

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022100810

PARENTS ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL DISTRICT.

DECISION

MAY 5, 2023

On October 28, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Corona-Norco Unified School District. On November 17, 2022, OAH granted the parties' joint request for continuance. Administrative Law Judge Cole Dalton heard this matter by videoconference on February 22, 23, and 28, and March 1 and 2, 2023.

Wendy Dumlao represented Student. One Parent attended all hearing days on Student's behalf. This Decision refers to the attending Parent as Parent, to the

other Parent as Parent Two, and to both as Parents. Danielle Gigli represented Corona-Norco. Special Educational Local Plan Area director Dawn Rust attended all hearing days on Corona-Norco's behalf.

At the parties' request, OAH continued the matter to March 28, 2023, for written closing briefs. The record was closed, and the matter was submitted on March 28, 2023.

ISSUES

A free appropriate public education is referred to as a FAPE. An individualized education program is referred to as an IEP.

As listed below, the Issues reflect the discussion and agreement of the parties on the first day of hearing. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.) OAH issued an Order Clarifying the Issues for Hearing on March 8, 2023, after confirming the issues with the parties.

1. Did Corona-Norco deny Student a FAPE between August 9, 2022, and September 27, 2022, by failing to materially implement Student's May 4, 2021 IEP, by:
 - a. failing to implement goals for toileting, snacks, and following directions;
 - b. failing to provide specialized vision services;
 - c. failing to provide Student's IEP and information to the non-public agency providing services to Student;

- d. failing to implement accommodations related to vision needs, such as reducing visual information on work, providing a font size of 20 points or larger, and using adaptive paper for assignments;
 - e. failing to provide pencil support on hand or wrist for assignments;
 - f. failing to provide Student adequate support to utilize augmentative and alternative communication devices to complete assignments or participate in oral language classwork;
 - g. failing to update augmentative and alternative communication software;
 - h. failing to provide two hours per month of assistive technology consultation; or
 - i. failing to provide the correct amount of occupational therapy services?
2. Did Corona-Norco deny Student a FAPE between August 9, 2022, and September 27, 2022, by failing to materially implement the May 26, 2022 IEP amendment, by:
- a. failing to implement multi-modal instruction delivery and presentation of general education curriculum and standards; or
 - b. failing to implement accommodations, which required simplified and chunked material for mastery of new skills?

3. Did Corona-Norco deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting, by:
 - a. failing to create appropriately crafted goals in all areas of need, specifically, reading/blending sounds, addition, subtraction, sequencing numbers, behavior, vocation, adaptive daily living skills, typing, speech, and self-help for toileting and snacks;
 - b. failing to obtain accurate baseline data on proposed goals in math, reading, writing, and following directions;
 - c. failing to propose a functional behavior assessment;
 - d. failing to consider a behavior intervention plan;
 - e. failing to offer a fading plan for aide support;
 - f. removing specialized vision services;
 - g. failing to include a nonpublic agency provider for intensive individual services;
 - h. failing to include the nonpublic provider for specialized vision services;
 - i. failing to offer appropriate speech and language and occupational therapy services for the 2023 extended school year;
 - j. failing to appropriately address and document the percentage of time Student would spend outside of general education;
 - k. failing to offer a board-certified behavior analyst from a nonpublic agency for supervision of the individual behavior services aide;
 - l. failing to increase speech services as recommended by Student's private speech language pathologist;

- m. failing to offer individual speech and language services to address an articulation goal;
 - n. failing to accurately list assistive technology devices and services as discussed during the IEP team meeting;
 - o. documenting the backpack accommodation incorrectly and not consistently with the physical therapist's recommendation made at the meeting; or
 - p. failing to maintain IEP team meeting notes that accurately reflected meeting discussions?
4. Did Corona-Norco deny Student a FAPE at the September 28, 2022 IEP team meeting, by significantly impeding Parents' ability to participate in the decision-making process regarding the development of Student's IEP, by:
- a. failing to discuss accommodations and modifications for district benchmark tests;
 - b. failing to discuss transportation and necessary accommodations for transportation;
 - c. failing to discuss extended school year, including any changes to extended school year services;
 - d. failing to discuss accommodations requested by Student's private speech language pathologist and private occupational therapist;
 - e. failing to discuss accommodations from Parents' input letter;
 - f. removing the accommodation of 20 point font without discussion;
 - g. rewording the accommodation regarding reducing visual information without discussion; or

- h. failing to provide Parents with final reports for physical therapy, augmentative and alternative communication, and special circumstances instructional assistance?

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 et seq. (2006); Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All subsequent citations to the Code of Federal Regulations are to the 2006 version, unless otherwise stated. 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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B);

Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student had the burden of proof on all issues. 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, nearly seven years old, attended The Growing Place private school in first grade, at the time of hearing. Student resided within Corona-Norco's geographic boundaries with his Parents at all relevant times. Student had several diagnoses, including

- autism spectrum disorder,
- Leri-Weill dyschondrosteosis,
- cerebral palsy,
- spastic quadriplegia,
- spastic diplegia,
- hyperreflexia,
- motor delay, and hypertonia,
- receptive and expressive language disorder,
- dysarthria, and
- epilepsy.

Student qualified for special education under the eligibility categories of autism and orthopedic impairment. Student had global developmental delays. He communicated using assistive technology, single-syllable word approximations, gestures, and taking someone to an item of interest.

Student attended The Growing Place since preschool, interspersed with home instruction during the height of the COVID-19 pandemic. Over Student's preschool and kindergarten years, the parties entered into settlement agreements arising from disputes regarding Corona-Norco's offers of FAPE. The last such agreement resulted from Corona-Norco's offer of FAPE in the May 4, 2021 IEP. The parties settled the FAPE dispute with Corona-Norco funding Student's placement at The Growing Place for kindergarten and providing compensatory education. The parties also agreed that Student would attend Corona-Norco for first grade during the 2022-2023 school year, using the May 4, 2021 IEP as a stay put or interim placement for the first 60 days of school. During the interim placement, also pursuant to settlement, Corona-Norco agreed to

- conduct assistive technology, physical therapy, and special circumstance instructional assistance assessments and
- review the assessments at an IEP team meeting.

Student would attend Norco Elementary School on an intradistrict transfer permit with Parents transporting him to and from school.

The parties held a May 26, 2022 IEP amendment meeting to discuss Parents' concerns for the 2022-2023 school year. The parties reviewed Corona-Norco's assessments at a September 28, 2022 IEP team meeting. Student attended 22 of 35 school days between August 9 and September 28, 2022. On September 28, 2022, after the meeting, Parents sent notice they withdrew Student from Corona-Norco and placed him at The Growing Place and sought reimbursement from the district.

ISSUE 1(a)-(i): DID CORONA-NORCO DENY STUDENT A FAPE BETWEEN AUGUST 9, 2022, AND SEPTEMBER 27, 2022, BY FAILING TO MATERIALLY IMPLEMENT STUDENT'S MAY 4, 2021 IEP?

Student contends Corona-Norco failed to materially implement numerous aspects of the May 4, 2021 IEP, including

- goals,
- vision services,
- provision of the IEP to nonpublic agency service providers,
- accommodations,
- augmentative and alternative communication services,
- assistive technology services, and
- occupational therapy services.

Corona-Norco argues that any implementation failures were not material as Student only briefly attended a Corona-Norco school. Corona-Norco also argues it had time to provide any necessary make-up services to Student, had he returned to a district placement.

As soon as possible after the development of an IEP, the school district must make special education and related services available to the student in accordance with their IEP. (34 C.F.R. § 300.323(c).) When a student alleges a denial of a FAPE based on the failure to implement an IEP, the student must prove a "material" failure to implement, which means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist.* 5/1 (9th Cir. 2007) 502 F.3d 811, 822 (*Van Duyn*).) "There is no statutory requirement of

perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a FAPE." (*Id.* at p. 821.) However, "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Id.* at p. 822.) *Van Duyn* emphasized that IEPs are clearly binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to the statute, and "not to decide on its own to no longer to implement part or all of the IEP." (*Ibid.*) A material failure to implement an IEP constitutes a substantive violation of the IDEA. (*Id.* at pp. 819-823.)

Student met his burden of proof that Corona-Norco failed to materially implement the specialized vision services offered in the May 4, 2021 IEP, Issue 1(b). In all other respects, Student did not meet his burden of proof.

Student's May 4, 2021 IEP offered placement in a general education classroom with related services in:

- occupational therapy for 30 minutes, four times weekly, individually, provided as a pull-out service;
- occupational therapy for 20 minutes, two times weekly, individually, provided as a push-in service;
- adapted physical education for 30 minutes, 45 times yearly in a group;
- specialized vision services for 45 minutes, 40 times yearly through a contracted nonpublic agency;
- intensive individual services, also referred to as a one-to-one instructional aide, for 1,065 minutes weekly;
- specialized academic instruction, 30 minutes, weekly, individually, provided as a pull-out service;

- speech and language therapy for 20 minutes, three times monthly, individually, provided as a pull-out service; and
- speech and language therapy for 20 minutes, six times monthly, provided in a group, as a pull-out service.

The May 4, 2021 IEP offered Student extended school year programming including related services in:

- adapted physical education for 20 minutes, four times yearly, individually;
- occupational therapy for 20 minutes, four times monthly, individually, as a push-in service;
- speech and language therapy for 20 minutes weekly, individually, as a pull-out; service and
- speech and language therapy for 20 minutes two times weekly, in a group, as a pull-out service.

Corona-Norco offered extended school year services to prevent regression and lessen the time required for Student to recoup skills in the areas of speech and language, social-emotional functioning, and fine and gross motor skills.

The IEP team met on May 26, 2022, at Parents' request, to review current concerns before Student began school on August 9, 2022. All necessary IEP team members attended, along with attorneys for Parents and Corona-Norco. Student's private behavior team from Autism Behavior Services, Inc., referred to as Autism Behavior, also attended the meeting. The behavior team consisted of board-certified behavior analyst and aide supervisor Ysabella Pitochelli and the aide, also called a

behavior specialist, Alejandro Romo. Autism Behavior provided behavior services for Student over the prior few years at home, in the community, and at The Growing Place. Pitochelli supervised Student's behavior specialist across all settings.

The IEP team discussed the May 4, 2021 IEP,

- Student's private placement at The Growing Place,
- his private behavior services and educationally related behavior needs,
- medical information regarding school attendance,
- upcoming assessments, and
- plans for an assessment review IEP team meeting.

Parent sought a modified school day as recommended by Student's doctor because of medical developments related to Student's sleep regression. Parent reported Student fell asleep either on the way home from school or within the classroom before the end of school. After discussing the matter, the IEP team agreed Student would attend morning breakfast at 8:20 a.m., followed by general education and related services from 8:45 a.m. through 2:00 p.m. on Monday, Tuesday, Thursday, and Friday, and would not attend school on Wednesday.

Pitochelli discussed Student's behaviors and how to support him with sensory input throughout the school day. The IEP team agreed to provide Student additional supplementary aids for sensory stimulation. These included a

- chewing straw,
- hand and leg squeezes,
- peanut ball,
- weighted vest,

- sensory choice board,
- location choice board to select work location,
- preferential seating,
- token board,
- visual schedule,
- movement breaks and non-contingent walks,
- food reinforcers provided by Parents,
- sensory strips,
- sensory toys like a slinky and fidget toys, and a
- home-school communication log.

Pitochelli explained Student preferred being in the back of the room for easier access to breaks and his sensory input items. The IEP team also agreed to include multimodal instruction and material simplified and chunked for mastery of skills.

Next, the IEP team discussed Student's assistive technology device, a regular-sized iPad with a strap and case, equipped with the TouchChat application. Student's behavior team helped Student use the device for communication. The application contained 60 icons allowing Student to communicate and make requests for wants and needs. Parent and Corona-Norco assistive technology specialist Erik Larson agreed to meet to further discuss the device and setting up the district-ordered device.

Parent requested that Corona-Norco contract with Student's current nonpublic agency Autism Behavior for continuity moving into the 2022-2023 school year. Pitochelli confirmed that her agency had a board-approved contract in place with Corona-Norco. The IEP team discussed Student's related services, identified in the May 4, 2021 IEP. As discussed further below, Corona-Norco agreed that Student required a one-to-one

instructional aide. Corona-Norco did not agree that Student required a behavior specialist. Behavior specialists required monthly supervision by a board-certified behavior analyst. Nonetheless, Corona-Norco agreed to contract with Autism Behavior to help ease Student's transition into an environment new to him. Accordingly, Corona-Norco later added supervision hours to the Autism Behavior contract but did not add board-certified behavior analyst supervision to Student's IEP services.

After contracting with Autism Behavior, Corona-Norco provided it with Student's IEP, health plan, toileting logs, and daily communication logs. Student's special education teacher Jacqueline Lopez Hernandez, referred to as Lopez, placed Student's May 4, 2021 IEP at-a-glance in Student's classroom binder at Student's desk. The May 4, 2021 IEP-at-a-glance is referred to as the brief IEP. The brief IEP contained the goals, supplementary aids, services, and other supports for school personnel and Student, and the pages labeled "program and related services." The brief IEP contained the IEP elements required for implementation of Student's program in the classroom. The binder also contained Student's toileting or diapering log, and communication log.

Lopez collaborated with Student's general education teacher Michelle Tiedt, and Student's aide from Autism Behavior Anyssa Verdugo at the beginning of the school year regarding Student's IEP. Providers always had access to Student's full IEPs and had quick access to Student's brief IEP, located at his desk.

(THIS SPACE INTENTIONALLY LEFT BLANK. TEXT CONTINUES ON NEXT PAGE.)

ISSUE 1(c): CORONA-NORCO PROVIDED THE IEP AND INFORMATION TO THE NONPUBLIC AGENCY PROVIDING SERVICES TO STUDENT

Student argues Corona-Norco failed to provide a copy of the IEP to Autism Behavior, which resulted in the aide failing to implement components of the IEP. Corona-Norco argues the contract with Autism Behavior required Autism Behavior to implement the IEP, and that providers always had access to the IEP goals, accommodations, and supplementary aides and services, kept in Student's binder in his classroom and that Corona-Norco provided the IEP, health plan, and other information to Autism Behavior after contracting with it for services.

Public agencies must ensure that a special education child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider responsible for its implementation. (34 C.F.R. § 300.323(d)(1); Ed. Code, § 56347.) Moreover, each teacher and provider must be informed of their specific responsibilities related to implementing the child's IEP and of the accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. (34 C.F.R. § 300.323(d)(2); Ed. Code, § 56347.)

Pitochelli attended the May 26, 2022 IEP team meeting to discuss Student's transition into Corona-Norco from The Growing Place, under the May 4, 2021 IEP. Pitochelli supervised Verdugo. Both had access both to Student's IEPs and to Corona-Norco staff who could review the IEPs with them, should they require such input. After Student began attending Norco Elementary, his resource specialist program provider Jacqueline Lopez met with Verdugo and Tiedt to collaborate regarding Student's educational program.

Pitochelli's testimony was inconsistent with the weight of the evidence, required suspension of logic, and changed between direct and cross-examination not only in tenor but also in substance. On direct examination she admitted being provided toileting logs, communication logs, and Student's health plan, but denied being sent a copy of Student's IEP. On cross-examination she claimed she only received the health plan. While admitting on cross-examination that she knew Student had an IEP the first week of school, she denied ever asking for a copy of it. Indeed, she knew of Student's IEP when she attended the May 26, 2022 IEP amendment meeting and provided substantial input on Student's needs. Undoubtedly, she had been aware of Student's need for special education when she began working with him in 2019. At one point during the hearing, she claimed Autism Behavior was retained merely to assist with Student's behaviors. She never asked whether Student had a behavior plan or suggested his need for one. At other points, Pitochelli admitted she modified Student's assignments with Verdugo despite having previously testified they only provided behavior assistance.

Pitochelli, at hearing, lauded The Growing Place as being better than Norco Elementary. Pitochelli explained that at The Growing Place, Student could go to the back of the classroom for sensory breaks and that he did not disturb other students who had attended school with him over the past few years. She asserted, in contrast, Student's break room at Norco Elementary was too far away. When pressed, she admitted the break room, or Student's resource specialist program room, was a mere 15 to 20 feet away from his general education classroom. Moreover, the weight of the evidence demonstrated Student could go to a place within his own classroom for

sensory breaks. For these reasons, Pitochelli undermined her own credibility, affecting the weight of her testimony overall. Her testimony regarding not being given Student's IEP was found not credible.

Verdugo's testimony was equally unpersuasive. Verdugo worked with Student's sibling since November 2020 in the community, at home, and at The Growing Place before working with Student beginning in April 2022. At Norco Elementary, Verdugo

- helped Student communicate,
- worked with him on assignments,
- accommodated his needs,
- worked on sensory regulation using sensory toys,
- implemented token boards,
- trained Student on replacement behaviors, and
- assisted Student while he attended occupational therapy, speech and language therapy, and his resource specialist program.

She gave service providers and general education teacher Tiedt tips on how to work with Student and how he learned. She used Student's FAPE box, a central location where the team placed

- his sensory toys,
- assistive writing tools,
- token economy items,
- communication log,
- toileting log, and
- the brief IEP.

Based upon her experience working with Student across a variety of settings, it was impossible to believe Verdugo did not have knowledge that Student had an IEP, let alone that she was responsible for implementing portions of it.

Parent had a good deal of control over Student's educational and private programming. Parent attended The Growing Place with Student, making sure staff there implemented Student's program with fidelity. She limited the amount of schoolwork Student did at home based upon his involvement with various private therapies, while he attended both The Growing Place and Norco Elementary. Parent was a special education coordinator in a nearby school district, and had extensive training, knowledge, and experience regarding IEPs. Based upon conversations from the September 28, 2022 IEP, the documentary evidence and the totality of the testimony, it was impossible to believe Parent had not discussed implementation of Student's IEP with Verdugo before and while she began working with Student at Norco. Even so, it was Corona-Norco's responsibility to provide Verdugo with access to Student's IEP and inform her of implementation responsibilities. The preponderance of the evidence established that Corona-Norco did, based upon the testimony of special education coordinator Lori Gerhart and program specialist Dr. Lori Abbadessa discussed below and upon consultations between Lopez, Tiedt, and Verdugo.

Like Pitochelli, Verdugo's testimony favored The Growing Place as a better placement, over Norco Elementary. For example, she claimed Student's FAPE box was closer to Student at The Growing Place, making access easier. When pressed, she admitted it had only been three to four feet away from Student at Norco Elementary and that she could move items to Student's desk for immediate access. In fact, the FAPE box had been moved to Student's desk. Tiedt, Lopez, Gerhart, and Dr. Abbadessa corroborated that the FAPE box was located at Student's desk. Verdugo claimed she did

not know about Student's toileting goal. However, she tracked data on Student's toileting multiple times daily using logs kept in the binder with the brief IEP. Verdugo admitted Lopez asked her about Student's goals in preparation for the September 28, 2022 IEP meeting. However, Verdugo claimed Lopez only asked whether she knew about the goals, not about Student's progress on goals. Reports from other service providers and Parent input during the September 28, 2022 IEP team meeting did not support Verdugo's testimony that she did not know of and did not implement goals. For these reasons, Verdugo's testimony was not credible and was given little weight.

Program specialist Dr. Abbadessa and special education coordinator Gerhart credibly demonstrated that Autism Behavior providers always had access to Student's IEP, necessary Student records, and consultation regarding working with Student after Autism Behavior contracted with the district. Gerhart provided Student's IEP and health plan to Autism Behavior before Verdugo began working with Student at Norco Elementary. Gerhart brought this up during Student's September 28, 2022 IEP team meeting, when Parent accused the district of not implementing Student's IEP. Gerhart testified consistently through direct and cross-examination and her testimony was corroborated by previously existing documentation. She admitted mistakes when they had been made. For these reasons, Gerhart was credible, and her testimony was given greater weight than that of Pitochelli and Verdugo.

Dr. Abbadessa had a distinguished career in education with experience teaching special education students and teaching special education to university students. She worked as a program specialist for Corona-Norco for several years by the time of hearing. She provided straightforward testimony with an unbiased demeanor. She was an honest, credible witness and her testimony was given significant weight.

Dr. Abbadessa explained that the Autism Behavior service contract required providers working with Student to implement his IEP. Corona-Norco gave private service providers the IEP or other necessary information prior to their first day of working with Corona-Norco students, and Corona-Norco followed that practice with Autism Behavior for Student.

Dr. Abbadessa described the process of communication from the school site level to district administration. School site providers first reached out to site administrators with any questions, and then to her. She responded to contracted agencies' questions. She went to Student's classroom several times to help with Student's providers. She observed Autism Behavior staff at the school site with Parent a few times during Student's attendance at Norco Elementary. Neither Parent nor Autism Behavior questioned Dr. Abbadessa about anything, much less obtaining Student's IEP, accessing Student's IEP, or getting clarification on implementing Student's IEP.

Dr. Abbadessa, Tiedt, Lopez, and Gerhart each credibly demonstrated Autism Behavior had access to Student's IEP within his classroom binder and knew of its responsibilities for implementing the IEP. Moreover, Pitochelli attended the May 26, 2022 IEP team meeting and had worked supervising Student's private behavior aides since 2019 at The Growing Place, at home, and in the community. Under all the circumstances, the preponderance of the evidence established Pitochelli and Verdugo were aware Student had an IEP, and they discussed implementation of it with Tiedt, Lopez, other related service providers, and Parent over the seven weeks that Student attended Norco Elementary School. Student did not prevail on Issue 1(c).

ISSUE 1(a): CORONA-NORCO IMPLEMENTED GOALS FOR TOILETING, SNACKS, AND FOLLOWING DIRECTIONS

Student argues Corona-Norco failed to materially implement his toileting goal, pointing to diapering logs that did not identify each of the four steps required in the goal. Student also argues Corona-Norco failed to implement Student's goals regarding snack and following directions. Corona-Norco argues Student's aide implemented the toileting goal as she took Student to the bathroom on a regular basis throughout each school day. The aide implemented the snack goal during lunch and recess. The aide and service providers implemented the following-directions goal as reflected in service logs.

Student's toileting goal required him to participate in a minimum of four toileting routine steps, such as requesting to use the bathroom, manipulating clothing, and voiding in the toilet, with no more than two physical, verbal, gestural, or visual prompts in four of five opportunities, across three consecutive trial days. Student's first short-term objective required him to complete two of the toileting routine steps with no more than three prompts, in two of five opportunities, across three consecutive trial days. The first short-term objective was to be measured approximately three months after Student began school at Norco Elementary.

Verdugo worked with Student on his toileting, snacking, and following-directions goals. Verdugo collaborated with Tiedt and Student's related service providers on how best to accommodate Student's needs. She attended each related service with Student, helped as providers implemented his goals, and provided input for him to access each service. In the classroom, Verdugo set up Student's FAPE box and accessed his binder, which were always at or near Student's desk. The binder contained Student's brief IEP,

daily communication log, and toileting log. Verdugo accessed the toileting log multiple times on each day of Student's attendance, marking down the date and time of toileting, whether Student's diaper was wet or dry, and whether he voided in the toilet.

Lopez provided specialized academic instruction to Student and support to Tiedt and Verdugo. Lopez persuasively described how Tiedt and Verdugo had access to and collaborated regarding the brief IEP in Student's binder. Lopez opined that Verdugo implemented the toileting goal as Verdugo knew of the IEP, took Student to the bathroom every day, and filled out the toileting logs. The evidence demonstrated that Student manipulated his clothing to use the toilet, sat on the toilet and scooted back, and sometimes voided in the toilet. The evidence did not demonstrate that Student regressed in toileting once he began attending Norco Elementary.

The toileting logs demonstrated Verdugo took Student to the bathroom from August 11 through September 22, 2022, multiple times each school day. Verdugo, at hearing, did not say she took Student on a regular schedule, as opposed to on his request. She did not say Student did not remove his clothes, sit on the toilet, and attempt to void, as he did when she worked with him at home.

Physical therapist Dr. Tianna Woods conducted an assessment resulting in a report dated August 29, 2022. As part of that assessment, Dr. Woods observed Student's toileting routine, which he accomplished with Verdugo's assistance. Dr. Woods found that Student had difficulty with transfers on and off the toilet due to decreased motor, planning, coordination, and postural control. He required minimum assistance getting onto the toilet and scooting backward. He required bilateral upper extremity support for sitting on the toilet, and assistance from the aide getting off the toilet and with clothing

management. These observations were probative of whether the aide worked with Student on toileting, and Student's ability to engage in two of the four steps required to meet or make progress on his first short-term objective for the toileting goal.

Moreover, the September 28, 2022 IEP team meeting recording and its transcript corroborate that Lopez spoke with Verdugo about Student's progress on the toileting goal before the IEP team meeting. Lopez informed Parent, at that meeting, that she provided information regarding Student's IEP to Autism Behavior before Verdugo began working with Student at Corona-Norco. Parent commented that she did not believe Corona-Norco addressed Student's goals with the same level of fidelity as The Growing Place. But Student presented no evidence of the program he attended or of the progress made at The Growing Place. Speculation on the level of fidelity between programs falls short of demonstrating a material failure to implement Student's IEP by Corona-Norco.

Verdugo assisted Student during recess and lunch. Student's self-help goal for mealtime required him to participate in a minimum of four mealtime-routine steps, including but not limited to

- requesting food,
- accessing food in a lunch box,
- opening snacks in various types of containers,
- cleaning up his eating area, and
- putting away his lunch box.

The first objective, to be met within three months, required him to participate in two of the mealtime steps with no more than three physical, verbal, gestural, or visual prompts, in two of five opportunities, across three consecutive trial days.

IEP progress reporting at the September 28, 2022 IEP team meeting demonstrated that Student met the first objective of the annual goal. He made good progress toward the annual goal. Student participated in three of the four meal time routine steps including

- requesting food on his assistive technology device,
- accessing food from his lunchbox with minimal staff support, and
- opening or flipping open press button lids, water and milk caps.

Student opened bags with hand over hand guidance. Verdugo continued to work with Student on cleaning up his food area and not taking food from other students.

Student's goal for following directions required him to follow verbal directions to complete nonpreferred activities. The three-month objective required him to follow verbal directions with no more than four physical, verbal, gestural, or visual prompts in four of five opportunities, across three consecutive trial days. Goal reporting at the September 28, 2022 IEP team meeting demonstrated Student made progress on this goal by completing a nonpreferred activity when given four prompts, but occasionally more were required.

Student made progress on annual goals in toileting, snacks, and following directions. The evidence demonstrated that Student's aide and other providers worked on these goals with Student during the brief time he attended Norco Elementary. Student did not demonstrate that Corona-Norco denied Student a FAPE by failing to materially implement these goals. Rather, the goals were implemented and, even if not perfectly, Student made some progress. Student did not prevail on Issue 1(a).

ISSUE 1(b): CORONA-NORCO FAILED TO MATERIALLY IMPLEMENT VISION SERVICES

Student argues Corona-Norco failed to materially implement vision services by not providing any by the time Student withdrew from the district on September 28, 2022. Corona-Norco argues that Student attended a district school only briefly and that, had Student not left, the district would have time to contract with a vision services provider and conduct the 40 sessions per school year required under the May 4, 2021 IEP.

Student's May 4, 2021 IEP required Corona-Norco to provide specialized vision services for 45 minutes, 40 times yearly, through a contracted nonpublic agency as a related service. Lopez provided Parents with Student's related service schedule on August 18, 2022. The schedule did not mention vision services, and asked Parents to contact Lopez with any questions. Parent did not mention the vision services until the September 28, 2022 IEP team meeting. Corona-Norco had not contracted for vision services by the time of the September 28, 2022 IEP team meeting.

During the September 28, 2022 IEP team meeting, the IEP team discussed Corona-Norco's failure to provide vision services. Gerhart explained Corona-Norco's erroneous belief that Corona-Norco's obligation to provide Student vision services arose from the settlement agreement, which occurred after development of the May 4, 2021 IEP. Student had only attended one or two sessions of vision services and Gerhart, essentially, believed the sessions expired with the settlement agreement.

Parent explained the settlement agreement provided her the ability to allocate funds for Student's services in the manner she chose. Parents decided not to follow through with vision services at that time to focus on other areas of Student's needs.

Acknowledging the mistake, Corona-Norco agreed to contract with a nonpublic agency and reinstate vision services. However, Corona-Norco failed to offer vision services in the September 28, 2022 IEP and did not follow up after the IEP team meeting with an offer of vision services. Corona-Norco's counsel Constance Taylor exchanged emails with Student's attorney on October 28, 2022, seeking clarification on the status of Parents' consent to the September 28, 2022 IEP, whether Parents disagreed with portions of the IEP, and whether the parties could have an amendment IEP team meeting. Student filed his complaint regarding the September 28, 2022 IEP on October 28, 2022. Even by that time, Corona-Norco had not contracted with a nonpublic agency for vision services.

Student attended seven weeks of school, four days weekly, between August 9 and September 28, 2022. During that time, Corona-Norco should have provided Student with approximately seven sessions of vision services had the 40 sessions per school year been evenly delivered across the year.

Corona-Norco argues it could have made up the services had Student not disenrolled. At the time of his disenrollment, Student missed only five percent of his annual vision services. However, Corona-Norco took no steps to correct its misreading of the May 4, 2021 IEP and settlement agreement. Corona-Norco did not contract with a vision services provider. It did not add vision services back into Student's IEP. It did not request another IEP team meeting to discuss vision services.

IEPs are binding under the IDEA, and the proper course for a school district that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to statute, not to decide on its own to no longer implement part or all of the IEP. (*Van Duyn, supra*, 502 F.3d at p. 822; see also 20 U.S.C. §§ 1414(d)(3)(F), 1415(b)(3).) The particular facts of this case warrant a finding that the missed seven sessions, along with Corona-Norco's subsequent inaction, resulted in a failure to materially implement vision services as required in the May 4, 2021 IEP. Corona-Norco failed to implement 100 percent of the vision services required under the IEP.

Student put on no evidence regarding the impact, if any, of not having vision services for the seven weeks he attended Norco Elementary. The lack of evidence of regression is not probative of the material failure to implement but may be probative as to remedies available to Student, addressed below. Student prevailed on Issue 1(b).

ISSUE 1(d): CORONA-NORCO IMPLEMENTED ACCOMMODATIONS RELATED TO VISION NEEDS

Student argues Corona-Norco failed to materially implement accommodations of reducing visual information on work, providing a minimum font size of 20 points, and using adaptive paper for assignments. Corona-Norco argues that it implemented visual accommodations, though not perfectly.

The May 4, 2021 IEP had visual accommodations consisting of reducing visual information on paper or work, using a font size no smaller than 20-point, using highlighted strips large enough for 20-point font, and allowing for visual breaks every 20 minutes, for 20 to 30 seconds.

Student produced no evidence on the latter two accommodations and scant evidence on the remaining visual accommodations. For the following reasons, Student did not meet his burden of proving Corona-Norco failed to materially implement accommodations related to his vision needs.

Parent, at hearing, provided some work samples that she opined indicated Corona-Norco failed to materially implement the vision-related accommodations in Student's May 4, 2021 IEP. Verdugo claimed the modifications and accommodations were not explained to her by Tiedt, but that she knew how to work with Student based upon discussions with Parent and her prior experience working with Student.

Tiedt ran a general education classroom with approximately 22 students, sitting in small-table groups of three to four students with their desks pushed together. She projected assignments on a large white board. Student had access to a smaller white board next to him, where the aide could put questions or assignments, making the type larger or smaller and isolating information. All assignments were also available on Google Classroom allowing Student to have a visual of what was read to him and to transfer information to Student's whiteboard. Tiedt acknowledged that not all assignments were provided to Student in 20-point font. The aide prompted Student to answer questions. Verdugo also used hand-over-hand support to help Student answer questions, which he could not do independently.

Tiedt watched Student progressing during his brief time in her class and anticipated that would continue over time. Social-emotionally, Student settled into his routine and made friends he ran with on campus. Parent argued that Student regressed during the 22 days he attended Norco Elementary. Student called no witnesses from The Growing Place and provided no records to compare Student's performance there

with his performance at Norco Elementary. Student provided some evidence regarding how he worked with Autism Behavior at home and in the community. However, the evidence demonstrated that Student performed differently with familiar providers in one-to-one settings. The evidence did not demonstrate regression at Norco Elementary.

Tiedt acknowledged it was her job to modify instruction for Student. However, Verdugo generally modified work for Student as she worked with him individually and knew what worked best for him. Verdugo admitted knowing of Student's required accommodations and modifications through Parent and her experience working with Student. She also had access to accommodations in the brief IEP at Student's desk and conferred with Lopez and Tiedt, in addition to related service providers.

Tiedt knew that Student's IEP required reducing visual information. That was sometimes accomplished by covering other information while Student answered a single question. Instruction could also be transferred to Student's whiteboard and isolated. Tiedt and Lopez described how sometimes information on a page was covered to isolate instruction or test information, and sometimes pages were folded over for that purpose. Information could also be transferred to Google Documents or rewritten on adaptive paper. Student argues that reducing visual information and masking are two different things. Though that may be technically true, they are both ways of reducing visual information on a page.

Student failed to meet his burden of proof that Corona-Norco did not materially implement his vision accommodations. Student did not prevail on Issue 1(d).

ISSUE 1(e): CORONA-NORCO IMPLEMENTED PENCIL SUPPORT ON HAND OR WRIST FOR ASSIGNMENTS

Student argues Corona-Norco failed to implement the accommodation of a pencil support on his hand or wrist. Corona-Norco argues it implemented the accommodations.

Student failed to meet his burden of proof that Corona-Norco did not materially implement the accommodation of a pencil support on his hand or wrist. The specific accommodation appeared in the May 4, 2021 IEP within a category of accommodations designed to provide support for Student's functional grasp pattern and handwriting legibility. The accommodation required Student to be given access to adapted or modified writing tools such as a writing frame, wikki sticks, short pencils, pencil support on his hand or wrist, a slant board, among others, and access to adapted writing paper with various types of options listed. The May 4, 2021 IEP did not require Corona-Norco only to use support on Student's hand or wrist as an accommodation. It was simply one of many options. Technically, the only way to prove a material failure to implement the accommodation would be to demonstrate that Corona-Norco failed to provide Student with access to any adaptive or modified writing tools or any adapted writing paper to support his functional grasp pattern and handwriting legibility. Student did not do so.

Occupational therapist Jeffrey Kang worked with Student for 30 minutes, four times weekly, on a pull-out basis and 20 minutes, two times monthly, for push-in services. Kang admitted misreading the May 4, 2021 IEP, which called for 30-minute pull-out sessions four times monthly, not weekly. Lopez emailed the related services

schedule to Parent on August 18, 2022, reflecting the four weekly, versus monthly, pull-out sessions of occupational therapy. Parent did not correct Corona-Norco's administration of extra occupational therapy sessions.

Kang readily admitted his misreading of the IEP at hearing. He discussed Student's needs and techniques that worked better with Student at school. Kang demonstrated qualifications, training, and experience as an occupational therapist and testified in a straightforward and candid manner. He was credible and his testimony was given significant weight.

Kang's occupational therapy logs provided evidence that he implemented hand-over-hand or wrist support when working with Student on writing. The logs also demonstrated the use of Student's token reward system, and using breaks and pauses to sustain attention and encourage participation. Kang used sensory items, including Student's peanut ball and reading Pete the Cat in between tasks, to help Student remain regulated with sensory breaks. He used a weighted pencil with Student but found Student responded better to thicker markers. Kang used verbal, gestural, and visual prompts to engage Student. Student generally remained on task for five-to-seven-minute intervals with breaks in between.

Verdugo worked with Student during his related services, including occupational therapy. Daily, Verdugo pulled out Student's assistive writing tools, pencil weights, and preferred sensory tools and token economy items, which were also available to related service personnel. Verdugo provided Student with hand-over-hand, hand-on-elbow, or hand-on-wrist support frequently during activities requiring Student to write, which occurred daily.

Student failed to produce evidence that Corona-Norco did not provide Student with support on hand or wrist for writing assignments. The evidence demonstrated that Corona-Norco implemented support on hand or wrist, access to adapted or modified writing tools and adapted writing paper to support functional grasp and handwriting legibility. Student did not prevail on Issue 1(e).

ISSUE 1(i): CORONA-NORCO DID NOT DENY STUDENT A FAPE BY PROVIDING AN INCORRECT AMOUNT OF OCCUPATIONAL THERAPY

As noted above, Student received twice as much pull-out occupational therapy services as was required in the May 4, 2021 IEP. Parent knew Student's related services schedule since August 18, 2022, and did not ask Corona-Norco to modify it. Similarly, at the September 28, 2022 IEP team meeting, Parent asked to continue the same level of occupational therapy services. Parent admitted enjoying the increased improvement Student showed in fine motor skills over his brief time at Corona-Norco. Though Student argued, at hearing, that the additional pull-out time impacted his ability to attend academic portions of his school day, this was not an issue for hearing. Moreover, the evidence demonstrated that Corona-Norco had limited opportunities for adjusting Student's pull-out time because of his shortened school day and being out of school on Wednesdays.

Student did not demonstrate that Corona-Norco provided occupational therapy services that fell materially short of what was called for in his May 4, 2021 IEP.

Student did not prevail on Issue 1(i).

ISSUE 1(f): CORONA-NORCO PROVIDED ADEQUATE SUPPORT TO UTILIZE AUGMENTATIVE AND ALTERNATIVE COMMUNICATION DEVICES TO COMPLETE ASSIGNMENTS OR PARTICIPATE IN ORAL LANGUAGE CLASSWORK

Student argues Corona-Norco failed to provide adequate support to use his augmentative and alternative communication devices to complete assignments or participate in oral language classwork because Tiedt marked him down for not being prepared on assignments that he did or could have used assistive technology to complete. Corona-Norco argues Student relied on two assignments during his 22 days of attendance in support of this issue, which does not constitute a material failure to implement.

Student put on evidence of two oral language assignments at hearing to support his claim Corona-Norco failed to materially implement assistive technology support to complete assignments or participate in oral language classwork. First, Tiedt assigned students an All About Me poster project, as homework, at the beginning of the school year. Students had two weeks to prepare their posters for an in-class presentation.

The All About Me Poster required students to present on five to seven items about themselves and family members. Tiedt asked students for three to four complete sentences about the posters they created. Student earned 12 of 18 points on the assignment. Tiedt marked Student down for lack of preparation, requiring prompts to use his device, and not standing still or keeping his hands still during the presentation.

Present levels of performance in Student's May 4, 2021 IEP show he had not attended to more than two step directions during structured activities. The evidence demonstrated he required prompting for all tasks and did not initiate communication spontaneously using his assistive technology device. His accommodations included speech and language modeling and visual and verbal cues when using his assistive technology device and assistive technology consultation for the IEP team, Parents, and staff.

Student had family members already programmed into his assistive technology device. However, neither Verdugo nor Tiedt practiced with him to find the appropriate icons before the presentation, requiring additional prompting during the presentation. Neither programmed sentences into Student's device, allowing him to push a button to share information.

Tiedt did not ask for consultation regarding the poster project. Tiedt, at hearing, admitted she could have used help modifying Student's work. However, she did not reach out to Lopez before giving Student the poster project and only conferred with Verdugo on the day of the presentation.

Given Student's level of disability, he could not have completed and practiced the poster project on his own. Parents typically did not do homework with Student because of his private therapies in speech and language, occupational therapy, and work with Autism Behavior. Parents did not consult with district providers regarding their inability to help Student on the project. Verdugo testified that she could only work on Student's private therapy goals in the home, so she did not help with the project during her work

with Student in the home setting. On cross-examination, she admitted she could work on homework with Student as a non-preferred activity. She did not communicate with Tiedt about Student's lack of preparation for the project.

Ultimately, as Corona-Norco had the responsibility to implement Student's IEP, Tiedt and Verdugo should have consulted with each other and/or Lopez regarding modifications for project presentation or grading before the day of the presentation.

Second, Tiedt assigned a poem, *The More We Work Together*, to students to read in class. Student argues that Corona-Norco should have programmed the poem into his assistive technology device so he could present it in class by pushing a single button. Tiedt graded Student with zero out of 18 points and marked the assignment as missing.

During the September 28, 2022 IEP meeting, Parent opined that someone should have updated Student's iPad for such assignments. Parent compared adding assignments to Student's iPad to him doing the pledge of allegiance at The Growing Place. Staff at The Growing Place input the pledge into Student's iPad. Verdugo prompted Student to hit a button on the iPad, which then stated the various parts of the pledge. Verdugo, at hearing, did not explain why she had not programmed the poem into Student's iPad or collaborated with Tiedt or Lopez regarding this type of assignment modification.

Larson and speech language pathologist Ratke, who both helped with programming Student's assistive technology device, opined at the September 2022 IEP team meeting and at hearing that programming non-repeated assignments was not a sustainable solution. They reasoned that classwork changed on a weekly or even daily basis and Student should be prompted to use his core vocabulary to present oral projects.

Parent, at the September IEP team meeting, agreed that Student could use his core words to recite the poem. But again, Student had not practiced the poem. Parent told the IEP team that they did not work on the assignments at home because she thought Corona-Norco needed to be held accountable for not giving her child a FAPE.

On the day of presentation, Tiedt asked Verdugo whether Student could use core words to recite the poem and whether he had been practicing. Verdugo did not think Student was ready to present the poem, so he did not. None of Student's providers worked with Student on using core words to recite the poem or programmed the poem into the assistive technology device, leaving Student unprepared on the date of presentation.

Corona-Norco failed to provide Student with appropriate support to use his assistive technology device to participate in oral language presentations on September 19, 2022 and September 23, 2022. Tiedt did not consult with Verdugo or other staff regarding programming Student's assistive technology device to participate in the two oral language projects. Verdugo did not program Student's assistive technology device, despite programming similar oral language assignments while Student attended The Growing Place.

On the other hand, Student failed to meet his burden of proving that Corona-Norco materially failed to implement his IEP in this regard. Two assignments over a seven-week period working with a student new to staff members does not support a finding of material failure to implement. Student put on some evidence that Corona-Norco could have used Student's assistive technology device to complete

other classroom assignments, generally. However, Corona-Norco put on evidence demonstrating it did use Student's assistive technology device for various classroom assignments.

Student did not meet his burden of proof that Corona-Norco failed to adequately use Student's assistive technology device to complete assignments and participate in oral language classwork. Student prevailed on Issue 1(f).

ISSUE 1(g), AND (h): CORONA-NORCO APPROPRIATELY UPDATED AUGMENTATIVE AND ALTERNATIVE COMMUNICATION SOFTWARE, AND IMPLEMENTED MONTHLY ASSISTIVE TECHNOLOGY CONSULTATION

Student argues Corona-Norco failed to update his device with pictures or names of classmates or providers and that assistive technology specialist Larson did not provide two full hours of monthly assistive technology consultation to all team members. Corona Norco argues it appropriately updated Student's assistive technology and implemented appropriate assistive technology consultation.

Larson implemented assistive technology consultation for IEP team members, Parents, and staff. The IEP offered consultation for two hours monthly. Larson's logs reflected a total of one hour and 45 minutes of consultation provided during August 2022. Larson met with Parent at Norco Elementary on August 5, 2022, to attempt an airdrop of Student's personal TouchChat profile to district's iPad. Larson and Parent conferred regarding Student's needs and next steps. Larson consulted with Parent after school started, over the telephone. He spent an additional two hours obtaining and programming the district device and returning Student's personal device on August 17, 2022.

Larson provided consultation with Parent, Ratke, Kang, Verdugo, Dr. Woods, the adapted physical education provider, Tiedt, Lopez, Dr. Abbadessa, and the school principal on August 26, 2022. While Tiedt could have benefitted from additional consultation on Student's use of his assistive technology device, that does not speak to the issue of materially implementing consultation identified in Student's IEP. In September, Larson provided 45 minutes of consultation services before Student disenrolled from school on September 28, 2022. Larson and Ratke were in the process of updating Student's device prior to the September 28, 2022 IEP. The updates included fringe words, words that make up approximately 20 percent of a person's vocabulary, such as names of friends or teachers. Student's IEP did not require such words. The evidence did not demonstrate that Student could not access his education unless he used fringe words.

The evidence demonstrated that Larson synched and programmed Student's iPad device and software. Student demonstrated only minor discrepancies in consultation time between the two-hour-monthly requirement and what Larson provided. Student did not prevail on Issues 1(g), and (h).

ISSUE 2(a) AND (b): DID CORONA-NORCO DENY STUDENT A FAPE BETWEEN AUGUST 9 AND SEPTEMBER 27, 2022 BY FAILING TO MATERIALLY IMPLEMENT ACCOMMODATIONS FROM THE MAY 26, 2022 IEP AMENDMENT?

Student argues Corona-Norco failed to implement multimodal instruction and simplified and chunked material for mastery of new skills from the May 26, 2022 IEP amendment. Corona-Norco argues Tiedt and Student's providers used multimodal

instruction, simplification, and chunking to teach him in the general education classroom and while providing specialized academic instruction and related services.

Corona-Norco provided Student with multimodal instruction in the general education classroom and through related services providers. Multimodal instruction meant providing visual, auditory, and kinesthetic or other input while teaching. For example, Tiedt presented classroom materials verbally, while displaying them on a whiteboard. Verdugo, Lopez, Kang, and Ratke also described using multimodal approaches while teaching Student. Providers modeled skills, talked about them, provided kinesthetic input, and used manipulatives and visual cues to help Student learn.

Corona-Norco provided Student with simplified and chunked materials during general education and related service teaching. Tiedt persuasively explained her teaching methods at hearing, which involved simplifying and chunking. Tiedt broke down specific skills when teaching math, reading, and spelling. Verdugo, Lopez, Ratke, and Kang necessarily simplified tasks for Student, who learned at a slow pace. Parent testified that no assignments sent home were chunked. However, completed work sent home is not probative to the issue of how teaching the skills demonstrated on the work was accomplished at school.

Student failed to present probative evidence that Corona-Norco failed to materially implement multimodal instruction and simplified and chunked material as required by the May 26, 2022 IEP. Student did not prevail on Issue 2(a) and (b).

ISSUE 3(a)-(p): DID CORONA-NORCO DENY STUDENT A FAPE BY FAILING TO OFFER AN APPROPRIATE IEP AND SERVICES AT THE SEPTEMBER 28, 2022 IEP TEAM MEETING?

Student argues Corona-Norco failed to offer a FAPE in the September 28, 2022 IEP, and Parents therefore withdrew him from public school and returned him to The Growing Place within a couple of hours after the IEP team meeting. Corona-Norco argues it remained ready, willing, and able to revise the IEP, which it agreed to do at the meeting, with Parent's input. It could not do so once Student left public school.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

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. 386 [137 S.Ct. 988, 1000].)

Whether a district denied a student a FAPE is determined by looking at what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d, 1031, 1041.) An IEP is a snapshot, not a retrospective. (*Ibid.*)

Corona-Norco met with Parents for Student's annual IEP team meeting on September 28, 2022. Parents were provided their procedural rights and safeguards and had no questions regarding them. All necessary team members attended, along with attorneys for Student and Corona-Norco. (34 C.F.R. § 300.321(a); Ed. Code, § 56341, subds. (a) & (b).)

The September 28, 2022 IEP team meeting lasted over three hours. The IEP team reviewed

- physical therapy,
- assistive technology,
- augmentative and alternative communication, and
- special circumstance instructional assistance assessments.

During the meeting, the IEP team addressed Parents' September 14, 2022 letter listing their concerns. Parents requested summaries from assessors and they received the assessments in advance and became familiar with the reports before the meeting. The IEP team reviewed Student's progress on previous goals from the May 4, 2021 IEP, the assessment reports, and Parents' input, and reviewed Student's areas of unique educational need. Student did not meet his four speech goals or his toileting goal. Student partially met or met the remaining eight goals in speech, following directions, snacks, adapted physical education, and occupational therapy.

The IEP team determined that Student followed one-step directions with the support of his aide. He required visual supports and extensive prompting to follow class routines. He continued to work on transitions and increase his work stamina. Student required support in toileting and his daily routine. His aide carried and emptied his backpack and organized his materials. Student required prompts to follow directions, pick up a pencil, or sit down. The IEP team identified Student's educational need for goals in the areas of reading, writing, math, adapted physical education, occupational therapy, speech and language, and physical therapy.

The IEP team drafted 16 goals to address each area of Student's identified needs. The IEP team offered academic goals in math, reading, and writing. The goal in math foundation skills required Student to select numbers one through 50 using a field of two numbers. The reading comprehension goal required Student to build vocabulary and word knowledge by matching a word or picture to a sentence. The writing goal required Student to use a visual model and adaptive writing tools to trace alphabet letters in upper case. A goal in writing sentence structure required him to follow directions for non-preferred activities using sentence starters.

Speech and language goals addressed Student's expressive language using multi-modal communication for wants and needs, receptive and expressive language using a story with a picture prompt to answer questions with multi-modal communication, pragmatic language using multi-modal communication to take two conversational turns with a peer, and articulation using a picture prompt and verbal model.

Adapted physical education goals addressed object control and locomotor skills.

Physical therapy goals addressed:

- manipulation in movement for opening a classroom door;
- transfers, balance, and motor planning for getting onto and off the toilet;
- postural endurance for sitting upright; and
- locomotion, balance, and endurance for walking with a backpack without tripping or falling.

Occupational therapy goals addressed fine motor and bilateral coordination for opening and closing containers, cutting with scissors, pulling marker caps, and using glue sticks. Goals addressed self-regulation and sensory processing using tools such as movement breaks and alternative seating options to attend for a minimum of 10 minutes.

ISSUE 3(a): CORONA-NORCO APPROPRIATELY CRAFTED GOALS IN ALL AREAS OF NEED

Student argues Corona-Norco failed to appropriately craft goals in

- reading-blending sounds,
- addition,
- subtraction,
- sequencing numbers,
- behavior,
- vocation,
- adaptive daily living skills,

- typing, speech, and
- self-help for toileting and snacks.

Corona-Norco argues it drafted appropriate goals for all areas of educational need.

An annual IEP must contain a statement of measurable annual goals related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum and meeting each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(1) & (2); Ed. Code, § 56345, subd. (a)(1) & (2).) The IEP must also contain a statement of how the goals will be measured. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs, tit. 5, § 3040, subd. (c).)

However, the IDEA does not require an IEP to contain every goal from which a student may benefit. (*Capistrano Unified School Dist. V. B.W.* (9th Cir. 2021) 21 F.4th 1125, 1133.) In California, an IEP need not contain additional information, beyond that explicitly required by the IDEA. (Ed. Code, § 56345, subd. (i).)

Here, Corona-Norco targeted Student's needs as identified through working with Student from August 9, through September 28, 2022, a review of Student's present levels of performance, collaboration with Parents, recent assessments, and, where available, a review of information from outside providers.

Student argues that he required a goal for reading/blending sounds. Parent opined that reading/blending sounds was an appropriate goal for a first grader. She did

not discuss whether reading/blending constituted a State academic standard or whether the need could be otherwise addressed in the regular general education curriculum.

Private speech language pathologist Samantha Belton testified at hearing about how she would do things a little differently than Corona-Norco's speech language pathologist Ratke. However, Belton admitted that differences existed between the medical model she worked under and the educational model that school-based speech language pathologist Ratke used. Moreover, Belton never observed Student at school and had no personal knowledge of how Ratke implemented Student's speech and language services.

Ratke reviewed Student's progress and collaborated with Belton before developing goals for the September 28, 2022 IEP. Ratke testified as an experienced, knowledgeable, and appropriately licensed and credentialed speech language pathologist. She presented well-reasoned opinions, which Student failed to undermine through either cross-examination or opposing witnesses. For these reasons, Ratke's testimony was credible, and given significant weight.

Ratke persuasively and credibly demonstrated that the model of speech therapy and goals she proposed were appropriately designed to meet Student's educational needs. Ratke developed an articulation goal that included verbal approximations of consonant-vowel or consonant-vowel-consonant blending. Student did not show how or whether the goal desired by Parent differed from this structure, was necessary to meet Student's educational needs, or would result in a denial of FAPE if not included in the September 28, 2022 IEP.

Student argues Corona-Norco failed to develop math goals for addition, subtraction, and sequencing numbers. Student did not persuasively demonstrate that he required these goals to meet his unique educational needs.

Lopez persuasively demonstrated that Student's math goals addressed his needs, were measurable, and were tied to his present levels of performance. Based upon her experience with Student, he could identify numbers one through 20 with 90 percent accuracy. Tiedt reported that Student recognized numbers up to 10 but could not add or subtract within 10 and struggled to sequence numbers.

Though Parents alleged fault with the September 28, 2022 IEP for failing to include additional goals for addition, subtraction, and sequencing, Student offered no proof that he required such goals in addition to his regular math work in the first-grade classroom. Saying that a skill is appropriate for first grade does not equate with showing that a student requires a goal for that skill to obtain a FAPE. Parents contend that Student, in private therapy, demonstrated the ability to count higher than Lopez tested. However, the law does not require Corona-Norco to develop goals based on what Student does outside of school but on his needs in school. Parent acknowledged during the IEP team meeting that Student performed differently with different providers, in different environments, and even on different days. The evidence consistently supported the premise that children often demonstrate varying levels of skill across home, school, community, and private therapy environments.

Student argues Corona-Norco failed to offer behavior goals. Student spent much time at hearing eliciting testimony regarding his off-task behaviors, but then disputed that Student could only attend at school for seven to 10 minutes, asserting he had already been able to attend longer than 10 minutes before coming to Norco

Elementary. However, data from Autism Behavior indicated that Student had been able to attend a nonpreferred activity, such as instruction, for 10 minutes up to 75 percent of the time. Student regressed during the months of November 2022 through January 2023, while attending The Growing Place.

The IEP indicated Student's behaviors did not impede his learning or that of others. It remained undisputed that Student needed frequent redirection, sometimes left his seat, and required movement breaks. However, Tiedt, Verdugo, Lopez, Ratke, and Kang all worked with Student using sensory input, sensory breaks, a token economy system, redirection, and modeling. None of them opined that he required additional goals related to his behavioral needs. They all opined that, as Student continued to transition into his public school placement, he became easier to work with. Even Verdugo admitted that Student's behavior was appropriately managed at Corona-Norco.

Corona-Norco developed a goal for sensory based self-regulation strategies and tools to develop Student's ability to attend for at least 10 minutes with fewer verbal or gestural prompts. These tools or strategies offered Student a means to correct his own behavior when feeling dysregulated. Additionally, Corona-Norco offered several accommodations directed at behavior issues. These included:

- frontloading transitions, expected behaviors, and social stories;
- visual reinforcers including a visual schedule and first-then board;
- token economy system for reinforcers;
- sensory choice board; and
- location board to select work location.

Student could change his seat to an area in the back of the room to access sensory objects and strategies more easily. Accommodations provided access to self-regulation and sensory integration strategies and tools throughout the day. Student did not persuasively demonstrate that he required more to support his behavior needs in the school setting.

Student argues he required a vocational goal to address transitions and work stamina. For the same reasons addressed above regarding sensory-based self-regulation strategies, the argument is not convincing. Corona-Norco provided accommodations, noted above, to address Student's ability to transition. Moreover, Corona-Norco addressed Student's physical stamina through adapted physical education and physical therapy while addressing an increase in time-to-task through his goal for attending more than 10 minutes. Student did not produce evidence that he required goals to address each of these areas in addition to the accommodations, supports, and service the IEP already offered.

Student's private occupational therapist Kayla Gillespie testified that a goal for organization of materials would be appropriate for Student. However, Gillespie never observed Student at Corona-Norco and had no personal knowledge of his routine there. Student had been prompted to obtain work materials through his aide, a process that would continue until learned. The September 28, 2022 IEP offered Student ongoing full day aide support. Again, Student presented no evidence demonstrating that he required a goal in this area in addition to the supports and services offered in his IEP.

The IEP team discussed adapted physical education and physical therapy goals. Parents agreed with all offered goals. In her August 29, 2022 physical therapy report, Dr. Woods observed that Student required frequent verbal and manual cues for directions

to the task of sitting on the toilet seat, moving back over the toilet, and required one-hand assistance for getting down and for sequencing, and maximum assistance for clothing management. On the day of Dr. Woods's observation, Student also required assistance from his aide to sequence hand washing. Parent expressed concern, as part of her input for the assessment, with Student's walking and balancing while getting onto and off the toilet. Dr. Woods concluded in her report that Student required assistance with toileting, opening and closing doors, and supervision on the playground. At the IEP team meeting, Dr. Wood proposed goals in transfer, balance, and motor planning for using the toilet. Corona-Norco further addressed Student's toileting needs by developing an accommodation for restroom accessibility, which offered Student a restroom schedule for potty training purposes in addition to Student using the restroom as needed. The IEP offered access to supports in the restroom to assist Student with toileting, including a potty seat or chair, and a stepstool.

Student presented no evidence that a continuation of the May 4, 2021 IEP toileting goal would appropriately meet Student's needs, while the physical therapy goal and toileting accommodations would not.

Student presented no evidence that Student required a typing goal. Larson reviewed his recent assessment at the IEP team meeting. He conducted a comprehensive school-based assistive technology assessment resulting in a report dated September 28, 2022. As part of the assessment, he obtained information from Parents, Tiedt, and Lopez, reviewed Student's records, conducted a functional evaluation, and trialed various devices. He did not recommend a typing goal, as Student claims. Rather, he reported, from Parent interview, that introduction of typing as a modality for written expression would be an important area for growth.

Larson recommended Student continue using his portable dynamic display voice output device with a core word-based communication system application with symbol or picture selection options, specifically, an iPad with the TD Snap application. This iPad and software had been the most appropriate and effective for Student's communication needs at school. In writing, Student progressed with pencil control and accurate tracing of letters supported by pencil aids, modified paper, and a slant board. He could isolate his index finger to select an icon or key through visual discrimination. Because of his difficulty with pencil-paper tasks, Larson recommended the IEP team consider use of a keyboard when appropriate for the task. Using a classroom laptop would provide Student this access. Larson recommended gradual introduction of letter identification on the physical keyboard to develop a strong foundation for typing skills as a later modality for written expression. At this time, however, Larson opined that Student did not demonstrate typing readiness. Instead, Student demonstrated inattention or tactile exploration of a typing device, such as holding the keyboard over his head and turning it around in his hands.

The IEP team did not recommend continuing Student's snack goal, which he partially met. As discussed more thoroughly under Issue 1(a), Student made good progress on his annual goal for snacks or mealtime routine. Student requested food using his assistive technology device, accessed food from his lunch box, with minimal staff support, and opened a variety of container types. Student fed himself with a fork with some spillage, could remove items from containers, and drink from a regular cup. Verdugo continued to work with Student on cleaning up his food area and putting away his lunch box with fewer than two prompts.

Autism Behavior data showed that Student's ability to independently obtain and open a snack waxed and waned in his private program between March and August 2022 and between October 2022 and January 2023. Student did not present data from his private program for the time he attended Corona-Norco. Autism Behavior data offered by Student neither tended to prove or disprove whether he required a snack goal to obtain a FAPE at Corona-Norco.

Gillespie prepared a September 9, 2022 progress report for Parents to share at the September 28, 2022 IEP team meeting. The report recommended that any goals Student had not met from his IEP should be "considered to continue or update to address those deficits..." At hearing, Gillespie did not recommend a continuation or modification of Student's snack goal.

The weight of the evidence demonstrated that Student could request food, access food in his lunch box, and open most types of containers. Corona-Norco offered Student an occupational therapy goal for opening and closing containers, among other things, to strengthen Student's fine motor skills. Though Verdugo continued to work with Student on cleaning up his lunch area and putting away his lunchbox, Student did not present evidence that the snack goal should be continued to work on these areas.

Student simply did not put on evidence that he required continuation of his snack goal whether in toto or modified. Parents did not request a continuation of the snack goal at the September 28, 2022 IEP team meeting, nor did they address the snack goal in their Parent input letter. Student did not meet his burden of proof on this issue. Student did not prevail on Issue 3(a) regarding goals.

ISSUE 3(b): OBTAINING ACCURATE BASELINE DATA FOR MATH, READING, WRITING, AND FOLLOWING DIRECTIONS GOALS

Student argues the baselines for certain goals were inaccurate as they did not match how Student performed outside of the school setting. Corona-Norco argues it obtained accurate baseline data that Parents disagreed with, except for the new goal proposed by Parents for writing sentence structure. The IEP team could not develop a baseline as Student disenrolled from Corona-Norco within hours after the IEP team meeting.

An IEP must include a statement of the student's present levels of academic achievement and functional performance and a statement of measurable annual goals. (Ed. Code, § 56345, subds. (a)(1) and (2).) Neither the IDEA nor California law requires baselines beyond present levels of performance. (20 U.S.C. § 1414 (d)(1)(A); 34 C.F.R. § 300.320(a); Ed. Code, § 56345, subds. (a)(1) & (2), (i).)

Student's September 28, 2022 IEP described present levels of performance in:

- reading;
- writing;
- math;
- communication development;
- gross and fine motor development;
- social, emotional, and behavior development;
- health;
- vocational; and
- adaptive or daily living skills.

Additionally, the IEP notes summarized recent assessments in physical therapy, assistive technology, and the need for an aide. The IEP stated appropriate present level of performance information upon which to base the goals offered.

Parents, for example, disagreed with the baseline for math foundational skills, arguing that Student could identify numbers one through 50 already. Tiedt and Lopez experienced that Student could identify up to 20 with 90 percent accuracy but could not identify beyond 20 with the same level of accuracy. Parent disagreed with the baseline stating that she had data to show that Student could identify some numbers beyond 20. Parent did not share that data before or during the meeting. Parents asked for more baseline testing, which Corona-Norco agreed to do, but then Parents immediately disenrolled Student from Corona-Norco.

Similarly, Parents requested, and Corona-Norco developed, an additional writing goal to complete a sentence using at least five words, using a sentence starter, to demonstrate correct spacing and ending punctuation. The school IEP team agreed to develop a baseline for this goal, but Parents pulled Student out of school before they could accomplish this task. Parents also disagreed with the baseline for writing using adaptive tools to trace each alphabet upper case letter. The draft IEP baseline identified that Student required hand-over-hand support to trace letters. The IEP team removed this baseline from the IEP sent to Parents because of Parents' disagreement. The modified document stated that no baseline could be obtained because Student was no longer enrolled.

Nonetheless, Student's present levels of performance for writing and fine motor skills were contained within another portion of the IEP. The present levels of performance stated Student could trace letters with hand-over-hand support and had

not been observed to write independently in class. All writing tasks were scaffolded throughout his school day. In occupational therapy, Student independently traced his first and last name and worked on staying within the lines of the paper. The present levels also discussed Student's need for prompts to respond using his assistive technology device, and reading comprehension, which would all play a role in his ability to access the new writing goal.

The September 28, 2022 IEP contained present levels of performance in all proposed goal areas. Student did not prevail on Issue 3(b).

ISSUE 3(c) AND (d): FAILING TO PROPOSE A FUNCTIONAL BEHAVIOR ASSESSMENT AND FAILING TO CONSIDER A BEHAVIOR INTERVENTION PLAN

Student argues that his behaviors impeded his learning and that of others such that Corona-Norco should have proposed a functional behavior assessment and considered developing a behavior intervention plan. Corona-Norco argues the September 28, 2022 IEP addressed Student's behaviors through positive behavior interventions, supports, and other strategies, including accommodations, goals, and an aide.

Functional behavior assessments and behavior intervention plans are not required components of an IEP. (20 U.S.C. § 1414(d); 34 C.F.R. § 300.320; 71 Fed. Reg. 46629 (2006).) Rather, the IDEA explicitly mandates development or revision of a behavior intervention plan when a student is subject to disciplinary change of placement and the conduct is found to be a manifestation of a disability. (20 U.S.C. 1415(k); 34 C.F.R. § 300.530(f); Ed. Code, § 56341.1(a).)

Where a student's behavior impedes their learning or that of others, an IEP team must consider the use of positive behavioral interventions and supports, or other strategies, to address that behavior. (Ed. Code, § 56341.1, subd. (b)(1).)

Tiedt, Lopez, Ratke, Larson, Kang, and Verdugo all demonstrated their ability to help Student regulate behavior and redirect him to task using the supports and services offered in the May 4, 2021 IEP. None of them requested that Corona-Norco conduct a functional behavior assessment or develop a behavior intervention plan either immediately or as part of the September 28, 2022 IEP. Student's behaviors improved during the short time he attended Norco Elementary. His providers opined that Student would continue to improve as he settled into his program at school.

Student's present levels of performance indicated that he worked best with positive reinforcement, which the school site team provided daily. He enjoyed working for a book break or peanut ball break. When frustrated, he demonstrated the ability to use his assistive technology device, with prompting, to express an emotion or a need. He also used word approximations, gestures, or moans to express wants and needs. He had an area in the back of the classroom where he could attend to self-regulation, sensory needs, and redirection. He could walk to the resource room to attend to needs there or take a walk. Student produced no evidence that he had behavior outbursts or tantrums that disrupted the classroom to such a degree that he required additional behavior supports or services.

Parents argue that Student demonstrated better behavior at The Growing Place. Likewise, Student put on evidence that he performed better during one-to-one clinic-based instruction with private providers. The fact that Student may have performed better, anecdotally, at The Growing Place where he worked with classmates and

providers for three years, or in private one-to-one settings where he also worked with providers for several years, does not tend to prove that Corona-Norco failed to offer Student a FAPE. Student also performed with fewer behavior issues at Norco Elementary both over time and in small group and individual related services sessions. It is logical that a child would be calmer in a less stimulating environment. The weight of the evidence established that Corona-Norco offered Student appropriate behavior interventions, supports, and services in the September 28, 2022 IEP.

The IEP offered assistive technology for communication and schoolwork, and gestural, tactile, visual, and verbal prompting and modeling. These were all things that helped Student attend to task and work without becoming overly frustrated because of his needs. The goal for following directions to complete non-preferred activities would help Student work on frustration tolerance. His goal for sensory-based self-regulation strategies provided a means to learn to attend longer to learning opportunities in the classroom and in therapies. Use of assistive technology with core words, visual schedules, and visual incentive charts helped behavior by making wants and needs simplified to Student's ability level. Corona-Norco offered an array of accommodations or aids, services, and program accommodations and modifications to support Student's behavior needs, as discussed previously.

Student failed to demonstrate that either a functional behavior assessment or behavior intervention plan were a necessary part of Student's IEP and that failure to include them resulted in a denial of FAPE. Student did not prevail on Issue 3(c) or (d).

ISSUE 3 (e): CORONA-NORCO DID NOT DENY STUDENT A FAPE
BY FAILING TO OFFER A PLAN FOR FADING AIDE SUPPORT

Student argues that he required an aide support fading plan to decrease aide dependency. Corona-Norco argues that, since Student still required an aide, an aide fading plan was premature.

Both school psychologist Stephanie Moreno and Parent persuasively demonstrated that Student would require aide support for the foreseeable future. Moreno's special circumstance instructional assistance assessment underscored Student's reliance on prompting for redirection and educational access. During the September 28, 2022 IEP team meeting, Parent expressed that all goals should require prompting of Student. Even though Student could use his assistive technology device to express wants and needs, he needed to be prompted to push the buttons. Sometimes Student was successful activating his augmentative and alternative communication device with verbal prompts, and sometimes he required visual and verbal prompts and modeling.

Student did not demonstrate that an aide fading plan would be remotely appropriate at the time of the September 28, 2022 IEP team meeting. Student did not prevail on Issue 3(e).

THIS SPACE INTENTIONALLY LEFT BLANK. TEXT CONTINUES ON NEXT PAGE.

ISSUE 3 (f), (i), (k), (l), AND (m): FAILURE TO OFFER APPROPRIATE SERVICES FOR VISION THERAPY, EXTENDED SCHOOL YEAR SPEECH AND OCCUPATIONAL THERAPY, A BOARD-CERTIFIED BEHAVIOR ANALYST AIDE SUPERVISION, AN INCREASE IN SPEECH SERVICES, AND INDIVIDUAL SPEECH SERVICES TO ADDRESS THE ARTICULATION GOAL

Student contends Corona-Norco failed to offer a FAPE in the September 28, 2022 IEP by failing to offer various related services. Corona-Norco argues it offered a FAPE but that it had no duty to add each service the Parents desired.

Considering a child's academic, developmental, and functional needs, an IEP must include a statement of the special education and related services that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) That includes a statement of supplementary aids and services and other supports that are provided in education-related settings to enable the student to be educated with nondisabled children to the maximum extent appropriate. (20 U.S.C. § 1401(33); 34 C.R.F. § 300.42; Ed. Code § 56033.5.)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program, not that preferred by the parent. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the child. (*Ibid.*)

Extended school year services must be available as necessary to provide a FAPE, where the IEP team determines the services are necessary for the provision of a FAPE.

(34 C.F.R. § 300.106 (a)(1) & (2); Ed. Code, § 56345, subd. (a)(9)(A)(iv).) Generally, school districts look at individuals with disabilities who may experience regression due to an interruption of their educational programming and who have limited recoupment capacity. School districts have considerable flexibility in determining eligibility for extended school year services but may use recoupment and retention criteria. (71 Fed. Reg. 46682 (2006); see also Cal. Code Regs., tit. 5, § 3043.)

FAILURE TO OFFER VISION THERAPY

Student's May 4, 2021 IEP offered Student vision services based upon an assessment conducted sometime before that IEP meeting. Corona-Norco failed to offer Student vision services in the September 28, 2022 IEP and had not conducted an assessment demonstrating that Student no longer required vision services.

The IDEA requires a reevaluation to determine the educational needs of a child with a disability and whether the child requires special education and related services. (20 U.S.C. § 1414(c); 34 C.F.R. § 300.305(a).)

Neither Corona-Norco nor Student put on evidence regarding Student's need for vision services as of September 28, 2022. Student had not been assessed in functional vision and his possible need for vision services since before May 4, 2021. His needs may have changed in the intervening 18 months. Children in elementary school evolve developmentally in every way, though at differing rates. Neither Corona-Norco nor Student knew the current state of his vision therapy needs, if any. Since the IDEA required Corona-Norco to offer a FAPE, the burden was on it to conduct an assessment

to determine Student's vision services needs, if any, before discontinuing the service. Corona-Norco described the failure to maintain vision services in the IEP as an oversight, but that provides no safe haven.

Student established that Corona-Norco failed to continue offering vision services without obtaining an assessment evidencing that Student no longer required the related service. Student prevailed on Issue 3(f).

CORONA-NORCO OFFERED APPROPRIATE SPEECH AND LANGUAGE SERVICES FOR THE REGULAR AND EXTENDED SCHOOL YEAR

Based upon recent assessments, review of progress toward annual goals, provider and Parent input, Corona-Norco offered Student special education and related services appropriate to enable Student to be educated in the general education setting to the maximum extent appropriate, in all areas apart from vision services.

Student argues that Corona-Norco failed to offer an appropriate amount of speech and language services for the remainder of the 2022-2023 school year and 2023 extended school year. Student argues that Corona-Norco failed to follow the private speech therapist's recommendations for individual pull-out speech therapy for articulation and did not discuss extended school year services at all but still changed the speech and language services for extended school year.

As discussed regarding Issue 3(a) for goals, Ratke proposed speech and language services for the regular school year in an educational model appropriate to implement Student's goals, while also allowing Student to attend general education to the maximum extent appropriate. Student's private speech-language pathologist Belton recommended Student receive 120 minutes of speech therapy weekly, broken into various 20-minute

pull-out and push-in, group and individual, sessions. She opined Student required group speech therapy to support social interaction and individual speech therapy to support his articulation goal. But Belton never observed Student in his school program. Her program recommendations were different, not more persuasive or shown to be necessary to offer Student a FAPE. Ratke discussed her method of addressing articulation goals in group settings, which had shown past success. Her testimony remained uncompromised by Belton's recommendations.

For extended school year services, Ratke persuasively demonstrated that the proposed 20 minutes weekly in a small group would sufficiently prevent Student from experiencing regression that he could not recoup in the beginning of the following school year. The evidence from both parties demonstrated that Student made very slow progress towards goals. He worked on some goals with outside one-to-one providers for several years. Parent demonstrated, as evidence by the IEP team meeting transcript, that Student's progress was slow and could vary day to day based upon how well Student felt, how much sleep he had, and many other factors.

Given this backdrop, Ratke's experience working with Student, and his history of progress, Student did not meet his burden of proving that he required more time for speech and language therapy during the regular school year or that he required one-to-one services to work on his articulation goal. Neither did Student prove that he required additional speech therapy services during the extended school year to avoid regression to the point that he could not recoup his skills within a reasonable time after returning to school for the following school year. Student did not prevail on Issue 3(i), (l), and (m).

CORONA-NORCO APPROPRIATELY DID NOT OFFER BOARD-CERTIFIED
BEHAVIOR ANALYST SUPERVISION

No dispute exists regarding the need for board-certified behavior analyst supervision hours. As established by Pitochelli, Gerhardt, and Dr. Abbadessa, Corona Norco added supervision hours to the contract with Autism Behavior because the aide required such supervision for certification, not because the May 4, 2021 IEP required the supervision or even a behavior specialist aide.

Corona-Norco agreed to continue using the aide from Autism Behavior for consistency. Student did not present evidence that Student required a behavior aide let alone supervision from a board-certified behavior analyst. Even Verdugo agreed that Student's behaviors were managed appropriately at Corona-Norco without implementation of a behavior plan. Student did not elicit testimony from either Verdugo or Pitochelli supporting a finding that he required a board-certified behavior analyst as a service offered in his IEP.

Moreno's special circumstance instructional assistance assessment resulted in a report dated September 23, 2022. Moreno concluded Student required a full-time one-to-one aide. Moreno did not recommend that Student continue with Autism Behavior, conclude Student required a behavior specialist in particular, or determine that Student required both a behavior specialist and supervision from a board-certified behavior analyst.

Student's September 28, 2022 IEP offered intensive individual services identified as one-to-one support from a nonpublic aide for support with

- academics,
- behavior,
- sensory diet,
- toileting,
- feeding,
- food access, and
- opening of containers or packages.

Corona-Norco addressed Student's off task and other behaviors through redirection, use of a token reward system, a sensory diet, among other things. None of this support mandated a behavior aide or supervision from a board-certified behavior analyst and Student did not prove that it did.

Even so, if Corona-Norco continued contracting with Autism Behavior then, as part of that contract, they would again be required to retain a board-certified behavior analyst for supervision of the behavior aide. Requirements under contract do not equate to a necessary IEP component.

Supervision of an aide typically occurs through the classroom teacher and/or special education provider, in this case, resource specialist teacher. A finding that the IEP did not require supervision hours from a board-certified behavior analyst does not absolve Corona-Norco from providing appropriate aide supervision, should Student return to a district school.

Student did not meet his burden of proof that he required supervision hours from a board-certified behavior analyst from a nonpublic agency to obtain a FAPE. Student did not prevail on Issue 3(k).

CORONA-NORCO DID NOT DENY STUDENT A FAPE BY FAILING TO CORRECTLY IDENTIFY THE PERCENTAGE OF TIME STUDENT WOULD SPEND IN AND OUTSIDE OF GENERAL EDUCATION

Student's September 28, 2022 IEP documented related services in

- specialized academic instruction,
- occupational therapy,
- physical therapy,
- adapted physical education,
- speech and language therapy, and
- resource support services.

The IEP documented the amount of time for each related service and whether providers would implement the service under a push-in or pull-out model. Next, the IEP documented that Student would participate 89 percent of the time in the regular class and extracurricular and nonacademic activities and spend 11 percent of the time outside the regular class and extracurricular and nonacademic activities.

Parents contend that Corona-Norco documented incorrect percentages of time spent in and outside of general education because the percentages were the same as what was calculated in the May 4, 2021 IEP. Neither party presented evidence regarding the correct percentages. As addressed in previous Issues, the September 28, 2022 IEP meeting lasted over three hours. During those three hours, the IEP team painstakingly

discussed Corona-Norco's provision of related services. Student did not present evidence demonstrating that Parents failed to understand the offer of related services because of the percentages identified in the September 28, 2022 IEP document.

Student failed to produce evidence demonstrating that Corona-Norco entered incorrect percentages of the time Student would spend in and outside of general education. Student did not prevail on Issue 3(j).

CORONA-NORCO APPROPRIATELY DOCUMENTED STUDENT'S BACKPACK ACCOMMODATION

Dr. Woods presented her August 29, 2022 physical therapy report at the September 28, 2022 IEP team meeting. Parent stated she agreed with everything and wanted the IEP team to move forward to other areas. When discussing Student carrying the backpack, Parent stated that on days when Student had a Chromebook and other supplies in his backpack, it was too heavy for him to carry and he tipped over. The IEP team agreed to include as an accommodation that someone would carry Student's backpack. The IEP team also added a physical therapy goal for Student to practice carrying the backpack to work on locomotion, endurance, and balance.

The IEP team identified, as an accommodation, that the aide or support staff may be required to assist Student with carrying his backpack or school materials depending upon weight, due to Student instability and fatigue. No deviance between the IEP team meeting discussion and IEP document could be found through reading the transcript of the IEP team meeting or listening to the audio recording. Likewise, the accommodation consistently captured the recommendation made by Dr. Woods.

Student failed to produce evidence of variance between the accommodation and Dr. Wood's recommendation regarding the backpack. Student did not prevail on Issue 3(o).

CORONA-NORCO ACCURATELY LISTED ASSISTIVE TECHNOLOGY DEVICES AND SERVICES

Student argues the September 28, 2022 IEP did not reflect use of a touch screen Chromebook and stylus pen, recommended by Larson. Corona-Norco argues Larson thoroughly discussed the assistive technology special factors page, which mirrored his assessment report, and that all IEP team members, Parents included, agreed with the recommendations for assistive technology devices and services.

The IEP clearly identifies assistive technology devices and services discussed at the IEP team meeting and offered by Corona-Norco in the September 28, 2022 IEP. The IEP team meeting recording and transcript support this finding. The special factors page of the IEP identified assistive technology offered to Student for communication as a portable dynamic display device with voice output, for example, an iPad with case and strap, core-word based communication application with symbol and picture selection options, for example TouchChat, and picture-supported communication including core boards, visual schedules, and visual incentive charts.

The September 28, 2022 IEP also documented assistive technology offered to Student for written expression and computer access, which included

- enlarged external keyboard with high contrast keys, for example the LogiTech Large Print High Contrast Bluetooth Keyboard,
- a standard external mouse,

- repeat key and slow key embedded keyboard features, for example Embedded Chromebooks Features, and
- an online library of audiobooks, for example Bookshare.

The IEP team reviewed Larson's assistive technology assessment and recommendations at length during the September 28, 2022 IEP team meeting. After agreeing to the low incidence portion of the special factors for the IEP, Parent agreed that assistive technology from the Parent concern letter had been discussed and addressed. Larson thoroughly explained low-, mid-, and high-tech assistive technology devices, and why he recommended the devices and supports identified in his assessment and draft IEP. Larson listed the assistive technology devices necessary for Student to receive a FAPE on the special factors page.

Student failed to demonstrate the September 28, 2022 IEP did not correctly identify assistive technology devices and services as discussed during the IEP team meeting. Student did not prevail on Issue 1(n).

CORONA-NORCO DRAFTED APPROPRIATE IEP TEAM MEETING NOTES

Nothing in the IDEA requires an IEP to include additional information beyond what is required by title 20 United States Code section 1414. (34 C.F.R. § 300.320(d)(1).) The IDEA does not require an IEP to contain meeting notes, let alone notes that perfectly reflect everything said during the meeting. The parties audio-recorded the IEP. Student entered the recording and a transcript of the recording into evidence. The IEP team meeting notes accurately reflected what happened at the meeting but do not capture everything said during the over-three-hour-long meeting. Student cited no legal authority in support of his contention that deficient IEP notes can result in a denial of FAPE. Student did not prevail on Issue 3(p).

ISSUE 3(g) AND (h): THE NONPUBLIC AGENCY PROVIDER FOR INTENSIVE INDIVIDUAL SERVICES AND FOR VISION SERVICES WERE NOT NECESSARY TEAM MEMBERS

Student's contention that failure to invite nonpublic agency providers for aide services and vision services resulted in a denial of FAPE is not supported by the evidence. At the discretion of Parents or Corona-Norco, either party could have invited other individuals having knowledge or special expertise regarding Student, including related services personnel, to the September 28, 2022 IEP team meeting. (34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b)(6).) Neither chose to do so.

The transcript of the IEP team meeting reflected the conversation held during the meeting indicating that both parties were aware that they could have invited these discretionary IEP team members. Corona-Norco's failure to invite additional individuals may have been an oversight or failure to engage in best practices but was not a denial of FAPE. Student did not prevail on Issues 3(g) and (h).

ISSUE 4(a)-(h): DID CORONA-NORCO DENY STUDENT A FAPE AT THE SEPTEMBER 28, 2022 IEP TEAM MEETING BY SIGNIFICANTLY IMPEDING PARENTS' ABILITY TO PARTICIPATE IN THE DECISIONMAKING PROCESS REGARDING THE DEVELOPMENT OF STUDENT'S IEP?

Student argues that Corona-Norco denied parental participation in the development of the September 28, 2022 IEP by failing to discuss

- accommodations for district benchmark tests,
- transportation and transportation accommodations,

- recommended accommodations from Student's private speech-language pathologist and occupational therapist,
- accommodations from Parents' input letter,
- removing a 20-point font accommodation, and
- rewording the accommodation for reducing visual information.

Student also argues a failure to discuss extended school year services and a failure to provide final reports from physical therapy, augmentative and alternative communication, and special circumstance instructional assistance assessments.

Corona-Norco argues Parents had the opportunity to participate in the decision-making process during the September 28, 2022 IEP team meeting, which lasted over three hours.

Federal and state law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.) Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

A parent has meaningfully participated in the development of an IEP when she

- is informed of her child's problems,
- attends the IEP meeting,

- expresses her disagreement with the IEP team's conclusions, and
- requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693.)

A parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Board of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.)

The evidence overwhelmingly demonstrated that Parents meaningfully participated in the development of Student's September 28, 2022 IEP. Corona-Norco provided Parents with draft goals, present levels of performance, and recent assessments several days before the IEP meeting. Parents provided Corona-Norco with an IEP input letter several days before the IEP meeting. Corona-Norco considered the letter at length, during the meeting.

Parent expressed no concerns regarding transportation or district benchmark testing. Corona-Norco's offer of transportation had not changed from the May 4, 2021 IEP to the September 28, 2022 IEP. Student was outside of district benchmark testing, as was noted in both IEPs. Corona-Norco had not precluded Parents from seeking clarification on these portions of the IEP.

Parents requested 55 accommodations and proposed several other changes to Student's educational programming. After receiving Parents' letter, Dr. Abbadessa spent several hours categorizing the 55 accommodations for inclusion into 19 categories in Student's IEP. Parents and providers extensively discussed accommodations throughout the IEP team meeting.

Parents attended the IEP meeting, were informed of Student's educational needs, expressed disagreement with conclusions of IEP team members, and requested revisions to the IEP. The IEP team meeting recording and its transcript reflected that Parents provided verbal input for at least one-third of the meeting. Parents asked questions, critiqued Corona-Norco's then-current provision and prospective offer of FAPE, requested new and different goals, and requested changes to the provision of various aspects of Student's related services, among other things. For the most part, Corona-Norco made the requested changes. The IEP team took a break during the meeting to make copies of documentary input Parents brought from outside service providers. Corona-Norco considered this input as well.

The IDEA does not require an IEP team to adopt every suggestion from an outside provider or parent. (See *N.T. v. Garden Grove Unified School Dist.* (C.D.Cal., May 19, 2016, No. SACV151013GHKJPRX) 2016 WL 2984192, at *5.) That Corona-Norco IEP team members did not agree with every recommendation from Parents or Student's private providers does not tend to prove a denial of parental participation in the development of the IEP.

Parent repeatedly referenced her training, experience, credentials, and work in education and knowledge of school district responsibilities for offering and providing a FAPE. Parent steered the conversation to topics she preferred to cover for the length of time she believed warranted. Parent demonstrated thorough knowledge of the process for developing an IEP, including knowledge of all required components. Student simply presented no evidence that Parents were deprived of the opportunity to cover any of these topics for the length of time they desired.

Corona-Norco provided Parents with final reports regarding recent assessments. Dr. Woods, Larson, and Moreno persuasively established that they provided their respective physical therapy, augmentative and alternative communication, and special circumstance instructional assistance assessment reports to Parents in advance of the IEP team meeting. Parents admitted receiving, reviewing, and being quite familiar with the assessments. Corona-Norco reviewed each assessment at the September 28, 2022 IEP meeting.

During the IEP team meeting, Parents clarified that Student did not attend a Corona-Norco program in preschool, as noted in the special circumstance instructional assistance assessment. Moreno agreed to remove the notation from her report. Larson and Dr. Woods testified they did not make changes to their reports, making the draft reports provided to Parents final reports. Dr. Woods, Larson, and Moreno provided their reports to Corona-Norco administration, who would upload them into the district's electronic special education records system making them part of Student's educational records.

Parents extensively and meaningfully participated in the development of the September 28, 2022 IEP. Accordingly, Student did not prevail on Issue 4(a) through (h).

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, SUBSECTION a:

Corona-Norco did not deny Student a FAPE between August 9 and September 27, 2022, by failing to materially implement Student's May 4, 2021 IEP by failing to implement goals for toileting, snacks, and following directions.

Corona-Norco prevailed on Issue 1(a).

ISSUE 1, SUBSECTION b

Corona-Norco denied Student a FAPE between August 9 and September 27, 2022, by failing to materially implement Student's May 4, 2021 IEP by failing to provide vision services.

Student prevailed on Issue 1(b).

ISSUE 1, SUBSECTION c:

Corona-Norco did not deny Student a FAPE between August 9 and September 27, 2022, by failing to materially implement Student's May 4, 2021 IEP by failing to provide Student's IEP and information to the nonpublic agency providing services to Student.

Corona-Norco prevailed on Issue 1(c).

ISSUE 1, SUBSECTION d:

Corona-Norco did not deny Student a FAPE between August 9 and September 27, 2022, by failing to materially implement Student's May 4, 2021

IEP by failing to implement accommodations related to vision needs, such as reducing visual information on work, providing a font size of 20 points or larger, and using adaptive paper for assignments.

Corona-Norco prevailed on Issue 1(d).

ISSUE 1, SUBSECTION e:

Corona-Norco did not deny Student a FAPE between August 9 and September 27, 2022, by failing to materially implement Student's May 4, 2021 IEP by failing to provide pencil support on hand or wrist for assignments.

Corona-Norco prevailed on Issue 1(e).

ISSUE 1, SUBSECTION f:

Corona-Norco did not deny Student a FAPE between August 9 and September 27, 2022, by failing to materially implement Student's May 4, 2021 IEP by failing to provide Student adequate support to utilize augmentative and alternative communication devices to complete assignments or participate in oral language classwork.

Corona-Norco prevailed on Issue 1(f).

(THIS SPACE INTENTIONALLY LEFT BLANK. TEXT BEGINS ON FOLLOWING PAGE.)

ISSUE 1, SUBSECTION g:

Corona-Norco did not deny Student a FAPE between August 9 and September 27, 2022, by failing to materially implement Student's May 4, 2021 IEP by failing to update augmentative and alternative communication software.

Corona-Norco prevailed on Issue 1(g).

ISSUE 1, SUBSECTION h:

Corona-Norco did not deny Student a FAPE between August 9 and September 27, 2022, by failing to materially implement Student's May 4, 2021 IEP by failing to provide two hours per month of assistive technology consultation.

Corona-Norco prevailed on Issue 1(h).

ISSUE 1, SUBSECTION i:

Corona-Norco did not deny Student a FAPE between August 9 and September 27, 2022, by failing to materially implement Student's May 4, 2021 IEP by failing to provide the correct amount of occupational therapy services.

Corona-Norco prevailed on Issue 1(i).

(THIS SPACE INTENTIONALLY LEFT BLANK. TEXT BEGINS ON FOLLOWING PAGE.)

ISSUE 2, SUBSECTION a:

Corona-Norco did not deny Student a FAPE between August 9 and September 27, 2022, by failing to materially implement the May 26, 2022 IEP amendment, by failing to implement multi-modal instruction delivery and presentation of general education curriculum and standards.

Corona-Norco prevailed on Issue 2(a).

ISSUE 2, SUBSECTION b:

Corona-Norco did not deny Student a FAPE between August 9 and September 27, 2022, by failing to materially implement the May 26, 2022 IEP amendment, by failing to implement accommodations which required simplified and chunked material for mastery of new skills.

Corona-Norco prevailed on Issue 2(b).

ISSUE 3, SUBSECTION a:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to create appropriately crafted goals in all areas of need, specifically,

- reading/blending sounds,
- addition,
- subtraction,
- sequencing numbers,
- behavior,

- vocation,
- adaptive-daily living skills,
- typing,
- speech, and
- self-help for toileting and
- snacks.

Corona-Norco prevailed on Issue 3(a).

ISSUE 3, SUBSECTION b:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to obtain accurate baseline data on proposed goals in math, reading, writing, and following directions.

Corona-Norco prevailed on Issue 3(b).

ISSUE 3, SUBSECTION c:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to propose a functional behavior assessment.

Corona-Norco prevailed on Issue 3(c).

(THIS SPACE INTENTIONALLY LEFT BLANK. TEXT BEGINS ON FOLLOWING PAGE.)

ISSUE 3, SUBSECTION d:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to consider a behavior intervention plan.

Corona-Norco prevailed on Issue 3(d).

ISSUE 3, SUBSECTION e:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to offer a fading plan for aide support.

Corona-Norco prevailed on Issue 3(e).

ISSUE 3, SUBSECTION f:

Corona-Norco denied Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by removing specialized vision services.

Corona-Norco prevailed on Issue 3(f).

(THIS SPACE INTENTIONALLY LEFT BLANK. TEXT BEGINS ON FOLLOWING PAGE.)

ISSUE 3, SUBSECTION g:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to include a nonpublic agency provider for intensive individual services.

Corona-Norco prevailed on Issue 3(g).

ISSUE 3, SUBSECTION h:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to include the nonpublic agency provider for specialized vision services.

Corona-Norco prevailed on Issue 3(h).

ISSUE 3, SUBSECTION i:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to offer appropriate speech and language and occupational therapy services for the 2023 extended school year.

Corona-Norco prevailed on Issue 3(i).

(THIS SPACE INTENTIONALLY LEFT BLANK. TEXT BEGINS ON FOLLOWING PAGE.)

ISSUE 3, SUBSECTION j:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to appropriately address and document the percentage of time Student would spend outside of general education.

Corona-Norco prevailed on Issue 3(j).

ISSUE 3, SUBSECTION k:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to offer a board-certified behavior analyst from a nonpublic agency for supervision of the individual behavior services aide.

Corona-Norco prevailed on Issue 3(k).

ISSUE 3, SUBSECTION l:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to offer increase speech services as recommended by Student's private speech and language pathologist.

Corona-Norco prevailed on Issue 3(l).

ISSUE 3, SUBSECTION m:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to offer individual speech and language services to address an articulation goal.

Corona-Norco prevailed on Issue 3(m).

ISSUE 3, SUBSECTION n:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to accurately list assistive technology devices and services as discussed during the IEP team meeting.

Corona-Norco prevailed on Issue 3(n).

ISSUE 3, SUBSECTION o:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by documenting the backpack accommodation incorrectly and not consistently with the physical therapist's recommendation made at the meeting.

Corona-Norco prevailed on issue 3(o).

ISSUE 3, SUBSECTION p:

Corona-Norco did not deny Student a FAPE by failing to offer Student an appropriate IEP and services at the September 28, 2022 IEP team meeting by failing to maintain IEP team meeting notes that accurately reflected the meeting discussions.

Corona-Norco prevailed on Issue 3(p).

ISSUE 4, SUBSECTION a:

Corona-Norco did not deny Student a FAPE at the September 28, 2022 IEP team meeting, by significantly impeding Parents' ability to participate in the decision-making process regarding the development of Student's IEP, by failing to discuss accommodations and modifications for district benchmark tests.

Corona-Norco prevailed on Issue 4(a).

ISSUE 4, SUBSECTION b.

Corona-Norco did not deny Student a FAPE at the September 28, 2022 IEP team meeting, by significantly impeding Parents' ability to participate in the decision-making process regarding the development of Student's IEP, by failing to discuss transportation and necessary accommodations for transportation.

Corona-Norco prevailed on Issue 4(b).

ISSUE 4, SUBSECTION c:

Corona-Norco did not deny Student a FAPE at the September 28, 2022 IEP team meeting, by significantly impeding Parents' ability to participate in the decision-making process regarding the development of Student's IEP, by failing to discuss extended school year, including any changes to extended school year services.

Corona-Norco prevailed on Issue 4(c).

ISSUE 4, SUBSECTION d:

Corona-Norco did not deny Student a FAPE at the September 28, 2022 IEP team meeting, by significantly impeding Parents' ability to participate in the decision-making process regarding the development of Student's IEP, by failing to discuss accommodations requested by Student's private speech and language pathologist and private occupational therapist.

Corona-Norco prevailed on Issue 4(d).

ISSUE 4, SUBSECTION e:

Corona-Norco did not deny Student a FAPE at the September 28, 2022 IEP team meeting, by significantly impeding Parents' ability to participate in the decision-making process regarding the development of Student's IEP, by failing to discuss accommodations from Parents' input letter.

Corona-Norco prevailed on Issue 4(e).

ISSUE 4, SUBSECTION f:

Corona-Norco did not deny Student a FAPE at the September 28, 2022 IEP team meeting, by significantly impeding Parents' ability to participate in the decision-making process regarding the development of Student's IEP, by removing the accommodation for 20-point font without discussion.

Corona-Norco prevailed on Issue 4(f).

ISSUE 4, SUBSECTION g:

Corona-Norco did not deny Student a FAPE at the September 28, 2022 IEP team meeting, by significantly impeding Parents' ability to participate in the decision-making process regarding the development of Student's IEP, by rewording the accommodation regarding reducing visual information without discussion.

Corona-Norco prevailed on Issue 4(g).

ISSUE 4, SUBSECTION h:

Corona-Norco did not deny Student a FAPE at the September 28, 2022 IEP team meeting, by significantly impeding Parents' ability to participate in the decision-making process regarding the development of Student's IEP, by failing to provide Parents with final reports for physical therapy, augmentative and alternative communication, and special circumstances instructional assistance.

Corona-Norco prevailed on Issue 4(h).

REMEDIES

Student prevailed on Issues 1(b) and 3(f) regarding failure to materially implement specialized vision services offered in the May 4, 2021 IEP and not offering vision services in Student's September 28, 2022 IEP without first having assessed Student to determine his needs in this area. Student did not put on evidence of his need for vision services leading up to either the May 4, 2021 or September 28, 2022 IEPs. Student's last vision therapy assessment occurred sometime prior to the May 4, 2021 stay-put IEP.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) A 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).) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Puyallup, supra*, 31 F.3d at pp. 1496-1497.)

An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524 citing *Puyallup*, *supra*, 31 F.3d at p. 1497.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid ex rel. Reid*, *supra*, 401 F.3d at p. 524.)

On the one hand, Parents could have collaborated with Corona-Norco regarding perceived program deficiencies in time to adjust Student's schedule. For example, Parents could have alerted Corona-Norco of the failure to have vision services listed on the related services schedule sent to them in August 2022, among other things. On the other hand, Corona-Norco had legal representation at the May 4, 2021 IEP team meeting, during the settlement process, and throughout the time period they planned for Student's enrollment in a district school for the 2022-2023 school year. How they could fail to have all components of Student's program in place before he began attending Norco Elementary remains a mystery.

IEP team meetings should be convened solely for the purpose of making educational decisions for the good of a child with exceptional needs. (Ed. Code, § 56341.1, subd. (h).) The purpose of the IDEA is to provide a cooperative process between parents and schools, and a central component of this collaboration is the IEP process. (*Shaffer*, *supra* at 546 U.S. 49, 53.) The parties are reminded to attend the IEP team meeting ordered in this Decision for the sole purpose of making educational decisions for the good of Student, through open collaboration.

Here, Parents contend that Student required vision therapy services to receive a FAPE. However, Student failed to present any evidence regarding his vision therapy needs. Student last received one or two vision therapy sessions as part of a settlement agreement arising from whether the May 4, 2021 IEP offered him a FAPE. He did not receive vision therapy while attending The Growing Place, which Corona-Norco funded as part of the same settlement agreement. Parents, at hearing, explained that they chose to use district settlement funding for other educational services apart from vision therapy.

Parents knew that Corona-Norco had not been providing Student with vision therapy after the 2022-2023 school year began. They did not bring the issue to Corona-Norco's attention until the September 28, 2022 IEP meeting. At that time, Corona-Norco committed to develop an independent services agreement for the vision therapy provider of Parents' choice. Corona-Norco contends did not do so as Parents disenrolled Student from the district that same day. However, it remained Corona-Norco's responsibility to offer Student a FAPE in a completed IEP. On October 28, 2022, Taylor reached out to Dumlao for identification of areas of agreement and disagreement and asked about scheduling another IEP date. Student filed his complaint with OAH that same day. By October 28, 2022, Corona-Norco should have provided Student with four additional vision services sessions.

Parents provided no input regarding Student's vision therapy needs during the September 28, 2022 IEP meeting. Since an award of compensatory education must be based upon individual needs and Student's individual vision therapy needs remained unknown even at the time of the hearing, a compensatory award cannot be fashioned.

Instead, it is equitable to order that Corona-Norco conduct an assessment regarding Student's functional vision to determine whether Student currently requires vision therapy and if so, the type, frequency, and duration of that therapy.

Corona-Norco is ordered to fund a vision assessment by an appropriately qualified optometrist. Corona-Norco is further ordered to fund the assessor's attendance at an IEP meeting, at their usual hourly rate for such meetings if not already included in the assessment cost, to review the vision assessment report at an IEP team meeting. Corona-Norco shall adhere to the 60-day statutory timeline for assessments, if Student cooperates by making themselves reasonably available for assessment.

If the vision assessor concludes that Student requires vision therapy, Corona-Norco shall provide Student with the eleven missed 45-minute vision therapy sessions as compensatory education, in addition to considering the inclusion of vision therapy within the September 28, 2022 offer of FAPE, any amendments thereto, or Student's next annual IEP, whichever occurs at or near the time of the assessment review. Corona-Norco shall consider whether the assessor recommends provision of vision therapy or other vision service to address Student's educational needs in the type, frequency, and duration recommended.

ORDER

1. Corona-Norco shall conduct a vision assessment by a qualified optometrist in compliance with all statutory and regulatory requirements, beginning with sending Parents an assessment plan within 15-days of the date of this Decision.

2. As compensatory education, Corona-Norco shall contract with a nonpublic agency to provide 495 minutes of vision services, the equivalent of 11 sessions of 45 minutes of vision services that Corona-Norco failed to provide while Student attended Norco Elementary and before Student filed his complaint. Corona-Norco shall initiate a contract for such services within 30 days of the IEP team meeting to review assessment results.

3. All Student's other requests for relief are 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.

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings