Bell methodology. The IEP team added counseling to support Student and further explore Student's social-emotional needs. Therefore, the September 15, 2020 IEP amendments appropriately addressed Student's unique needs and were reasonably calculated to enable to provide educational benefit.

OCTOBER 23, AND OCTOBER 29, 2020 IEP TEAM MEETING

Bonita Unified convened an IEP team meeting on October 23, 2020 to review Student's triennial assessments. Parent was unable to attend on that date. As with the May 22, 2020 IEP team meeting, the October 23, 2020 IEP meeting was convened solely for purpose of maintaining required timelines. Bonita Unified continued the IEP team meeting to October 29, 2020, to ensure Parent's attendance and participation.

The IEP team reconvened on October 29, 2020 to review and consider Student's triennial assessment reports.

PSYCHOEDUCATIONAL ASSESSMENT

Christopher Holloway conducted Student's psychoeducational assessment and prepared the report dated October 23, 2020. Holloway, a school psychologist, held a master's degree in educational psychology and counseling and a pupil personnel services credential in school psychology. He conducted over 500 psychoeducational assessment for children with disabilities and provided school counseling services for elementary and high school students. He had extensive experience with attention deficits. Holloway presented as an excellent witness.

Holloway's tests and procedures included, but were not limited to observations, rating scales, interviews, records reviews, one-on-one testing, and other types and combinations of tests gathered both remotely and in-person. Student's assessments were administered in-person, however personal protection equipment, such as face masks, were utilized due to mandatory COVID-19 precautions. Student required lots of breaks to complete the assessments. Holloway extensively referenced and included

Student's prior independent assessments and information from Dr. Braun, Dr. Baker, Casa Colina, Dr. Yang, and Lindamood Bell.

Holloway reported Parent's list of concerns which she attached to the assessment plan on March 13, 2020. Parent repeated her concerns in the areas of academic achievement, intellectual development, speech and language, motor development, social/emotional, behavior, and adaptive skills during her interview. Holloway interviewed Student's general education teachers, Logan, Falk, and Frymer, as well as Nairouz, Student's education specialist.

Holloway administered the Kaufman Brief Intelligence Test, Second Edition, a standardized test which measured Student's verbal and non-verbal intelligence. Student scored in the average range for verbal knowledge, which measured reasoning ability, integration, and logical classification skills by utilizing general information and receptive vocabulary. Student scored borderline to the upper extreme range on the non-verbal subtests which measured her non-verbal or visual reasoning abilities using analogies and traditional matrix patterns.

Holloway administered the Wechsler Individual Achievement Test, Third Edition, a standardized test which measured Student's academic achievement and functioning. Student's overall achievement performance fell within the average range, but she exhibited discrepancies in all areas.

The oral language subtests assessed Student's listening comprehension and oral expression. The listening composite comprehension subtest contained receptive vocabulary and oral discourse comprehension components to measured listening comprehension.

The oral expression subtest tested expressive vocabulary, oral word fluency and sentence repetition. Student scored in the average range for expressive vocabulary and oral word fluency. Student demonstrated difficulty with the sentence repetition subtest which Holloway considered indicative of an auditory processing deficit. She exhibited discrepancies between her ability and academic achievement in the areas of basic reading skills reading fluency and reading comprehension.

Holloway tested Student's written expression in the areas of essay composition sentence composition and spelling. On the essay composition, Student scored in the average range, but Holloway considered the score inflated, as he observed Student's difficulty getting her ideas down on paper, and the resulting loosely constructed paragraph. Student scored in the average range on sentence composition and sentence combining. As with the essay subtest, Holloway questioned Student's performance, as he observed her difficulties copying sentences verbatim, and not writing full sentences. Student scored in the below average range in spelling. Despite the average composite score for written expression, Holloway concluded writing was a difficult area of the curriculum for Student. Based upon her performance on tasks and during classroom performance, Student demonstrated a discrepancy between her ability and achievement in written expression.

Holloway tested Student's mathematics skills in the areas of math problem solving and numerical operations. Student scored in the below average range on math problem solving which measured Student ability to respond to basic concepts, everyday applications, geometry and algebra. On numerical operations which measured untimed mathematical calculation skills, Student scored in the average range. Student's reasoning abilities in math reasoning was severely discrepant to her math calculation skills, which represented an area of need.

Holloway addressed Parent's concerns regarding dyslexia by administering the Dyslexia Index. This index took into account Student's subtest scores that highly correlated with dyslexia, especially pseudoword decoding, oral reading fluency and spelling. Holloway determined Student's index scores indicate a moderate risk for dyslexia. The scores on their own did not diagnose dyslexia but needed to be taken into consideration with the content of Student's full assessment.

Holloway tested Student's auditory and phonological procession by administering the Comprehensive Test of Phonological Processing, Second Edition. Phonological processing referred to the use of phonological information, especially the sound structure of oral language, in processing written language, and oral language. This standardized test, measured phonological awareness, phonological memory and rapid naming.

Student scored in the below average range on word manipulation and word blending. She scored in the average range on phoneme isolation. Student scored in the poor range on phonological memory which required Student to hear numbers or nonwords and repeat them exactly. Student scored in the average range on rapid symbolic naming, which required her to read a series of letters and numbers as quickly and accurately as possible. Holloway concluded that overall, Student demonstrated processing deficits in auditory memory and phonological processing.

Holloway tested Student's visual and visual-motor processing necessary for academic activities requiring written work. Holloway administered the Developmental Test of Visual Perception, Third Edition. The test which measured Student's visual processing skills, consisted of a visual-motor integration and motor-reduced visual perception composites.

On the visual-motor integration composite for eye-hand coordination Student scored in the average range for eye-hand coordination and above average on the copying subtest. On the motor-reduced visual perception composite, Student scored in the above average range on four-out-of-five subtests. Student's above average scores correlated with her non-verbal intelligence scores. Holloway did not question the discrepancies in his visual processing findings when compared to those contained in Dr. Stephey's 2019 assessment. Dr. Douglas Stephey, Student's ophthalmologist, determined Student displayed visual deficits in a significant number of neurological areas, including magnocellular visual pathway function, binocularity, convergence insufficiency, oculomotor skills, visual memory, motor planning and sequencing. These deficits, among other things, often resulted in dyslexia, reading and learning disabilities, headaches when reading, light sensitivity, poor eye tracking, poor visual processing speed, losing one's place when reading, word blur, an increased risk of attention deficit disorder, inattentiveness and nervousness and anxiety.

Holloway opined visual convergence was not an area of assessment covered by school psychologists. Therefore, he did not need to consider the impact of Student's visual convergence symptoms on visual learning in the classroom or accessing information through distance learning. He ignored his own observations of Student's difficulty copying sentences verbatim, her tendency to not write full sentences as well as his conclusions on the Dyslexia Index. He ignored Parent's input regarding headaches, inattentiveness, and anxiety. Instead, based upon his visual processing subtests alone, Holloway determined visual processing was an area of relative strength for Student.

Holloway tested Student's attention processing and executive functioning. In addition to attention, executive functioning included planning, working memory,

problem solving, verbal reasoning, inhibition, mental flexibility, multi-tasking, initiation and monitoring of actions, which affect all academic areas.

Holloway administered the Comprehensive Executive Function Inventory, a ratings scale which was completed by Parent and Student's teacher, Frymer. Frymer's rating scores were in the average range. On the validity index however, Holloway issued a caveat regarding teacher scoring. Frymer interacted with Student only through distance learning on the computer. The ratings scale was not normed or standardized to COVID-19 conditions or interactions through the computer.

Parent's ratings, on the other hand, exhibited an inconsistent ratings style and negative impression response style. Holloway discussed her responses with Parent. Parent indicated she answered the questions independently based upon what she saw at home. She maintained her ratings were accurate and indicative of the level of concern she had for her daughter.

The full-scale scores reflected Student' overall executive functioning. Parent rated Student in the low average range, and Frymer, in the below average range. Both indicated concern with attention and executive functioning in the home and school settings. Attention, initiation, organization, and self-monitoring were areas of concern across settings. Student demonstrated average cognitive skills in the areas of association, conceptualization, and expression.

Holloway assessed Student's social/emotional and behavioral functioning. Student participated in an interview with Holloway. It took some time for Student to open up. Once she relaxed, Student spoke clearly, made eye contact, and elaborated on many different subjects. She enjoyed talking about her pets. She indicated she had three friends, but friends from school do not live in her neighborhood. She reported

she got nervous asking questions at school and while learning online. She wanted to return to school in person.

Student described distance learning as boring. When bored, she walked around the house and became distracted by things she wants to play with. There were lots of toys and art tables in the room to distract her. Holloway reported from his observations during distance learning, Student also chatted with anyone in the room and ate snacks while on camera. Holloway did not find this uncommon and opined that online learning at home involved a looser environment than the classroom for all students. Toys, snacks, and other distractions were readily available in the home setting.

Holloway administered the Behavior Assessment Scale for Children, Third Edition, a rating scale completed by Parent and Frymer. Holloway noted the same validity indices as with the Comprehensive Executive Functioning Inventory rating scales.

The behavioral symptoms index reflected the overall level of problem behavior, through hyperactivity, aggression, depression, attention problems, atypicality and withdrawal subscales. Parent rated Student in the clinically significant range at home while Frymer rated Student in the average range and found less behaviors at school. Both Parent and Frymer reported higher concerns for Student's withdrawal as her tendency to evade others or avoid social situations.

The externalizing problems composite measured problems such as aggression, hyperactivity, and delinquency. On hyperactivity, described as the tendency to be overly active, rush through work and act without thinking, Parent rated Student as clinically significant, which Frymer rated Student average in the classroom. Both raters found Student's aggressive behaviors and conduct to be average.

The internalizing problems composite measured behaviors that were not marked by acting out. Parent scored Student's anxiety, depression and somatization as clinically significant. Frymer found Student in the average range for each of the behaviors.

Frymer, completed the school problems composite which examined the areas of attention and learning problems at school. Frymer rated Student in the average range, regarding to the presence of academic difficulties, particularly in understanding or completing schoolwork or homework. She also rated Student in the average range for study skills, which considered Student's adaptive skills conducive academic performance, including her organizational skills and study habits.

Parent rated Student's attention problems, defined as the tendency to be easily distracted and unable to concentrate for an extended period, as clinically significant. Frymer found Student's attention problems in the average range.

The adaptive skills composite measured positive behaviors that enable successful social/emotional functioning. Parent rated Student as clinically significant. Frymer rated her at risk. These similar scores indicated Student presented with some difficulties across settings in the areas of adaptability, functional communication, leadership and social skills.

Holloway concluded Student remained qualified for special education and related services due to specific learning disability as her primary eligibility. He based this on Student's significant discrepancies in the areas of listening comprehension, written expression, basic reading skills, reading fluency, reading comprehension and mathematic reasoning. She also demonstrated deficits with auditory processing, phonological processing and attention.

Holloway also determined Student met the eligibility requirements for other health impairment due to her diagnosis of attention deficit hyperactivity disorder and the attention problems and executive functioning problems consistently noted by Parent and Frymer. Student exhibited severe social anxiety in the home setting. Although observed to a lesser extent in the school setting, Holloway nevertheless determined Student's anxiety was a disruptive factor to Student's education in the school environment. Student remained shy or avoidant of some social situations or peers, which occasionally inhibited her participation with peers or getting comfortable in a new situation.

HEALTH SCREENING

As part of the health summary, Iavicoli interviewed Parent, who provided copies of Student's assessments and related medical information. Parent reported Student had allergies and a diagnosis of attention and concentration deficits, and social anxiety. Iavicoli reported Dr. Braun's involvement as Student's auditory specialist, and Dr. Stephey as Student's vision specialist. Parent determined that updated vision and hearing screenings were unnecessary, as Student was recently tested by the specialists. Parent declined further vision assessment, and pursuant to school guidelines, Student did not require additional vision testing, as she had passed the test for near and far vision.

Dr. Douglas Stephey, Student's ophthalmologist, conducted a private vision therapy evaluation with a written report, dated March 13, 2019. Dr. Stephey presented his findings to Student's IEP team on April 17, 2019. Dr. Stephey did not testify at hearing.

Based upon Dr. Stephey's report, Student displayed visual deficits in a significant number of neurological areas. These deficits often resulted in learning disabilities, similar to those exhibited by Student. As a result of these deficits and despite her chronological age and intelligence, Student did not possess the developmental skills necessary to be an effective learner. Student's visual processing deficits limited her abilities to move, look and listen in a fast, accurate, effortless, sustainable, and meaningful way. Dr. Stephey diagnosed Student with a visual impairment and other health impairment due to motor overflow. To assist Student in the classroom, Bonita Unified provided Student with prism glasses as assistive technology to support Student's visual deficits. and adopted some of Dr. Stephey's recommended accommodations for Student.

Considering Dr. Stephey's earlier identification of visual processing deficits, as well as current Parent and teacher input, a mere health screening was an insufficient assessment to determine Student's visual needs to appropriately access virtual lessons. Bonita Unified was required to look beyond the simple ability to see in evaluating Student's visual deficits. Given Holloway's contrary findings of visual processing as a relative area of strength for Student, further visual assessment was appropriate. Bonita Unified did not conduct a thorough vision assessment despite the information available to district assessors and the IEP team indicating a need for one.

When analyzed only in the context of Student's access to the curriculum in a brick-and-mortar classroom, Bonita Unified's failure to more thoroughly assess Student's vision and visual perception, did not result in a denial of FAPE. Dr. Ballinger's subsequent visual processing assessment reconfirmed Student's visual processing deficits as initially diagnosed by Dr. Stephey. She more clearly explained the relationship between Student's visual deficits and her academic performance. However, without information from Bonita

Unified, Dr. Ballinger's explanations remained hypothetical. While Dr. Ballinger passionately advocated for visual therapy intervention, she based the need for vision therapy on assumptions rather than data regarding Student's actual academic performance in the classroom. No doubt the recommended vision therapy would provide Student with increased skills for academic excellence, but Bonita Unified was not required to maximize Student's benefit or academic progress. Without consideration of Student's actual academic performance at school, Dr. Ballinger presented no evidence that her passion for Student was a necessity. Further, with the exception her recommendation for a series of vision therapy sessions, Dr. Ballinger's assessment did not make recommendations which sought to significantly changes the goals and services offered in the IEP. As a result, Dr. Ballinger's assessment provided the IEP team with the more thorough vision assessment lacking from Bonita Unified's psychoeducational assessment and health screening. It also provided no information which required drastic change from the goals and services offered in the May 22, 2020 IEP. Thusly, Bonita Unified's failure to conduct a more thorough vision assessment did not deprive Student of educational benefit.

SPEECH AND LANGUAGE ASSESSMENT

Christina Garcia, speech and language pathologist, assessed Student in the area of speech and language. Garcia was a credentialed speech and language pathologist, who held a master's degree in speech and language pathology. She had over ten years of experience evaluating, developing, and implementing individual and group services for children. Her written report incorrectly reports completion of the report on March 23, 2020. Due to COVID-19 interventions and delay in obtaining parental consent to assess, she completed the speech and language assessment in October 2020.

Garcia administered a variety of assessments. She conducted an oral peripheral examination and determined Student's oral structures were within normal limits and

adequate for speech production. Student's voice and fluency were not areas of concern and were informally tested. Student's overall pitch, quality of voice, and volume were within functional ranges, however at times Student spoke softly and was asked to speak up and into the camera. Student's spontaneous speech indicated she could deliver a coherent, complete and fluent question or command during the majority of her utterances.

Garcia's observations of Student in the classroom supported Parents contentions regarding Students distraction, limited classroom participation and lack of appropriate social interaction. During a virtual classroom activity in general education, while the teacher read to the class, Student popped in and out of view, looked away from the computer screen and engaged in conversation with someone sitting with her. Student was not following the class activity, got up and began dancing in front of the screen. The person with Student, prompted her to return to the lesson. After about three minutes Student was again distracted and repeated behaviors including dancing, making funny faces at the screen, playing on her chair, and leaving the room. After transitioning to another lesson, Student's behavior remained similarly distracted.

During Garcia's assessments, Student's attention and cooperation varied over the three days of testing. She could be attentive but was easily distracted when others were in the room with her. She often asked the person in the room questions instead of asking Garcia, and she relied on others for their approval to her responses before responding to Garcia. Student constantly sought redirection from Parent. When alone, Student responded with less hesitation.

Garcia administered the Goldman-Fristoe Test of Articulation, Third Edition, which evaluated Student's articulation of sounds in all positions of words. Student scored in

the average range, presenting with zero errors and producing all speech sounds correctly. Garcia deemed Student's speech intelligible in 100 percent of speaking opportunities.

Garcia conducted an informal assessment to assess Student's production of multi-syllabic words. When orally given two-to-five syllable words and asked to repeat the modeled words, Student correctly produced 75 of 83 words correctly without repetition.

Garcia administered the Receptive One-Word Picture Vocabulary Test, Fourth Edition, which measured Student's understanding of vocabulary by asking her to identify illustrations of words presented orally. Student scored in the average range. Conversely, on the Expressive One-Word Picture Vocabulary Test, Fourth Edition, which measured Student's speaking vocabulary by asking Student to name objects, actions and concepts presented in illustrations. Student also scored in the average range.

Garcia administered the Clinical Evaluation of Language and Fundamental, Fifth Edition which evaluated Student's understanding and use of oral language. The test consisted of seven subtests. The sentence comprehension subtest evaluated Student's ability to interpret spoken sentences and identify referential meanings of sentences. The word structure subtest evaluated Student's ability to apply word structures or morphology to mark inflections, derivations, and comparison and to select and use appropriate pronouns. The word classes subtest evaluated Student's ability to understand relationships between words based upon semantic class features, function, place, or time of occurrence. The formulated sentences subtest evaluated Student's ability to complete semantically and grammatically correct spoken sentences using

given words. Student's scores on these subtests placed her in the average range for her chronological age.

On the other hand, Student presented with significantly below average skills on the recalling sentences and understanding spoken paragraphs subtests which required Student to listen to spoken sentences of increasing complexity and paragraphs without visual stimuli with the expected ability to repeat the sentences or answer questions with relevant details about a given paragraphs. These scores correlated with Student's attention deficits and central auditory processing disorder.

Garcia administered the Comprehensive Assessment of Spoken Language, Second Edition, to evaluate Student's pragmatic language and inference skills. Student scored in the average range on both subtests and was able to demonstrate understanding of various social rules, cues, and rituals. She could make appropriate responses in various social situations, including making inferences from context clues. Garcia noted however that based upon observations and parent and teacher interviews, there was a significant difference in Student's performance of those skills in her daily communication. Student presented with difficulty participating and interacting in social situations in the general setting and at home. Her functional communication skills and spontaneous and independent social interactions presented as an area of weakness.

Based upon her findings, Garcia determined Student possessed adequate communication skills except in the area of pragmatics and expressive language. She found that Student met the eligibility criteria for speech and language impairment and recommended speech and language therapy.

Parent continued to disagree with Garcia's findings and recommendations regarding Student's ability or inability to pronounce multi-syllabic words. Parent

explained that when Student is prompted, she was able to pronounce sounds, but the skill did not carry over into the home setting. Instead, Student refrained from multi-syllabic words and utilized short, fragmented sentences, and always had difficulty reading or saying multi-syllabic words.

Garcia shared words Student could pronounce and reported she did not see Parent's described discrepancies during Student's speech sessions. Garcia provided Student's speech and language services, and due to group scheduling, most of Student's sessions were one-on-one. Garcia considered Dr. Braun's assessments, but clarified that reading words is different from producing the words verbally.

OCCUPATIONAL THERAPY ASSESSMENT

Verner conducted Student's occupational therapy assessment, and prepared his report dated October 23, 2020. Verner held a master's degree in occupational therapy. Verner provided occupational therapy services and conducted assessments as an employee of Bonita Unified. He also provided part-time services for Casa Colina as a therapist for adult in-patient rehabilitation.

Verner conducted a complete assessment of educational occupational therapy with added focus on Parent's concerns regarding Student's handwriting and sensory issues. He conducted formal assessments, obtained Student work samples, interviewed Student's teacher and Parent, observed Student in the classroom, and reviewed the assessment reports from Casa Colina, Dr. Braun, and Dr. Stephey.

Verner administered the Test of Handwriting Skills-Revised, to evaluate Student's fine motor skills needed to manipulate and grasp objects. It included tests for precision dexterity, shoulder and wrist stability, hand dominance and tool use. Visual motor skills

subtests measured the interaction of Student's visual skills, visual perceptual skills and motor skills which pertained to the coordination of eye and hand movements. Verner reported that Student did well listening to and following instructions. She received a break mid-assessment. Student scored in the average range in each of the subtests. Verner noted, however that Student reversed the letter D and failed to include the letter M on two subtests. Verner considered this a minor issue which was corrected with reminders. Even with these errors, the letters were legible, and he found no concerns with Student's ability to write letters and numbers.

Based upon Student's functional assessment and his clinical observations, Verner determined Student's fine motor foundational skills were all within functional limits. Student independently completed each of the subtests related to fine motor and visual motor correlation.

Verner viewed Student's homework writing samples and interviewed her teachers and Parent. Each indicated Student's handwriting was messy, but legible. Logan, Student's teacher, reported Student's difficulty copying information from the board. She remedied this by providing Student a hard copy so she could closely copy information.

As part of the assessment, Student demonstrated the ability to close copy information, complete drawings and match details with good accuracy. She put together and took apart buttons, snaps, zippers, and buckles. She demonstrated the ability to tie shoelaces and appropriately sequenced these tasks independently. Verner opined that throughout the assessment, Student manipulated all the different items with confidence, appropriate strength, and good dexterity. Student demonstrated good

visual perception skills while playing a game and was quick at spotting the same items on different card, utilizing up to nine cards at a time.

Verner administered the Sensory Processing Measure rating scales which enable the assessment of sensory processing issues, praxis, and social participation. Logan, Student's second grade general education teacher, completed the main classroom form. Frymer, Student's third grade teacher, had not worked with Student in person as Logan had. Verner acknowledged Logan's scores could not be standardized due to the amount of time that had passed due to distance learning. Combined with the teacher interviews of both Logan and Frymer, the Sensory Processing Measure provided good information regarding Student's ability to process sensory information in the school setting.

Student scored in the typical range in two categories, touch and body awareness. In social participation, hearing, and balance and motion, Student exhibited mild problems. Of note, Student frequently fidgeted when seated, and occasionally demonstrated poor coordination or appeared clumsy. Student exhibited more significant issues in the categories of vision and planning and ideas. Logan noted Student always became distracted by visual stimuli, and frequently looked around rather than focus on the person speaking or the blackboard. While Student could be easily distracted, she would get back on task with a single reminder. Student showed poor organization of materials on her desk, and frequently failed to complete tasks with multiple steps. She frequently demonstrated limited imagination and creativity in play and free time.

Verner reviewed the private Casa Colina assessment conducted on July 28, 2020. He considered Casa Colina's assessment with caution. All information had been

provided by Parent, and the testing primarily related to adaptive skills utilized in the home setting. While Parent's ratings on the Sensory Processing Measure, Home Form, placed Student within the definite dysfunction range in four categories, the assessor reported Student did not seek tactile stimulus, and responded appropriately to light touch and textures. Student did she seek vestibular input. The Casa Colina assessment report determined that visually, Student could cross her midline, use bilateral coordination and track moving object. With auditory integration, Student oriented briefly, and immediately resumed activity independently.

Verner concluded Student did not require educationally based occupational therapy. He defined the criteria for educationally based occupational therapy as what services does Student need when she steps on the school campus to access the curriculum. Student displayed good foundational skills. Although not perfect, Student's handwriting was appropriate. Verner did not observe any major concerns during his virtual classroom observation of Student.

As confirmed by Logan, Student's biggest issue centered around attention and distraction. Student easily refocused her attention and responded well to teacher input. Her attention difficulties at school and with distance learning, however, were not deficits requiring occupational therapy.

ASSISTIVE TECHNOLOGY ASSESSMENT

Heidi Torres conducted Student's assistive technology assessment and completed a written report dated October 23, 2020. Torres, an education specialist for Bonita Unified, held a master's degree in special education and a mild/moderate special education credential. Torres completed the Open Access Learning and Participation for all Assistive Technology course which qualified her to assess a student's needs for

assistive technology, and to match, modify, customize, and provide specialized tools and equipment to support the student's difficulties accessing learning. Torres conducted Student's assistive technology assessment and presented a written report dated October 23, 2020. She based her assessment results and interpretations on records review, direct assessment, observation, teacher interview, student interview, and review of writing samples. She did not review the assessments by Dr. Stephey, Braun, and Ballinger.

At the time of the assessment, Student utilized a Chromebook daily in the classroom. Student used text-to-speech and voice typing. Picture supports, word processing software, digital templates, speech recognition software, electronic text, text reader and scanner with text reader were used in the classroom.

Torres administered a series of reading and writing assessments to determine if Student required additional assistive technology supports. Based upon these assessments, and her virtual observations, Torres determined Student could physically access her Chromebook and utilize the necessary tools to be successful through distance learning. Student could operate the standard Chromebook keyboard and mouse pad.

Student's current learning environment presented instruction using multi-modality methods, i.e., visual representations and computer-based activities. Student was not limited in her physical ability to access and operate available material, equipment, and technology.

Torres's review of Student's academic progress and IEP accommodations, and her observations indicated Student received adequate support in each subject area to allow her to access and benefit from the curriculum. She did not require assistive technology

goals and services. Instead, Torres recommended a series of accommodations be provided to increase Student's access to the curriculum in the areas of reading and writing.

She determined Student would benefit from the use of a speech-to-text tool to help increase written work production and her independence in completing classroom assignments that require writing. She recommended Bonita Unified provide Student with continuing access to a computer or Chromebook; access to grade-level digital text; access to a text reader for reading passages and online books; access to headphone to use with the text reader; continued access to use of word processing software; and access to speech-to-text or voice typing capability for writing.

The IEP team did not complete a full discussion of all components of Student' IEP. The IEP team did not make any changes or amendments to the May 22, 2020 IEP and continued the IEP team meeting to November 30, 2020, for further discussion and recommendations.

NOVEMBER 30, 2020 IEP TEAM MEETING

The IEP team reconvened on November 30, 2020, to continue discussion and recommendations for Student's May 22, 2020 triennial IEP.

The IEP team recapped its discussions from October 23, 2020. Student presented with academic difficulties in the areas of listening comprehension, basic reading skills, reading fluency, reading comprehension, written language and math reasoning which were impacted by processing deficits in the areas of auditory processing, phonological processing and attention. She demonstrated difficulties with attention and social anxiety that contribute to her academic difficulties and required repetition of instruction,

teacher check-ins for understanding, and allowing her to become comfortable in a situation so she did not disengage or shy away. At times, Student's attention and social anxiety impacted her comfort in communicating with her peers and with her pragmatic skills. These identified areas of need continued to support a determination that Student qualified for special education and related services under the categories of specific learning disability and other health impairment.

Parent provided input to the IEP team meeting. She continued to express concerns with Student's audio processing deficits, contending Student's regression. Parent observed that Student did not hear words correctly and she spoke in short sentences consisting of three-to-five words to simplify her thoughts. Parent continued to express concerns with Student's vision in distance learning. Student complained her eyes hurt when reading, rubbed her eyes frequently, and experienced frequent headaches. Parent repeated her concerns with distance learning and reported Student's difficulties with virtual teaching. Student also exhibited social anxiety.

Nairouz reported on new information obtained for the IEP team. Student's DIBELS's scores from September 2020, were below average. Student read 37 words per minute with 88 percent accuracy. Student's September 2020 DIBELS score was lower than her score in February 2020, where Student read 82 words per minute 98 percent accuracy. The September 2020 DIBELS score was also below the benchmark of 70 words per minute with 95 percent accuracy.

Student's November 2020 STAR testing in reading ranked Student with a grade equivalency of 3.3. The November 2020 STAR testing in math ranked Student with a grade equivalency of 3.5. Based upon the STAR testing, Student's academic skills were at grade level.

The IEP team reviewed Student's progress on her current goals which were initially implemented in 2019. Nairouz, as Student's education specialist, and specialized academic instructor for the 2020-2021 school year, implemented the 2019 goals because Parent did not consent to Student's IEPs offered after June 10, 2019. Student met her goal to count syllables in three and four syllable words with 80 percent accuracy. She met her annual goal for listening comprehension by correctly answering questions after listening to instructional text. She met her goal for high frequency word and could independently read 94-out-of-100 words.

Although the goals were part of the May 10, 2019 IEP, Student had not met her reading decoding goal, but read one syllable nonsense words with consonant blends with 71 percent accuracy. Student did not meet her annual writing goal but met her first short term goal in which she could dictate at least five sentences to the teacher to summarize an instructional level text, after reading it and listening to the text read aloud a least twice, and after engaging in a teacher-guided discussion about the text. Student also completed the requirement to complete a digital graphic organizer on two consecutive writing assignments.

Parent reported Student completed about 90 percent of the CAPDOTS program. Upon completion Parent intended to seek a reassessment from Dr. Braun.

Based upon input from Parent, including an audio recording of Student's pronunciation of multi-syllabic words, Garcia wanted to revise Student's speech and language goal to assist Student become more independent in producing multi-syllabic words. The IEP team discussed strategies addressing how to target this skill.

Patterson reported to the IEP team that Bonita Unified currently offered in-person tutoring for two hours per week. Student signed up for this tutoring but did not

attend. Parent indicated the time of day at which the tutoring occurred was not compatible with Parent's work schedule. Parent asked if the tutoring could be offered at a more convenient time, such as 8:00 a.m. on school days. Patterson explained that the tutoring was not intended to replace services provided during the school day. The offer of tutoring was supplemental and not individualized or added as part of a student's IEP.

The IEP team recapped the triennial assessments. Parent disagreed with Verner's occupational therapy assessment and requested the IEP to include the goals and services recommended by Casa Colina. Bonita Unified IEP team members determined Casa Colina's assessments and recommendations were not educationally related, even though Parent contended Student could not open a milk carton at school. Verner's assessment was far more comprehensive and addressed those skills needed at school. All observations of Student, including Lee's reported Student could hold a pencil and write legibly.

Parent also contested Torres' findings Bonita Unified provided Student access to various technologies within the school day, and Student successful utilized those technologies. Parent argued the assistive technology assessment failed to explore Student's basic skills, like whether Student understood the need to keep the Chromebook charged, or whether she could independently download lesson materials, or successfully transition from program to program without assistance. Parent felt Student needed direct assistive technology services to learn how to address these areas. Student needed assistance with using headphones. Student refused to use headphone except for ten minutes during CAPDOTS training. Student could not tolerate headphones for the entire school day. Nairouz observed Student using headphones and she concurred with Dr. Braun, that headphones increased Student's hearing and made a difference in Student's performance. Nairouz requested to continue reviewing

accommodations that addressed the technology areas that supported Student. She suggested trials with different headphones to find ones Student would use.

The IEP team ran out of time to complete the triennial IEP and continued the IEP team meeting until after Winter break.

JANUARY 5, 2021 AND JANUARY 22, 2021 IEP TEAM MEETINGS

The IEP team reconvened on January 5, 2021. Bonita Unified provided Student performance updates. Nairouz provided new information on Student's specialized academic instruction. Student worked hard and gave her best efforts in the pull-out setting. Student needed encouragement to participate in class, and often sought help from Parent instead of the teacher. Nevertheless, when asked a question by the teacher, Student always responded. Nairouz observed Student usually remained attentive for the 20-to-30 minutes of a specialized academic instruction session. Student was less attentive after lunch but was easily prompted to refocus in the small group setting of no more than four students.

The IEP team recapped points from the psychoeducational assessment, including Holloway's observations of Student during the assessment. Student worked hard but became fatigued and more distractible the longer testing went on as well as during tasks that were purely auditory in nature. She required breaks. During classroom observations, Student did not appear to communicate or engage with peers in the whole class or breakout room setting. Student muted her microphone and communicated with a person off camera in the home setting. During virtual learning, Student often stood, moved her body, ate snacks, and ducked out of view of the camera. She was also observed jumping and running. On the other hand, Student

raised her hand twice and answered a question when called upon during the observations.

Garcia reported that before the COVID-19 school closure, Student presented with appropriate social skills in the school setting. However, since then, during distance learning, Student's social engagement and interactions decreased substantially. Student was hesitant to ask or answer questions. She participated in pull-out sessions, but often needed prompting and encouragement from those in the room with her, to direct her responses to Garcia. Student exhibited limited participation in conversation with minimal turn-taking, often looking to those around her for support to engage. Furthermore, during the triennial speech and language assessment, Student had a difficult time attending to tasks and asking Garcia for help when needed, and she appeared to get frustrated easily and protested participating in tasks.

Dr. Beth Ballinger, Student's optometrist, attended the January 5, 2021 IEP team meeting to review her private assessment of Student's visual deficits conducted in September 2020. Dr. Ballinger prepared a written report, dated December 31, 2020 which was presented to Bonita Unified.

Dr. Ballinger, a Doctor of Optometry was a fellow in the College of Optometrists in Vision Development. Dr. Ballinger testified at hearing and presented as a highly qualified vision professional with extensive experience with developmental optometry for children. She had extensive experience with special education and vision related learning disabilities in children. Parent hired Dr. Ballinger to assess Student in 2020. Dr. Ballinger assessed Student in person, and interviewed Parent. Parent provided all the information and prior assessments which were reviewed by Dr. Ballinger. Dr. Ballinger did not speak with anyone from Bonita Unified. Dr. Ballinger testifies in

due process hearings, primarily on behalf of students, and was paid for her appearance at this hearing. Dr. Ballinger was an excellent witness. Her testimony was clear, concise, informative, and unbiased. Dr. Ballinger's testimony was persuasive.

Dr. Ballinger conducted an extensive visual evaluation which explained Student's vision deficits in relation to her educational needs. Her assessment findings were similar to those of Dr. Stephey. She saw the same visual challenges as previously reported. Dr. Ballinger, however, presented a more detailed report, and clearly explained her findings. Dr. Ballinger's assessment was far more extensive than that of Holloway. Dr. Ballinger assessed beyond visual intake and explored vision integration with other sensory modalities.

Dr. Ballinger express concern with convergence inconsistency, a condition in which Student's focus slips and then overtightens. As a result, when reading, print runs together, Student develops double vision, and her visual system shuts down. When her focus slips while reading she will lose her place. She will skip words or sentences which affects reading comprehension.

In measuring Student's horizontal tracking speed, Dr. Ballinger reported that Student moved her head to scan rows of numbers, which became more difficult moving toward the middle of the page. Moving her head caused fatigue over the academic school day which resulted in a demonstrated loss of attention and manifestation of off task behaviors. Student's inconsistent saccadic eye movement integrity required Student to utilize more effort to sustain visual attentional accuracy, resulting in her need for additional time for reading and copying tasks. Exerting more energy to control these deficits created fatigue, frustration, poor duration, skipping of words and sentences and contributed to variable visual attention and comprehension involve in

reading and writing demands. Student's variable eye teaming became more stressed with sustained visual demands.

Dr. Ballinger opined that Student's inconsistent fine visual motor integrity negatively impacted her stability with respect to the quality of visual motor control. Convergent inconsistency significantly affected Student's reading performance. With convergent inconsistency, Student's focus slipped then then overtightened, making her vision transitions difficult from close up to distance vision. Student's inconsistent biocular control and poor sensory motor endurance contributed to her double vision and focusing deficit. Words moved on the page or print ran together. When print ran together, Student would skip words or sentences which meant she was not getting all of the information being presented. Although she could copy information, she might unknowingly miscopy.

Dr. Ballinger found it imperative that Student participate in an individualized program of optometric vision therapy to develop necessary visual skills needed for her academic demands. Student required a minimum of 40 in-office visits plus five progress evaluations, each session consisting of one hour of one-on-one vision therapy.

Dr. Ballinger recommended a number of accommodations for Student such as a quiet one-on-one learning situation with less physical distractions and less complex visual array; visual breaks from academic demands; a slant board to accommodate her copying and reading demands; more time to complete assignments and tests, verbal reinforcement of information and one-on-one support to check on understanding of materials.

Based upon all information presented to the IEP team, the team determined Student required goals in the areas of reading decoding and spelling, reading fluency,

vocabulary within content, listening and reading comprehension, writing, math problem solving, task initiation and speech and language.

The first goal addressed Student's needs in the areas of reading decoding and spelling. The IEP team modified this original goal based upon information obtained after May 22, 2020, including district assessments, teacher input and observation and Dr. Braun's recommendations. The IEP team significantly expanded the baselines for the reading decoding goal to specifically included auditory processing information supplied by Dr. Braun.

The second goal added to the IEP on September 15, 2020, addressed oral reading fluency. The goal contained an amended baseline that referenced Student's increased fluency. The goal sought to increase Student's correct reading to 100 words per minute with 97 percent accuracy.

The third goal, added to the IEP on September 15, 2020, addressed vocabulary in content, and replaced a prior vocabulary goal which focused on word opposites. The goal sought to have Student read a passage and answer questions related to identifying vocabulary meaning within context with 75 percent accuracy.

The fourth goal which addressed reading comprehension remained the same as originally written on June 17, 2020 but contained an amended the baseline to reflect a higher reading level, included the use of the text reader as recommended by Dr. Braun and increased the accuracy level expected.

The fifth goal addressed Student's writing and remained the same as initially presented on June 17, 2020.

The sixth goal addressed math problem solving. The IEP team crafted this goal at the January 5, 2020 IEP team meeting in response to Student's November 2020 STAR math assessment scores. The goal sought to have Student generate correct math equations to solve problems when provided a group of five, one-step word problems with 80 percent accuracy.

The seventh goal which addressed Student's use of prompts to initiate tasks based upon newly taught concepts, remained the same as originally presented on June 17, 2020.

The eighth goal which addressed articulation and multi-syllabic words, remained the same as initially presented on June 17, 2020, but now included an additional baseline containing Parent's concern about multi-syllabic skills demonstrated in the home.

The ninth goal, newly created on January 22, 2021, addressed Student's needs with pragmatics and social communication. The goal required Student to maintain a topic of conversation with an adult or peer, by asking questions and making comments. The IEP team developed the baseline for this goal pursuant to Student's assessments scores on subtests for pragmatic language and inference, and on observations of Student's participation and attention during distance learning.

The tenth goal, which also addressed articulation and multi-syllabic words, was based upon a similar goal drafted on June 17, 2020. The amended goal added parental concerns to the baseline, reference Student's central audio processing deficit reported by Dr. Braun and acknowledge that Student's attention deficits impacted her performance in distance learning.

The IEP team determined Student required the assistive technology devices recommended by Nairouz but did not require services to appropriately implement use of the recommended devices.

The IEP team again ran out of time to complete the triennial assessment and continued the IEP team meeting to January 22, 2021 to complete the triennial IEP.

On January 27, 2020, the IEP team reviewed Student's accommodations and included many of the accommodations recommended by Dr. Ballinger including tracking support during reading, classroom seating arrangement which considered the direction of lighting, masking tools to reduce the visual medium on worksheets, and a slant board.

The IEP team offered required assistive technology in the form of the Chromebook with text-to-speech and speech-to-text capabilities to improve Student's performance in reading and writing assignments, continuing access to word processing software, and access to grade-level digital text. Pursuant to Dr. Braun's recommendations the assistive technology included access to text reader capability for reading passages and online books, and headphones to use with the text reader.

The IEP team tabled Parent's request for an FM system, based on Dr. Braun's request that an FM system not be considered until after Student completed the CAPDOTS program which remained uncompleted.

The IEP team discussed whether counseling would be beneficial for Student. Frymer and Nairouz reported that Student's behaviors during distance learning remained the same reported in October. Frymer noted Student did less work in class. Student participated more in an individual setting and remained shy in a group setting.

Holloway offered to draft an anxiety-self-awareness goal supported by counseling. Parent expressed her belief that counseling presented in a virtual format would not benefit Student. Holloway drafted a goal after the IEP team meeting for Parent's consideration, but Parent made it clear she was not interested.

To support Student's goals, the IEP team increased Student's specialized academic instruction to 300 minutes per day to accommodate the additional goals. The team offered 30 minutes per week of individual and 30 minutes per week of group speech and language services, and 60 minutes per month of individual counseling.

The IEP team again considered a continuum of placements and determined placement in the general education classroom with supports constituted the least restrictive environment for Student. Although Parent requested consideration of placement in a non-public school, she did not pursue that placement at hearing. The evidence indicated Bonita Unified briefly discussed non-public placement but did not consider it an appropriate placement. Non-public school placement represents a more restrictive placement. Further, Student's IEP could be implemented in the general education classroom with pull-out services. Bonita Unified correctly determined Student's least restrictive placement and was not required to consider non-public school placement requested by Parent.

There is a distinction between the issues presented by the parties. Bonita Unified's requests a determination of whether the May 22, 2020 IEP and its counterparts *offers* Student a FAPE in the least restrictive environment, while Student's issues seek determination of whether Bonita Unified *provided* Student a FAPE during the same time period.

The requirements in determining whether an IEP offers FAPE is embedded in *Rowley*. Determination of FAPE has two parts. First, there must be a determination of the school district's compliance with the procedural requirements of the IDEA. Second, there must be a determination that the IEP developed through those procedures was designed to meet the child's unique needs and was reasonably calculated to enable the child to receive educational benefit. (*Rowley, supra*, 458 U.S. at pp. 206-207.)

On its face, the May 22, 2020 IEP and its counterparts complied with procedural requirements for the content of an IEP, identified Student's unique needs, created relevant goals which addressed those needs, provided sufficient services to support the goal, and created appropriate accommodations to support Student's academic progress in the brick-and-mortar classroom. By such definition, the May 22, 2020 IEP and its counterparts completed on January 22, 2021, was designed to meet Student's unique needs and was reasonably calculated to enable Student to receive educational benefit in the regular school classroom. The collateral dramas between school district and Parent were immaterial to the offer of FAPE. The express language of the IEP indicated the May 22, 2020 IEP, in its totality, was intended for implementation in the regular school setting. Prospective what ifs are not considerations in determining whether the IEP offers appropriate goals and supports to provide Student with educational benefit commensurate with her abilities. The appropriateness of the IEP is determined at the time it is created, not in hindsight.

The intervening COVID-19 pandemic-imposed distance learning due to the emergency circumstances. On March 13, 2020, Governor Newsom issued Executive Order N-26-20, requiring the California Department of Education and Health and Human Services Agency to jointly develop guidance ensuring that during the COVID-19

pandemic students with disabilities receive a FAPE consistent with their IEP and meeting other procedural safeguards under the IDEA and California law.

Effective September 18, 2020, California enacted Education Code, section 43503, which set out the requirements for distance learning offered by school districts during the 2020-2021 school year. School districts may offer distance learning under certain conditions on a local or statewide level as the result of an order or guidance from a state public health officer or local public health officer.

Pursuant to the statute, also referred to as Senate Bill 98, distance learning must include provision of access to all students to connectivity and devices adequate to participate in the educational program and complete assignments (Ed. Code, § 43503, subd. (b)(1)); content aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction (Ed. Code, § 43503, subd. (b)(2)); academic and other supports designed to address the needs of students who are not performing at grade level or need support in other areas (Ed. Code, § 43503, subd. (b)(3)); Special education, related services and any other services required by a student's IEP, with accommodations necessary to ensure the IEP can be executed in a distance learning environment. (Ed. Code, § 43503, subd. (b)(4).)

To implement the requirements set forth by the Legislature, a contingent Distance Learning Plan for Emergency Conditions was created which sets forth the various areas of compliance necessary to implement distance learning under Education Code, sections 46392, subdivision (a) and Education Code, section 41422, subdivision (a). Bonita Unified complied and created an emergency IEP which provided for implementation of Student's entire IEP through distance learning with the exception of those accommodations available only in the classroom.

The emergency IEP sets forth the student's IEP services which will be provided to the extent practicable, taking into consideration the student's unique circumstances, the specific emergency, circumstances, school district policy, and federal, state and local orders. In essence the emergency IEP constituted a separate contingent IEP which *may* temporarily supersede the school district's offer of FAPE as contained in the student's IEP implemented during non-emergency school days. As a result, the factors which determine whether Bonita Unified's offer constituted a FAPE remained subject to the *Rowley* criteria.

The May 22, 2020 IEP, in its totality was intended for implementation in the regular school setting, or in this case when Student returns full-time to the regular general education classroom. The IEP identified Student's unique needs and offered appropriate goals and supports to provide Student with educational benefit commiserate with her abilities in a school setting. The May 22, 2020 IEP as amended by its counterparts offers Student a FAPE in the least restrictive environment and may be implemented without consent upon Student's return to full-time attendance in the regular classroom setting.

STUDENT'S ISSUES:

This Decision incorporates all factual findings contained in District's Issue One above.

ISSUE 2: DID BONITA UNIFIED DENY STUDENT A FAPE BY USING FEBRUARY 2020 IN-PERSON CONTACT AS THE BASIS OF DEVELOPING STUDENT'S GOALS, DEPRIVING HER OF APPROPRIATE GOALS?

Student contends Bonita Unified failed to conduct required triennial assessments for the May 22, 2020 IEP, and relied on old information gathered prior to March 2020, to inaccurately determine Student's present levels of performance which resulted in inappropriate goals.

Bonita Unified contends the IEP team-based Student's present levels of performance and proposed IEP goals on updated information available at the time and continued to update the goals when additional information became available.

An IEP must contain a statement of measurable annual goals. (20 U.S.C. § 1414(d)(1)(A)(i)(I).)

The required three-year reassessment provides the IEP team with information to determine whether the student remains eligible for special education. It also informs the IEP team of new or ongoing needs resulting from the student's disability that may require revision of the student's IEP. (Ed. Code, § 56381, subd. (b)(2).)

If the parent refuses to consent to the reassessment, the school district may, but is not required to, pursue the reassessment by the consent override procedures, and filing a due process complaint to obtain permission to reassess without parental consent. The school district does not violate its obligation to reassess if it declines to pursue the reevaluation. (34 C.F.R. § 300.300 (c)(i)(ii); Ed. Code § 56381, subd. (f)(3(4)).)

Reassessment is not required for each offer of FAPE. IEP teams regularly conduct annual IEP team meeting without new assessments. The IEP team may simply rely on credible information obtained from a variety of sources. Bonita Unified did so. The IEP team reviewed Student's most recent DIBELS and STARS scores, along with her most recent grade card. Student's teacher and speech pathologist presented information regarding Student's performance and their observations.

The February 2020 information presented to the IEP team consisted of valid material which provided a wealth of information traditionally included in formal assessments, assessments which would have been completed by May 22, 2020, with timely consent.

The May 22, 2020 IEP and its counterparts was not static. The IEP continued to evolve. Parent's disagreement with the information utilized by the IEP team did not equate to a failure to collect or consider relevant from a variety of sources.

The IEP team reviewed new information as it became available after February 2020. The IEP team reviewed and considered Dr. Braun's audiological assessment and retest of Student conducted in May 2020. On September 15, 2020, the IEP team reviewed and considered Parent's privately obtained reading assessment from Lindamood Bell. IEP team reviewed and considered the information presented in Parent's privately obtained occupational therapy assessment conducted by Casa Colina. The IEP reviewed Dr. Yang's report and asked Parent questions about Student's diagnosed childhood anxiety.

At each of the IEP team meetings, Student's teachers and service providers updated Student's present levels of performance based upon their professional opinions and observations of Student participation or non-participation in their respective

programs. The IEP team considered Student's new DEBELS scores and STAR assessment result when obtained in Fall 2020.

Once Parent provided consent to Student's comprehensive reassessment, the IEP team obtained significant information in the various assessments and their subtest components which provided the basis for redetermination of eligibility for special education and related services, identified Student's areas of needs, and current levels of academic performance and social skills. The assessments conducted by Bonita Unified provided new and current information through Parent, Student and teacher interviews. The IEP team considered Dr. Ballinger's visual processing assessment upon its completion in December 2020. Dr Braun and Dr. Ballinger, as well as the representative from Lindamood Bell, attended IEP team meetings to discuss their reports and answer questions.

Parent and her attorney provided information and asked questions at each of the IEP team meetings. Parent's disagreement with the information utilized by the IEP team did not equate to a failure to collect or consider relevant from a variety of sources.

Parent's concerns were exhaustively discussed. Parent's concerns, however, were often unsupported by evidence or existing data. As example, through a myriad of emails and direct communications with Bonita Unified staff, Parent consistently opined specialized academic instruction was not appropriate for Student. While Parent may have concluded Student regressed resulted from ineffective specialized academic instruction, she was unable to provide evidence of this, bearing in mind Parent removed Student from specialized academic instruction services in September 2019. When compared with the data presented by Bonita Unified, which consisted of standardized

test results, grade performance and teacher observations, the IEP team reasonably relied on data presented rather than conclusions drawn by Parent.

At hearing, Student relied on Parent's opinions as an expert witness on each issue. Undeniably, Parent qualified as a quasi-expert simply from being Student's parent. She relentlessly, yet fittingly, sought the best outcome for her child. Her observations in the home setting were given substantial weight where relevant to the issues presented. Parent was also a well-educated professional with recognized educationally related skills. These collateral skills, however, did not automatically provide Parent with the acumen to draw professional or non-rebuttable conclusions about educational regression or the provision of special education and related services. In those areas, many of her actions and conclusions were flawed. As, example, Parent steadfastly requested a reading program from Lindamood Bell, without understanding the reading strategies already utilized in Bonita Unified's specialized academic instruction, specifically Lindamood Bell strategies, including the Seeing Stars program.

Student's assertion regarding Issue Two was simply wrong as Bonita Unified continued to convene IEP team meetings thereafter to review and consider additional assessments and data collected after February 2020, in which case the IEP team made changes to Student's IEP goals and services. Student failed to prove the February 2020 information presented to the IEP team was invalid or incorrect. Student failed to establish Bonita Unified failed to seek or obtain Student further information, especially considering that Parent delayed the triennial assessment by not providing consent to Bonita Unified's assessment plan. Student failed to establish the goals developed for the May 22, 2020 IEP were inappropriate. Each of the goals appropriately addressed Student's identified areas of need, as more fully explained in Bonita Unified's Issue One analysis.

ISSUE 3: OCTOBER 19, 2019, DID BONITA UNIFIED DENY STUDENT A FAPE BY IGNORING THE PRIVATE VISION ASSESSMENTS AND RECOMMENDATIONS BY DR. STEPHEY, DR. BAKER, AND DR. BALLINGER TO PROVIDE VISION THERAPY TO STUDENT?

Student contends Bonita Unified ignored Student's severe visual deficiencies, including blurred vision when reading and headaches, and failed to adopt the findings of Dr. Stephey, Dr. Baker, and Dr. Ballinger, who recommended Student receive vision therapy.

Bonita Unified contends the IEP team meaningfully reviewed and considered the private vision assessments provided by Drs. Stephey, Baker, and Ballinger, and offered Student appropriate supports and services to address her needs in the areas of vision and visual processing. Bonita Unified contends vision therapy sessions were unnecessary as Student's goals and accommodations were sufficient to allow Student access to the curriculum and did not deprive her of educational benefit.

In California, related services are called designated instruction and services. Language and speech services, audiological services, occupational therapy, assistive technology and vision therapy are considered to be designated instruction and services. (Ed. Code, § 56363, subd. (b).)

For purposes of special education eligibility, visual impairment means an impairment in vision that, even with correction, adversely affects a child's educational performance. (C.F.R. § 300.8(c)(13); C.C.R., tit. 5, § 3030(b)(13).) The eligibility criteria for specific learning disability includes, but is not limited to, a disability within the function

of vision which results in visual perceptual or visual motor dysfunction. (Ed. Code, § 56338.)

In California vision therapy may include remedial and/or developmental instruction shall be provided by an optometrist, ophthalmologist or other qualified licensed physician and surgeon or by qualified school personnel when prescribed by a licensed optometrist, ophthalmologist or other qualified licensed physician and surgeon. (C.C.R., tit. 5, § 3051.75(c).)

If a parent obtains an independent educational evaluation or shares an evaluation they privately paid for, the school district must consider the evaluation when making decision regarding the student. (34 C.F.R. § 300.502(c)(1).)

DR. STEPHEY

Dr. Douglas Stephey, Student's ophthalmologist, conducted a private vision evaluation with a written report, dated March 13, 2019, and an addendum report dated May 13, 2019. Dr. Stephey presented his findings to Student's IEP team on April 17, 2019. Dr. Stephey's assessment and contributions to Student's IEP team occurred prior to the statute of limitations in this matter. His conclusion, however, placed Bonita Unified on notice of Student's vision deficits related to her education.

Dr. Stephey did not testify at hearing, nor did Student establish his qualifications or expertise. Nevertheless, neither party presented any evidence to suggest Dr. Stephey lacked the qualifications to assess Student or make recommendations contained in his report.

Based upon Dr. Stephey's report, Student displayed visual deficits in a significant number of neurological areas. These deficits, as described more extensively in Bonita

Unified's Issue One, could result in dyslexia other learning disabilities, headaches, light sensitivity, poor visual processing speed, as well as an increased risk of attention deficit disorder, inattentiveness and nervousness and anxiety. Although Dr. Stephey found that Student exhibited convergence insufficiency, he did not report it as a severe deficit at that time. In the March 13, 2019 report, Dr. Stephey diagnosed Student with a visual impairment and other health impairment due to motor overflow.

Dr. Stephey made many recommendations for accommodations and suggested Student obtain prism glasses for visual acuity to support her in the classroom. The recommendations also provided his vision plan for Student's treatment which included nine steps of visual therapy and related exercises, which were to be implemented in the home. Dr. Stephey's recommendations also included the ingestion of large doses of fish oil to address attention deficit disorder and non-confirmed dyslexia.

Based upon Dr. Stephey's assessment, including his May 6, 2019 follow-up letter, Bonita Unified reimbursed Parent for the recommended prism glasses as a form of assistive technology. Although the IEP team did not adopt each of Dr. Stephey's recommendations, it did consider his report and adopted portions of his recommendations which were intended to be utilized in the school setting. Bonita Unified did not ignore Dr. Stephey's assessment and recommendations as adopted in Student's April 17, 2019 IEP, and continued to utilize Dr. Stephey's accommodations, sans fish oil, as included in the May 22, 2020 IEP.

DR. BETH BALLINGER

Dr. Ballinger evaluated Student's vision deficits in September 2020. She prepared a written assessment report dated December 31, 2020, which was presented and discussed at the January 2021 IEP team meeting. Factual findings of Dr. Ballinger's

professional expertise and the contents of her assessment report are more fully presented in Bonita Unified's Issue One. Parent provided all the information and prior assessments reviewed by Dr. Ballinger. Dr. Ballinger did not speak with anyone from Bonita Unified. Dr. Ballinger testifies in due process hearings, primarily on behalf of students, and was paid for her appearance at this hearing. Dr. Ballinger was an excellent witness. Her testimony was clear, concise, informative, and unbiased. Dr. Ballinger's testimony was persuasive.

Dr. Ballinger conducted an extensive visual evaluation of Student which explained her vision deficits in relation to her educational needs. Dr. Ballinger assessed beyond visual intake and explored vision integration with other sensory modalities. Dr. Ballinger was specifically helpful in connecting her visual diagnoses to the resulting deficits to be expected in the educational setting. As example, in measuring Student's horizontal tracking speed, Dr. Ballinger reported that Student moved her head to scan rows of numbers, which became more difficult moving toward the middle of the page. Moving her head, instead of just her eyes, caused fatigue over the academic school day which resulted in a demonstrated loss of attention and manifestation of off task behaviors. Student's inconsistent saccadic eye movement integrity required Student to utilize more effort and time for reading and copying tasks. More energy caused fatigue, frustration, poor duration, skipping of words and sentences and contributed to variable visual attention and comprehension with reading and with writing demands. Student's variable eye teaming became more stressed with sustained visual demands. This contributed to her challenges copying from the board and from one piece of paper to another. Student's intermittent binocular slippage caused her visual system to decompensate. She became visually overwhelmed with more visual clutter on the page.

Dr. Ballinger opined that Student's inconsistent fine visual motor integrity negatively impacted her stability with respect to quality of visual motor control. Student's inconsistent binocular control and poor sensory motor endurance contributed to her double vision and focusing deficit; words moving on the page; Student's inconsistent spacing between words; her need for more time to complete assignments; off-task behaviors when her visual endurance was compromised; and unknowingly miscopying information.

Dr. Ballinger recommended a number of accommodations for Student, such as a quiet one-on-one learning situation with less physical distractions and less complex visual array; visual breaks from academic demands; a slant board to accommodate her copying and reading demands; more time to complete assignments and tests; verbal reinforcement of information; and one-on-one support to check on understanding of materials. The IEP team accepted her opinions and adopted the crux of her recommendations. While Student's psychoeducational assessment professed no finding of a visual processing deficit, per se, Student's identified areas of need included goals and accommodations which addressed the same areas as described by Dr. Ballinger.

While Bonita Unified had the obligation to consider the results of an independent educational evaluation, either privately obtained or at public expense, pursuant to title 34 Code of Federal Regulations, Part 300.502(c)(1), it had no obligation to adopt the evaluator's recommendations or conclusions. (See, e.g., *T.S. v. Board of Educ. of the Town of Ridgefield* (2d Cir. 1993) 10 F.3d 87.)

The core of Issue Three was not whether Bonita Unified ignored the recommendation for vision therapy, but whether Bonita Unified's was required to provide the vision therapy program. Dr. Ballinger found it imperative that Student

participate in an individualized program of optometric vision therapy to develop visual abilities to keep up with increasing academic demands. Without intervention, as information became more complex, and required higher comprehension, Student would fall further behind.

Dr. Ballinger's described a program which required an in-office vision therapy program which needed to be carefully designed to improve Student's binocularity without creating more visual stress to Student's already overwhelmed system. The report indicated Student needed in-office optometric vision therapy to develop and monitor her visual acquisitional accuracy with respect to binocular integrity. To accomplish this, Student required a minimum of 40 in-office visits plus five progress evaluations, each session consisting of one hour of one-on-one vision therapy.

Although a highly credible witness, Dr. Ballinger's recommendation was not without flaws. Dr. Ballinger was not a credentialed teacher and has never taught school. Dr. Ballinger did not obtain information from Bonita Unified or know what measures Bonita Unified had taken to support Student's visual deficit, other than the prism glasses. Dr. Ballinger was unable to observe Student in the classroom to determine how Student's visual processing deficits impacted Student within the educational setting when provided accommodations. Nor did Dr. Ballinger review any data to determine if Student was successfully accessing the curriculum with supports already provided by Bonita Unified. Finally, Dr. Ballinger presumed an all or nothing approach without considering other possible options other than the intensive vision therapy that Bonita Unified could implement at school.

DR. BAKER

On July 8, 2020, Dr. Robert Baker, Student's pediatrician, provided Bonita Unified with a letter of his concerns. The letter was not persuasive. Dr. Baker merely reiterated information provided by Parent supporting her requests for the additional assessments from Dr. Stephey and Dr. Braun. Dr. Baker provided no first-hand information or diagnoses to justify such opinions. Dr. Baker's requests for assistive technology and occupational therapy assessments, were already included in the January 24, 2020 assessment plan which Parent had failed to sign. The remaining information in the letter pertained to obtaining medical diagnoses for social anxiety disorder and attention deficit disorder.

Dr. Baker's letter offered no probative value in this matter. Bonita Unified did not fail to appropriately consider Dr. Baker's recommendations.

At hearing, Student did not sufficiently pursue further demarcation of the proposed vision therapy to establish why it was a required special education related service. The only description of the vision therapy program was contained in Dr. Stephey's report, where he indicated intensive vision therapy was intended to target the visual deficits and change the brain itself. While Dr. Ballinger was not asked for further explanation at hearing, she testified she generally agreed with Dr. Stephey's report. Seeking neurological changes in the brain through specialized optometric services, is far different than providing special education and related services.

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 child. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) Nor does a

school district need to prepare an IEP that offers a potential maximizing education for a disabled child. (*Rowley, supra*, 458 U.S. at p. 197, fn. 21.) All that is required is that the IEP team create an IEP that is reasonably calculated to enable the student to make some progress towards the goals in that program.

Student established she would benefit from vision therapy; however, the proposed intensive therapy was intended as an optometric procedure to maximize visual improvement. Student did not establish that recommended intensive vision therapy was a necessary educationally related service or that Student was not be appropriately supported in the classroom without intensive visual therapy.

As determined in Issue One, the IEP team appropriately considered the reports and recommendations of Dr. Stephey, Dr. Baker and Dr. Ballinger. Student did not establish that Bonita Unified was required to provide Student with intensive vision therapy to provide Student with meaningful educational benefit. Bonita Unified's failure to adopt the recommendations for visual therapy did not result in a denial of FAPE.

ISSUE 4: SINCE MARCH 16, 2020, DID BONITA UNIFIED DENY STUDENT A FAPE BY FAILING TO PROVIDE STUDENT WITH INSTRUCTION THAT WAS APPROPRIATE TO MEET STUDENT'S UNIQUE NEEDS DURING VIRTUAL LEARNING?

Student contends that the distance learning programs provided by Bonita Unified due to the COVID-19 restrictions, failed to appropriately address Student's difficulties with vision, concentration, attention and social anxiety which resulted in her inability to work independently during online classes. Further, as Bonita Unified was unable to

provide in-person teaching and services, it failed to consider a non-public school placement which offered in-person teaching and services.

Bonita Unified contends it provided Student an educational program comparable to that in her IEP delivered through a combination of virtual and hybrid instruction during the COVID-19 school closures. Bonita Unified contends Student participated and benefited from her distance learning program by her performance and progress as evidenced her subsequent assessments and teacher input. Further, Bonita Unified contends that at all times it offered Student appropriate placement in the least restrictive environment.

The May 10, 2019 IEP constituted Student's operable IEP for the 2019-2020 school year and continued as the last agreed upon IEP into the 2020-2021 school year. The IEP offered Student placement in the general education classroom, with 225 minutes per week of specialized academic instruction, 30 minutes per week of individual speech and language services, and 30 minutes per week of group speech and language services. The IEP contained four goals which were designed to support Student's identified needs in the areas of speech, utilizing multi-syllabic, reading decoding, listening comprehension, writing, and sight words. Each of the goals were related in some manner to Student's significant visual processing deficits, identified by Dr. Stephey, and later Dr. Ballinger, as well as significant deficits in central auditory processing as described by Dr. Braun. Each of the goals relied heavily on measuring Student's ability to see, hear and speak. Although Bonita Unified was aware of Student's anxiety diagnosis, it had not yet interfered with Student's performance at in the classroom. On September 26, 2019, Parent revoked consent to Student's specialized academic instruction, which was not reinstated until April 6, 2020, through distance learning.

The COVID-19 pandemic forced the statewide closure of schools. The COVID-19 pandemic-imposed distance learning due to the emergency circumstances. On March 13, 2020, Governor Newsom issued Executive Order N-26-20, requiring the California Department of Education and Health and Human Services Agency to jointly develop guidance ensuring that during the COVID-19 pandemic students with disabilities receive a FAPE consistent with their IEP and meeting other procedural safeguards under the IDEA and California law. Pursuant to California Department of Education guidelines, school districts were instructed to provide a student with an IEP a distance learning plan comparable to her IEP.

While Bonita Unified could not implement Student's last agreed upon and implement IEP with total fidelity because the COVID-19 pandemic prevented in-school instruction, Bonita Unified still had an obligation to provide a comparable program taking into consideration the health and safety restrictions. (See *R.F. Frankel v. Delano Union School Dist.* (E.D. Cal 2016) 224 F. Supp. 3d, 979, citing, *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086; *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dep't of Educ.* (9th Cir. 2010) (600 F.3d 1104, 1116 [furloughs and concurrent shut down of public schools is not a change in educational placement of disabled children].)

While California provided emergency guidance for special education and related services provided through distance learning, the U.S. Department of Education did not suspend the requirement that school districts provide student with a FAPE or any regulation regarding their obligations, thereby leaving all federal requirements for provision of FAPE, in full force and effect when delivering services through distance learning methods.

Effective September 18, 2020, California enacted Education Code, section 43503, which set out the requirements for distance learning offered by school districts during the 2020-2021 school year. School districts may offer distance learning under certain conditions on a local or statewide level as the result of an order or guidance from a state public health officer or local public health officer.

Pursuant to the statute, also referred to as Senate Bill 98, distance learning must include provision of access to all students to connectivity and devices adequate to participate in the educational program and complete assignments (Ed. Code, § 43503, subd. (b)(1)); content aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction (Ed. Code, § 43503, subd. (b)(2)); academic and other supports designed to address the needs of students who are not performing at grade level or need support in other areas (Ed. Code, § 43503, subd. (b)(3)); Special education, related services and any other services required by a student's IEP, with accommodations necessary to ensure the IEP can be executed in a distance learning environment. (Ed. Code, § 43503, subd. (b)(4).)

To implement the requirements set forth by the Legislature, a contingent Distance Learning Plan for Emergency Conditions was created which sets forth the various areas of compliance necessary to implement distance learning under Education Code, section 46392, subdivision (a) and Education Code, section 41422, subdivision (a). Bonita Unified complied and created an emergency IEP which provided for implementation of Student's entire IEP through distance learning with the exception of those accommodations available only in the classroom.

The emergency IEP sets forth the student's IEP services which will be provided to the extent practicable, taking into consideration the student's unique circumstances, the

specific emergency, circumstances, school district policy, and federal, state and local orders.

As determined in Issue One, the emergency IEP constituted a separate contingent IEP which temporarily supersede the school district's offer of FAPE as contained in the Student's IEP implemented during non-emergency school days. Parent did not sign the emergency plan IEP until February 2021.

While California provided emergency guidance for special education and related services provided through distance learning, the U.S. Department of Education did not, thereby leaving all federal requirements for provision of FAPE, in full force and effect when delivering services through distance learning methods.

As of April 6, 2020, continuing to the date of hearing, Bonita Unified offered Student a distance learning program which, on its face, provided Student with all of her IEP goals and services, and provided all accommodations except those which could only be accessed in the classroom. The problem in Issue Four, is not whether Bonita Unified provided an IEP program during distance learning that was comparable to her non-emergency IEP. The issue is whether Bonita Unified implemented the IEP offered during distance learning in a manner which provided Student with more than de minimus benefit.

Bonita Unified argues that the current guidance from the Office of Special Education and Rehabilitative Services, and California Department of Education provides that whether or to what extent a student may need compensatory services due to the extended school closure as a result of COVID-19 is to be determined by an IEP team upon the school district's return to normal operations. As of the hearing date, Bonita Unified still utilized distance learning in a hybrid model with modified attendance in the

classroom. Therefore, as of the hearing date, Bonita Unified had not returned to non-emergency school days. Using Bonita Unified's interpretation of the guidance, Student's claim for compensatory services is not ripe for decision. It is unlikely that the guidance was intended to prevent a student with a disability from seeking compensatory services for regression by virtue of an indefinitely delayed trigger date. Student is entitled to seek relief as soon as the violation arises. Student's contention in this issue rests upon a much simpler determination of whether the IEP program, even if appropriately crafted, was materially implemented to allow Student to make academic progress.

Bonita Unified developed an alternate education program delivered to all students in a virtual format. General education students received no direct daily instruction. Grades were frozen as of March 13, 2020. Grades could be improved thorough completion of assigned work, but not be reduced. Standardized testing was suspended. Student absences were not counted on a daily basis. Bonita Unified implemented IEP services virtually where practical. This very mode of delivery of distance learning, necessarily impacted the ability to implement an IEP.

With no requirements to produce work samples or attend a virtual session, there was no way to measure Student's progress on goals. As example, how was Garcia expected to hear Student's articulation on multi-syllabic words, if Student was not required to attend even show up for virtual learning? How were concepts to be re-taught if there was no direct virtual teaching in the first place? How was academic progress measured when Student failed to provide complete assignments or provide work samples?

Logan met with her class virtually once a week through Google Meet, and utilized Google programs to provide students with a schedule of things to do which followed the curriculum. Completion of assignments was optional. Student completed only a few assignments.

Nairouz sent assignments based upon Student's IEP goals, videos, and resources home to Student each week. Student did not complete assignments. Although Nairouz indicated the materials were sent home were related to the curriculum, she did not explain how the materials were connected to Student's goals.

Garcia conducted Student's speech and language services through distance learning. She created an interactive program called See/Saw which contained individualized activities to practice speech and language skills. Student did not participate in activities.

None of these teachers offered evidence of any data collected, any progress reports or any work samples to indicate how they were able to measure Student's progress towards meeting her goals. Parent provided example after example of Student's disconnect from distance learning. The school wide construction of the distance learning program alone prevented implementation of Student's goals.

As argued by Student, the educational benefit of an IEP cannot be de minimus, rather, the IEP must be likely to produce progress, not regression or trivial educational advancement. (*R.H. v. Plano Indep. Sch. Dist.* (5th Cir. 2010) 607 F. 3d 1003, 1008.)

A material failure to implement an IEP occurs when there is more than a minor discrepancy between the services a school provides to a child with a disability and the services required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d

811, 815.) The materiality standard does not require that the child suffer that a prejudice must be shown demonstratable educational harm in order to prevail. (*Id.* at p. 822.) The child's educational progress, or lack thereof, may be probative of whether there was more than a minor shortfall in services.

When the service provider could not measure Student's goals, then the goals became ineffective. If the goals were ineffective, so was the IEP. The totality of Student's academic progress might be measured by utilizing alternate methods or observations as found in Issue One, but Bonita Unified's inability to obtain Student's consistent participation in daily activities and reliably measure Student's goals constituted a material failure to implement Student's IEP.

Parent reported to various Bonita Unified personnel on a frequent basis. She continually reported Student was making no progress because distance learning as formatted by Bonita Unified did not meet her needs. Student had difficulty seeing the computer screen and got headaches. She had difficulty hearing due to background noise but couldn't use the headphones all day. Student had attention difficulties and did not redirect without assistance. Student would turn off the camera and run around the room. Parent provided a photo of Student lying on the floor ignoring the computer session. All of these examples indicated Student was not receiving educational benefit during distance learning.

Bonita Unified cannot argue that Parent failed to consent to the May 22, 2020 IEP thereby preventing the district from modifying Student's IEP to provide a FAPE. Parent did not consent to the IEP, however, Bonita Unified could have filed for due process to implement the May 22, 2020 IEP thereby attempting to make a new offer of FAPE much earlier.

The evidence supports a determination that Bonita's Unified's distance learning program created roadblocks to their ability to reliably measure Student's progress on goals. This constituted a material failure to implement Student's IEP resulting in a denial of FAPE.

ISSUE 5: SINCE OCTOBER 19, 2019 DID BONITA UNIFIED DENY STUDENT A FAPE BY IGNORING THE RECOMMENDATIONS BY DR. BRAUN, DR. BAKER AND LINDAMOOD BELL TO PROVIDE SERVICES FROM LINDAMOOD BELL ADDRESSING AUDIO PROCESSING?

Student contends Bonita Unified failed to appropriately address Student's central auditory processing deficits by failing to adopt and implement the recommendations of Dr. Braun and failed to appropriately address Student's identified needs by refusing to provide assessment and services through Lindamood Bell as requested by Parent.

Bonita Unified contends it meaningfully reviewed and considered the reports of Drs. Braun and Baker, and Lindamood Bell to support Student's audio processing needs as was evidenced by the numerous examples of the adoption of their recommendations.

California defines a specific learning disability as a disorder in one or more of the basic psychological processes, including visual processing and audio processing, which are involved in understanding or in using language, spoken or written, that may have manifested itself in the imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. (C.C.R., tit. 5, § 3030(b)(10).) Phonological processing is included in the description of basic psychological processes. (Ed. Code, § 56334.) As such, central auditory processing deficits are recognized as a specific learning disability.

Audiological instruction and services as a designated instructional service, may include planning, organizing, and implementing an audiological program for auditory dysfunctions as specified a child's IEP, and consultative services regarding test findings, amplification needs and equipment, home training programs, acoustic treatment of rooms, and coordination of educational services to hearing-impaired students. Audiological services shall be provided only by personnel who possess a license in audiology. (C.C.R., tit. 5, § 3051.2(a)(3),(a)(4),(b)(1),(b)(2).)

DR. BAKER

As previously determined, Dr. Baker's letter provided no probative value in this matter.

DR. BRAUN

Dr. Bea Braun, an educational audiologist, conducted a central auditory processing evaluation of Student on October 13, 2018, which was discussed and considered as part of Student's May 10, 2019 annual IEP. As with Dr. Stephey, this independent evaluation occurred prior to the statute of limitations in this matter, however, the information contained in Dr. Braun's evaluation report, which was presented to Bonita Unified, remained relevant to the matters at hand.

As determined in Issue One, Dr. Braun had extensive experience as an educational audiologist and was well qualified to administer central auditory processing evaluations.

Dr. Braun's assessment determined Student presented with a central auditory processing disorder which was more fully reported in the Issue One factual findings. The IEP team generally accepted Dr. Braun's assessment findings that Student's auditory decoding deficit resulted in poor processing of sound, which impacted auditory

discrimination. This in turn created poor phonological awareness, poor vocabulary and grammar development, and difficulty understanding speech in poor listening environments.

Dr. Braun made recommendations for classroom strategies and modifications which were adopted included preferential seating, noise reduction, repetition, and extra time to complete tasks, which were added to the January 8, 2019 IEP. Dr. Braun recommended CAPDOTS be administered at school 15 minutes per day. The IEP team included the CAPDOTS program in the IEP. The IEP crafted Student's reading decoding goals based upon Dr. Braun's input. Dr. Braun recommended utilization a reading program which supported strong phonics development with visual reinforcement, provided by several reading programs, such as Lindamood Bell, Orton, Gillingham, or Wilson. The IEP team offered Student a summer reading program which utilized Lindamood Bell strategies and the Seeing Stars program.

Dr. Braun administered a central auditory processing retest to Student on May 22, 2020. The results of the retest indicated continuing audio processing difficulties related reading. Therefore, Dr. Braun again recommended a targeted reading program that supported visual reinforcement with phonics, such as utilized by Lindamood Bell or Orton Gillingham.

Dr. Braun suggested Lindamood Bell because she believed their teaching strategies utilized both sides of a student's brain thereby increasing its neuroplasticity which in turn, could increase reading decoding and comprehension. Dr. Braun, however, had never been trained in the Lindamood Bell strategies, and had never seen a Lindamood Bell program in action with a child. Dr. Braun did not know Bonita Unified

had teachers and service providers trained in Lindamood Bell strategies who could implement the strategies as part of Student's specialized academic instruction.

LINDAMOOD BELL

Brendan Marshall, the tester who conducted Student's Lindamood Bell assessment or pre-test, did not testify at hearing. Instead, Kyle Stagnaro, Executive Center Director for Lindamood Bell, Houston, Texas, testified to explain the Lindamood Bell learning program. Stagnaro testified honestly, but she was not an educator, and her testimony related only to the procedures and operation of Lindamood Bell clinics in general.

As previously reported, Lindamood Bell clinics are private, for-profit programs, which provide in-house training to its testers and clinicians. Although Lindamood Bell provides researched-based reading strategies, it does not require an educational background for employment. Stagnaro did not know Marshall's professional background or qualifications to assess Student's reading skills.

Marshall determined Student would benefit from Lindamood Bell sensory cognitive programs, specifically Seeing Stars and Visualizing/Verbalizing. He recommended the Lindamood Bell clinic program consisting of an intensive eight-week program, four hours per day, five days per week during the summer. If done during the school year, the intensive program required two hours per day.

Student's pre-test scores and Marshall's recommendation are viewed with some skepticism. It was unknown if the test scores were normed to virtual testing, and the standardized testing was not conducted according to the test's manual. Stagnaro

acknowledge Marshall made the standard recommendation for the Lindamood Bell clinic program, and he received a bonus based on annual sales.

Lindamood Bell offers workshops and trainings to teachers to utilize their programs. Both Seeing Stars and Visualizing/Virtualizing are available to school districts. Stagnaro indicated Lindamood Bell programs could be implemented in small groups, however, Lindamood Bell preferred to provide its clinic programs in a one-to-one setting with its own clinician to control the student's progress and post-test outcomes.

Student's contention that Bonita Unified ignored Dr. Braun's recommendation to provide services from Lindamood Bell was not supported by the evidence. Lindamood Bell was not the only reading strategy Dr. Braun recommended, and she conceded her limited knowledge of how the Lindamood Bell clinic program operated. On the other hand, Bonita Unified teachers were trained in Lindamood Bell based reading programs, provided Student with a Lindamood Bell based summer reading program, and offered to provide Lindamood Bell strategies, including Seeing Stars in Student's specialized academic instruction. Bonita Unified offered Student a reading pre-test conducted by a credentialed teacher with specialized training in Lindamood Bell strategies. Parent refused consent to the both the IEP and district assessment.

Student failed to establish that Student required the recommended intensive Lindamood Bell clinic program. The recommendation for the clinic program was not based upon a reliable assessment and consisted of the standard recommendation made by Lindamood Bell employees. The evidence did not support a finding that Bonita Unified staff was insufficiently trained in Lindamood Bell strategies or were unable to appropriately provide Lindamood Bell programs and testing within the district.

Student established only that the Lindamood Bell clinic program was Parent's preferred form of reading remediation. As with Issue Three above, Bonita Unified was not required to place Student in a program preferred by a Parent, even if that program will result in greater educational benefit to Student. Further, Bonita Unified used Lindamood Bell reading instruction through its trained staff. Bonita Unified's failure to provide Student with the Lindamood Bell clinic did not constitute a denial of FAPE.

ISSUE 6: SINCE OCTOBER 19, 2019 DID BONITA UNIFIED DENY STUDENT A FAPE BY FAILING TO PROVIDE STUDENT WITH 60 MINUTES OF INDIVIDUAL SPEECH SERVICES PER WEEK PER PARENT REQUEST AND INSTEAD CONTINUE TO PROVIDE 30 MINUTES PER WEEK OF GROUP SPEECH THERAPY AND 30 MINUTES PER WEEK OF INDIVIDUAL SPEECH THERAPY PER WEEK VIRTUALLY ONLY?

Student contends Bonita Unified's provision of online speech services did not meet Student's individual needs. Bonita Unified ignored Parent's request for speech therapy services to 60 minutes per week of individual speech therapy and re-assessment to measure regression.

Bonita Unified contends it offered a speech and language assessment, which Parent refused consent until August 2020. Further, Bonita Unified's offer of 30 minutes per week of individual and 30 minutes per week of group sessions is appropriate.

A student is eligible for special education and related services when they are assessed as having a language or speech disorder which demonstrates difficulty understating or using spoken language to such an extent that it adversely affects their educational performance and cannot be corrected without special education and related

services. Such difficulties result from any of the following disorders: articulation, abnormal voice, fluency difficulties in verbal expression, inappropriate or inadequate acquisition, comprehension or expression of spoken language, hearing loss which results language or speech disorder. (Ed. Code, § 56333.)

The May 10, 2019 IEP constituted Student's last agreed upon IEP. Pursuant to that IEP Student qualified for special education and related services in the categories of specific learning disability and speech and language impairment. Student displayed needs in sight words, phonemic awareness, decoding, listening comprehension, and communication, given a history of social anxiety. The IEP team drafted goals which addressed Student's speech and language needs. One goal addressed multisyllabic words, another decoding. The final offer of goals and services was completed on June 10, 2019, meaning implementation of Student's speech services would not commence until the beginning of the 2019-2020 school year.

In Fall 2019, Parent indicated speech and language goals and services were no longer appropriate to meet Student's needs based upon her belief that Student was not making progress. Parent's conclusions were based only on her interaction with Student at home. On October 23, 2019, Bonita Unified offered Parent an assessment plan for a comprehensive re-evaluation which included a speech and language assessment. Parent did not sign the assessment plan until August 24, 2020, two days before the beginning of the 2020-2021 school year.

Garcia, Student's speech and language pathologist, reported Student made great progress and had met or exceeded the 2019 goals. Student could accurately count syllables in three-to-four syllable words independently. She could independently produce and use grade level multi-syllabic words in grammatically complete sentences.

Student could correct her errors with no more than one prompt. Garcia determined Student would benefit from continued goal maintenance in the large group classroom setting by demonstrating awareness of sounds in multi-syllabic words and self-monitor her production of multi-syllabic words in reading and speaking during class activities. Parent vehemently disagreed, particularly regarding Student's progress with multi-syllabic words. Further, she felt Student could not handle the increasing stress of the group sessions.

During distance learning, Student rarely participated in activities. Parent attributed this to Student's anxiety. Parent did not believe Bonita Unified understood Student's anxiety. As example, Parent became visibly upset at hearing when describing an incident in the cafeteria in which school staff failed to recognize as an anxiety induced panic attack. She reported Student went to the nurse's office on a continuing basis when she was overwhelmed or as a means to elope from class. These events, while of concern, demonstrated potential needs for counseling or social skills. Parent did not establish a nexus to increased individual speech and language services. If anything, Student's social phobia denoted a need for social communication practice in a small group setting.

As many observers reported, Student could be shy at times, which limited her participation in group settings. Garcia acknowledged Student participated more often when she was in a more private or one-to-one setting. Parent had not consented to re-assessment, and distance learning had not been in effect long enough to collect reliable data.

As determined in Issue One, the speech and language goal appropriately addressed Student's articulation and multi-syllabic words. While Parent continued to

disagree about Student's progress and baseline, Student presented no evidence to suggest Student required more than 30 minutes per week of individual speech and language to meet this goal.

Based upon her findings in the speech and language assessment, Garcia determined Student possessed adequate communication skills except in pragmatics and expressive language. This was directly related to Student's avoidance of social communication.

Parent continued to disagree with Garcia's findings regarding Student's ability or inability to pronounce multi-syllabic words. Parent explained that when Student was prompted, she could pronounce sounds, but the skill did not carry over into the home setting. Instead, Student refrained from multi-syllabic words and utilized short, fragmented sentences, and always had difficulty reading or saying multi-syllabic words.

Given that Garcia did not see Parent's described discrepancies during Student's speech sessions, Parent made an audio recording of Student's inability to pronounce multi-syllabic words. The recording, presented at the November 30, 2020 IEP team meeting, provided some support of Parent's observations. Upon reviewing the recording, the tape was not extremely persuasive. The IEP team, however, took heed and amended Student's baselines to include Mother's baselines in the home setting.

In her closing brief, Student contends Bonita Unified failed to provide appropriate speech and language services during distance learning based upon Parent's May 2, 2020, email which opined that proposed course of actions did not meet Student's individual needs. Student's evidence was not persuasive. Parent provided no expertise with speech and language pathology and provided nothing other than personal belief conclusionary evidence. Student's anxiety issues were not a basis for increasing

Student's speech services. Although Parent disagreed with Garcia's baseline for multi-syllabic words, she did not provide any evidence that the goal itself was inappropriate or that Student required any additional goals which would require 60 minutes of individual speech services. Student provided no specific evidence to justify termination of group speech services. Student had difficulties with pragmatics and social communication. By definition, social communication requires peer interaction which is not available in individual speech sessions. Bonita Unified did not deny Student a FAPE by failing to increase Student's speech and language services as requested by Parent.

ISSUE 7: SINCE OCTOBER 19, 2019, DID BONITA UNIFIED DENY STUDENT A FAPE BY (A) IGNORING THE RECOMMENDATION OF CASA COLINA FOR OCCUPATIONAL THERAPY, AND (B) BY FAILING TO PROVIDE INDEPENDENT EDUCATIONAL EVALUATIONS OCCUPATIONAL THERAPY AND ASSISTIVE TECHNOLOGY?

CASA COLINA ASSESSMENT

Student contends Bonita Unified failed to consider and adopt the findings and recommendations of the private occupational therapy assessment obtained from Casa Colina.

Bonita Unified contends that, based upon the assessment reports of both Casa Colina and the district, Student did not require occupational therapy to assist her in accessing the curriculum or provide educational benefit.

A school district must consider an independent educational evaluation that parent obtains and gives to the district in any decision made with respect to the

provision of FAPE to the child, so long as the evaluation meets agency criteria. (34 C.F.R. § 300.502(c) (2006); Ed. Code, § 56329, subd. (c).)

The May 10, 2019 IEP team determined Student did not require educationally related occupational therapy services to access her education. Student's exhibited appropriate fine motor skills compared with her peers, utilized standard writing utensils, and produced writing using correct letter formation and spacing. Student ran, jumped, climbed on play structures in an age-appropriate manner and maneuvered her school environment safely. Student took care of her basic personal needs. Parent's consent to the IEP suggests Student did not require support with fine and gross motor skills at that time.

Subsequently, Parent concluded Student required occupational therapy based on her messy handwriting. Teachers reported that although messy at times, Student's handwriting was legible and comparable to the handwriting of same aged peers. Parent reported concerns that Student's other fine motor skills had regressed. Student could not open a milk carton, tie her shoes or take care of personal hygiene.

Bonita Unified denied Parent's request for an independent occupational therapy assessment at public expense. On July 28, 2020, Parent obtained a private occupational therapy assessment from Casa Colina. Lee, the Casa Colima assessor, did not testify at hearing. The assessor relied on Parent and Student reports, her clinical observations, a review of records provided by Parent, and standardized testing. The assessor did not contact Bonita Unified.

The Casa Colina findings and recommendations are more fully addressed in Issue One. In recap, the Casa Colina assessment report contained findings regarding visual and audio-based deficits previously assessed by Drs. Braun and Ballinger. Other

findings reported concerns regarding social behavior and attention. The report did not link findings to any deficits in Student's motor skills. Based on Lee's assessments, Student demonstrated average fine motor skills.

Lee offered four goals based upon parental input. Two goals addressed self-care directed to manage fastening clothing and brushing hair. Two goals addressed social skills, to maintain play with a peer and initiate greetings. To support these four goals the assessor recommended Student receive 120 minutes per week of occupational therapy consisting of 60 minutes of group therapy to address social skills, and 60 minutes per address self-care skills.

Lee did not attend an IEP team meeting to review her report, however Verner, Bonita Unified's occupational therapist, reviewed the Casa Colina report and discussed it the IEP team on September 15, 2020. The IEP team did not offer Student occupational therapy services. Verner credibly testified about his review of the Casa Colina assessment and the reasons the IEP team did not adopt the findings and recommendations contained in the assessment. Student provided no credible evidence to rebut Verner's testimony. The Casa Colina assessment emphasized self-help areas which were not educationally related. As determined in Issue One, the Casa Colina recommendations failed to focus on motor skills and sensory processing required for Student to access the curriculum.

Student did not establish that she required the goals and services recommended by Casa Colina. The information contained in the report did not support a finding that Student required occupational therapy to access her education. To the contrary, Casa Colina reported Student's fine motor skills as average. There was no evidence presented to find that Student's gross motor skills prevented her from accessing the curriculum or

resulted in safety issues while at school. Instead, the recommendations were solely based upon parental input and referenced behaviors not documented in the educational environment. Without a need for occupational therapy goals, there was no requirement for Bonita Unified to provide occupational therapy services. Bonita Unified did not deny Student a FAPE by failing to adopt the Casa Colina assessment recommendations.

INDEPENDENT EDUCATIONAL EVALUATIONS

Student further contends Bonita Unified failed to provide independent educational evaluations for occupational therapy and assistive technology requested by Parent, in a timely fashion.

Bonita Unified contends it was entitled to assess Student in occupational therapy and assistive technology prior to considering requests for independent assessments. Parent refused consent to assessment until August 2020. Subsequently when Parent renewed her request for independent assessments, Bonita Unified agreed to fund the assessments. The independent assessments have been completed, rendering the issue moot.

An independent educational evaluation is an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. (34 C.F.R. 300.502(a)(3)(i) (2006).)

A parent has the right to an independent educational evaluation at public expense when she disagrees with an evaluation obtained by the school district, unless the district demonstrates in a due process hearing that its own evaluation was appropriate, or demonstrates the evaluation obtained by the parent did not meet district criteria. (34 C.F.R. 300.502 (b)(1) and (b)(2); Ed. Code §56506, subd. (c).) To

obtain the independent educational evaluation, the student must disagree with an assessment conducted by the school district and request the independent evaluation. (34 C.F.R. § 300.502(b)(1),(b)(2).) A student is entitled to only one independent educational evaluation at public expense each time the school district conducts an assessment with which the parent disagrees. (34 C.F.R. 300.502(b)(5).)

When a student requests an independent educational evaluation, the school district, must, without unnecessary delay, either file a request for due process hearing to show that its assessment was appropriate and met legal standards, or ensure that the independent evaluation is provided at public expense. (34 C.F.R. § 300.502(b)(2)(i)(ii); Ed. Code, § 56329, subd. (b).)

On September 16, 2019 Parent sent an email to Rogers declaring she did not wish to delay a school district assistive technology assessment any further, and she request the assistive technology assessment at that time. A string of emails between Parent and Rogers indicated Parent intended to submit an assessment request in writing. Parent provided the written assessment request on October 16, 2019, this time requesting a comprehensive assessment of Student.

On October 23, 2019, Bonita Unified sent Parent an assessment plan for a comprehensive psychoeducational assessment, which included an assistive technology assessment and an occupational therapy assessment. Parent did not consent to the assessment plan.

On January 24, 2020, in preparation for Student's triennial IEP, Bonita Unified sent Parent a second assessment plan, which again included assistive technology and occupational therapy. Parent did not consent to the assessment plan and did not consent to the assessment plan until August 24, 2020.

As described in Issue One, the intervening COVID-19 pandemic led to emergency legislation which suspended a school district's obligation to conduct provide district assessments until after July 1, 2020. After obtaining Parents written consent on August 24, 2020, Bonita Unified commenced the district assessments in a timely fashion after the beginning of the 2020-2021 school year.

Upon completion of the assistive technology assessment, which was discussed at the November 30, 2020 IEP team meeting, Parent requested an independent assistive technology assessment. On December 15, 2020 Bonita Unified consented to an independent assistive technology assessment at public expense. The independent assistive technology assessment was delayed due to contract renewal with the assessor however the assessment was completed.

The evidence does not support a finding that Bonita Unified failed to provide an independent assistive technology assessment in a timely fashion. Once Parent requested the independent assistive assessment, Bonita Unified agreed to provide the assessment at public expense in a timely fashion. Student presented no evidence of educational harm to Student by virtue of any delay in completing the assessment. Further, the May 22, 2020 IEP offered Student appropriate assistive technology, such as the Chromebook and other items recommended by Dr. Braun. Parent did not consent to the IEP.

OCCUPATIONAL THERAPY

On September 16, 2019 Parent requested an independent occupational therapy evaluation in the same email to Rogers in which she requested the assistive technology assessment. In the email, Parent indicated occupational therapy was an area of need pursuant to a 2014 Infant Family Services assessment. She opined that Bonita Unified

failed to identify occupational therapy as an area of need, did not assess Student's need for occupational therapy Student's 2017 psychoeducational assessment. Parent concluded that since Bonita Unified did not assess Student in occupational therapy, she was immediately entitled to an independent occupational therapy assessment at public expense.

On October 19, 2019 Bonita Unified provided a letter of prior written notice denying the request for an independent assessment, indicating Parent's request for an independent assessment was premature; District had yet to conduct an occupational therapy assessment. Bonita Unified agreed to provide its own occupational therapy assessment and provided Parent with an assessment plan which contained an offer to conduct the assessment. Parent refused to sign the assessment plan.

On January 24, 2020, Bonita Unified provided Parent with a second assessment plan for Student's triennial assessments. This assessment plan also included an assessment for occupational therapy. Parent did consent to the assessment until August 24, 2020.

As with the assistive technology assessment, once Bonita Unified obtained consent, it commenced the assessments in a timely fashion. On November 30, 2020, after review of the district assessments, Parent requested an independent occupational therapy assessment. On December 15, 2020 Bonita Unified agreed to provide an independent occupational therapy assessment at public expense. As with the assistive technology assessment, the independent occupational therapy assessment has been completed.

The provision of an independent evaluation is not automatic. Following the student's request for an independent evaluation, the public agency must, without

unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate or ensure that an independent evaluation is provided at public expense. (34 C.F.R. § 300.502(b)(2).)

The term "unnecessary delay" as used in Code of Federal Regulation, Title 34, Part 300.502(b)(2) is not defined in the regulations. It permits a reasonably flexible, though normally brief, period of time that could accommodate good faith discussions and negotiations between the parties over the need for, and arrangements for, an independent evaluation. (*Letter to Anonymous*, 56 IDELR 175 (OSEP 2010).) The determination of "unnecessary delay" is a fact-specific inquiry. (See *Pajaro Valley Unified Sch. Dist. v. J.S.* (N.D. Cal. Dec. 15, 2006, C06-0380 PVT) 2006 WL 3734289 (a delay of almost three months between parent's request for an independent evaluation and district's due process filing was unreasonable where district offered no explanation or justification for its delay).

Technically Bonita Unified did not comply with legal requirement to provide the assessment or file for due process to defend its own assessment, because there was no assessment to defend. Specifically, where a Parent does not consent to a school district assessment, there is no assessment on which to disagree. A school district assessment is a predicate to a publicly funded assessment.

The obligation for Bonita Unified to defend its assessment did not exist until the assessment was reviewed on November 30, 2020. Thereafter, upon Parent's renewed request for an independent assessment, Bonita Unified acted in a timely manner and agreed to fund the independent occupational therapy assessment. The assessment has been completed. Bonita Unified can do no more. Bonita Unified did not deny Student a FAPE by failing to provide independent assessments in a timely fashion.

ISSUE 8: SINCE JUNE 10, 2019, DID BONITA UNIFIED DENY STUDENT A FAPE BY FAILING TO PROVIDE THE COMPENSATORY SERVICES FOR SPEECH AND LANGUAGE SERVICES, CAPDOTS PROGRAM, AND SPECIALIZED ACADEMIC INSTRUCTION THAT BONITA UNIFIED PREVIOUSLY AGREED TO PROVIDE?

Student contends Bonita Unified failed to provide compensatory education hours promised to Student.

Bonita Unified contends Student did not establish she was owed compensatory services in the areas of specialized academic instruction, speech and language or CAPDOTS.

Student did not provide any form of written agreement which identified any compensatory services owing to Student. The January 8, 2019 IEP team meeting notes reported 16 hours of make-up or compensatory hours were owed to Student. The IEP notes, however, do not identify whether the missing hours were specialized academic instruction, speech services, CADOTS or a combination of services. Subsequently, the June 10, 2019 IEP notes indicated a discussion regarding parental concerns that Student did not get her full 120 minutes of weekly services as her services logs were blank. The notes did not indicate which services were missing, and none of Student's IEP services provided 120 minutes per week. Parent believed Student was shorted on services for things like fire drills, assemblies, and field trips, and sought additional services. The IEP team comments indicated there were make-up sessions needed but did not specify an exact number of hours or identify the missing services. Student did not qualify for

extended school year. The notes indicated that the missing hours would be provided as part of the extended school year program which included reading camp, summer speech and language services, and continuation of CAPDOTS. The notes also reflect clarification that Student was not entitled to make-up sessions for absences and field trips. Student attended the reading camp during extended school year 2019. Student failed to establish that any further compensatory services were owing for the 2019 school year.

Student presented no evidence to support a finding of a denial of FAPE. Student argues that the failure to provide the compensatory hours resulted in a material failure to implement Student' IEP. This argument is flawed. First, Student's issue did not allege a failure to implement the May 10, 2019 IEP. The issue alleged Bonita Unified failed to honor an agreement to provide compensatory services. Second, assuming any agreement existed, an award of compensatory services is not part of the operative IEP. Regardless of the semantics, Student did not offer any evidence to establish the failure to provide the 16 hours of compensatory services from 2017 resulted in a loss of educational benefit.

Student's contention fails on another level as well. Although neither party raised the issue of jurisdiction, OAH's limited jurisdiction generally precludes adjudication of settlement agreements. The District Court in *Pedraza v. Alameda Unified School Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603), held that OAH has jurisdiction to adjudicate settlement claims that allege a denial of FAPE *resulting from the violation of a mediated settlement agreement*. No such mediated agreement exists in this matter. Student presented insufficient evidence to even establish jurisdiction over a claim of agreed upon compensatory services.

Student, in her Closing Brief, attempts to extend Issue Eight to include a claim that Bonita Unified failed to provide compensatory services for services not provided after schools were closed. Student was reminded several times during the hearing, the ALJ would not entertain an expansion of the issues from those identified in the Order Following Prehearing Conference and confirmed prior to the commencement of testimony. Student's additional arguments are beyond the scope of Issue Eight as determined in the Order Following Prehearing Conference. This exclusion does not prejudice Student, as Bonita Unified's obligation to provide compensatory services during distance learning was fully addressed in Issue Four.

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.

Issue 1: The May 22, 2020 annual and triennial IEP, as continued or amended on June 4, 2020, June 17, 2020, September 15, 2020, October 23, 2020, November 30, 2020, January 5, 2021 and January 22, 2021, offered Student a FAPE in the least restrictive environment. Bonita Unified prevailed on Issue 1.

Issue 2: Bonita Unified did not deny Student a FAPE by using February 20, 2020 in-person contact as the basis of developing appropriate goals. Bonita Unified prevailed on Issue 2.

Issue 3: Bonita Unified did not deny Student a FAPE since October 19, 2019, by ignoring the private vision assessments and recommendations by Dr. Stephey, Dr. Baker, and Dr. Ballinger to provide vision therapy to Student. Bonita Unified prevailed on Issue 3.

Issue 4. Since March 16, 2020 did Bonita Unified deny Student a FAPE by failing to provide Student with instruction that was appropriate to meet Student's unique needs during virtual learning? Student prevailed on Issue 4.

Issue 5: Bonita Unified did not deny Student a FAPE since October 19, 2019 by ignoring the recommendations by Dr. Braun, Dr. Baker and Lindamood Bell to provide services from Lindamood Bell addressing audio processing. Bonita Unified prevailed on Issue 5.

Issue 6: Bonita Unified did not deny Student a FAPE since October 19, 2019 by failing to provide Student with 60 minutes of individual speech services per week per Parent request and instead continue to provide 30 minutes per week of group speech therapy and 30 minutes per week of individual speech therapy per week virtually only. Bonita Unified prevailed on Issue 6.

Issue 7:

(a) Bonita Unified did not deny Student a FAPE since October 19, 2019, by ignoring the recommendation of Casa Colima for occupational therapy. Bonita Unified prevailed on Issue 7(a)

(b) Bonita Unified did not deny Student a FAPE by failing to provide independent educational evaluations occupational therapy and assistive technology. Bonita Unified prevailed on Issue 7(b).

Issue 8: Bonita Unified did not deny Student a FAPE since June 10, 2019, by failing to provide the compensatory services for speech and language services, Central Auditory Processing Disorder Treatment, known as CAPDOTS, program, and specialized academic instruction that Bonita Unified previously agreed to provide. Bonita Unified prevailed on Issue 8.

REMEDIES

Student prevailed on Student's Issue Four. Between March 16, 2020 and the end of the 2019-2020 school year, Bonita Unified failed to materially implement Student's IEP resulting in a denial of FAPE.

ALJ's have broad latitude to fashion appropriate equitable remedies for FAPE denials. (*School Comm. Of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed. 2d 385]; *Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516 (c)(3)(2006).) Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d at p. 1497.)

Student has requested a number of remedies which will be addressed individually.

1. Student's request for complete current evaluations of Student and the development of an appropriate goals is denied. Bonita Unified prevailed on Issue One and has offered an appropriate IEP which shall be implemented as Student's current IEP.

2. Student's request for the Lindamood Bell clinic program is denied. Bonita Unified was not required to provide Lindamood Bell clinic program, nor did Student establish Lindamood Bell strategies cannot be provided by Bonita Unified in the school setting.
3. Student's request for implementation of the visual therapy program recommended by Dr. Ballinger is denied. Student did not prove the vision therapy program was educationally related. Student's request for a re-evaluation by Dr. Ballinger at public expense is denied. Student's request for additional services from Dr. Ballinger is denied. Student did not establish a need for additional assessment or services. Further, the request for any services is too vague.
4. Student's request for payment of the costs of the independent assistive technology assessment and occupational therapy assessment is denied as moot.
5. Student's request for payment of compensatory services promised is denied. Student did not prevail on Issue Eight.
6. Student's request for after school care is denied. Student is not entitled to day care as a remedy.
7. Student's request for placement at a non-public school such as Westmark or Canyon View is denied. Student's appropriate placement is currently in a general education classroom with supports. Student did not establish Student requires a more restrictive placement
8. Student's request for full reimbursement for all independent assessments performed by Dr. Ballinger, Dr. Baker, Dr. Braun, Casa Colina, and Lindamood Bell is denied. Student did not establish she was entitled to independent

educational evaluations at public expense. Student's request for payment of all ongoing assessments is denied. Student did not identify any ongoing assessments.

9. Student's request for all costs for the testimony of Dr. Braun and Dr. Ballinger at hearing, and reasonable attorneys' fees is denied. OAH does not award attorney's fees and costs in due process hearings.

COMPENSATORY REMEDIES

Compensatory education is an equitable remedy that depends upon a fact-specific and individualized assessment of a student's current needs. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d. 516, 524.) The award must 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. (*Reid, supra*, 401 F.3d at p. 524; *R.P. ex rel. C.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1125.) Hour-for-hour relief for a denial of FAPE is not required by law. (*Puyallup, supra*, 31 F.3d at p. 1497.)

Student has requested compensatory services for in the areas of specialized academic instruction, speech and language, occupational therapy, assistive technology and educational tutoring. Student's request for compensatory services does not indicate how she arrived at the number of hours requested, nor did she indicate the anticipate rate for each service, as example, educational tutoring seldom bills at the same rate as speech and language services.

Parent's testimony demonstrated has not academically benefited from distance learning for a period of approximately a year. Student has experienced a demonstrated

regression with attention, anxiety, and social interaction. Much of this has resulted in Student's refusal to complete assignments or participate in distance learning. Parent's determination that Student has made no educational progress since 2019, must be mitigated with the fact that Parent removed Student from specialized academic instruction earlier in 2019. This lack of academic support may also have contributed to any regression viewed by Parent. Nevertheless, Student has not benefited from distance learning, and equitably, she is entitled to compensatory relief.

1. Student is awarded up to 120 hours of compensatory education and related educational services in an amount not to exceed \$18,000.00, for educationally related services provided by a non-public agency or provider of Student's choice. Educationally related services include but are not limited to specialized academic instruction, speech and language, educational tutoring, assistive technology or computer and software, vision therapy, or reading program, such as Lindamood Bell. Bonita Unified shall reimburse Parent for payment of compensatory education within 60 days of presentation of proof of payment of any such expense. Proof of payment must include an invoice or attendance record indicating the date of service and the amount of payment. The invoice shall be accompanied by a copy of a cancelled check, credit card statement, or loan statement showing payment. Receipts for cash payments are insufficient verification for purposes of reimbursement. The \$18,000.00 shall be available for the reimbursement awarded to Student for a period of two years from the date of this decision.

ORDER

1. Bonita Unified School District may implement the May 22, 2020 annual and triennial IEP, as continued or amended on June 4, 2020, June 17, 2020, September 15, 2020, October 23, 2020, November 30, 2020, January 5, 2021 and January 22, 2021 without parental consent, if Parent seeks to avail herself of special education and related services from Bonita Unified School District.
2. Bonita Unified School District is ordered to pay to Parent, on behalf of Student, the amount of \$18,000, for reimbursement of up to 120 hours of compensatory education and related educational services provided by a non-public agency or provider of Student's choice. Educationally related services include, but are not limited to specialized academic instruction, speech and language, educational tutoring, assistive technology or computer and software, vision therapy, or reading program, such as Lindamood Bell. Bonita Unified is ordered to reimburse Parent for payment of compensatory education within 60 days of presentation of proof of payment of any such expense. Proof of payment must include an invoice or attendance record indicating the date of service and the amount of payment. The invoice shall be accompanied by a copy of a cancelled check, credit card statement, or loan statement showing payment. Receipts for cash payments are insufficient verification for purposes of reimbursement. The \$18,000.00 shall be available for the reimbursement on behalf of Student for a period of two years from the date of this decision.
3. All other relief is denied.

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/

Judith L. Pasewark

Administrative Law Judge

Office of Administrative Hearings