

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020060992

PARENT ON BEHALF OF STUDENT,

v.

BASS LAKE JOINT UNION ELEMENTARY SCHOOL DISTRICT.

AMENDED DECISION

DECEMBER 23, 2020

On June 29, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Bass Lake Joint Union Elementary School District. Bass Lake Joint Union Elementary School District is called Bass Lake. OAH continued the matter on August 12, 2020. Administrative Law Judith L. Pasewark heard this matter by videoconference on October 20, 21, 22, 28, 29, and November 5, 2020.

Daniel Shaw and Melissa Cummins, Attorneys at Law, represented Student. Parent attended each day on behalf of Student. Student did not attend the hearing.

Karen Gilyard and Ashley Turner, Attorneys at Law, represented Bass Lake. Diane Hagood, Special Education Director, attended each day on behalf of Bass Lake.

At the parties' request, the matter was continued to November 30, 2020, for written closing brief. The record closed and the matter was submitted on December 1, 2020.

ISSUES

The October 12, 2020 Order Following Prehearing Conference determined the time frame for Student's issues as the 2019-2020 school year, through June 29, 2020, including extended school year, based upon the parties' discussion and agreement with the ALJ. At hearing, the parties offered significant testimony and evidence beyond the predetermined date contained in the Order Following Prehearing Conference without objection. The ALJ considered this extended evidence only as it was relevant to the issues as defined by the parties at the prehearing conference. The ALJ did not broaden the scope of the agreed upon issues or Bass Lake's defenses beyond the 2019-2020 school year and extended school year.

1. Did Bass Lake deny Student a free appropriate public education, called FAPE, during the 2019-2020 school year, through June 29, 2020, including extended school year, by failing to make a clear offer of FAPE?
2. Did Bass Lake deny Student FAPE during the 2019-2020 school year, through June 29, 2020, including extended school year, by failing to offer goals in all areas of need?

3. Did Bass Lake deny Student FAPE during the 2019-2020 school year, through June 29, 2020, including extended school year, by failing to offer or provide adequate specialized academic instruction?
4. Did Bass Lake deny Student FAPE during the 2019-2020 school year, through June 29, 2020, including extended school year, by failing to offer or provide adequate vision services?
5. Did Bass Lake deny Student FAPE during the 2019-2020 school year, through June 29, 2020, including extended school year, by failing to provide deaf and hard of hearing services?
6. Did Bass Lake deny Student FAPE during the 2019-2020 school year, through June 29, 2020, including extended school year, by failing to offer or provide adequate physical therapy services?
7. Did Bass Lake deny Student FAPE during the 2019-2020 school year, through June 29, 2020, including extended school year, by failing to offer or provide adequate speech and language services?
8. Did Bass Lake deny Student FAPE during the 2019-2020 school year, through June 29, 2020, including extended school year, by failing to offer or provide required assistive technology?
9. Did Bass Lake deny Student FAPE during the 2019-2020 school year, through June 29, 2020, including extended school year by failing to offer or provide adequate extended school year services?
10. Did Bass Lake deny Student FAPE during the 2019-2020 school year, through June 29, 2020, including extended school year, by failing to offer or provide adequate nursing services?

11. Did Bass Lake deny Student FAPE during the 2019-2020 school year, through June 29, 2020, including extended school year, by failing to implement Student's individualized education program, called an IEP?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) 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).) Student requested this hearing, therefore Student bears the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was four years old and resided with her parents within the boundaries of Bass Lake. Student qualified for special education and related services under the classification of other health impairment due to multiple and complex low incident disabilities which rendered her medically fragile. Due to her compromised immune system, Student could not be educated in a school setting.

Bass Lake initially offered Student home-hospital placement for 60 minutes per week with corresponding home nursing services. However, the only available program for Student was 50 miles from Student's home. Student required medical ambulance transportation. On October 7, 2019, Student's IEP team amended Student's placement to four hours per day of home instruction by a special education teacher, with accompanying home nursing services.

Parents and Bass Lake resolved a previous due process complaint with a settlement agreement on November 13, 2019. The November 13, 2019 settlement agreement authorized completion of several independent educational evaluations to be completed in early 2020, each of which will be discussed below.

ISSUE 1: DID BASS LAKE DENY STUDENT FAPE DURING THE 2019-2020 SCHOOL YEAR, THROUGH JUNE 29, 2020, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO MAKE A CLEAR OFFER OF FAPE?

Student contends she was never provided a clear offer of FAPE in any of the IEPs offered by Bass Lake, because the IEP team did not fully develop significant parts of Student's goals and services during the IEP team meetings. Several of Student's goals and services were independently created later outside of the IEP team meeting, without parental participation.

Bass Lake contends the March 13, 2020 and April 15, 2020 IEPs contained minor typographical errors due to glitches with the computer system used to memorialize Student's IEP. Further, if the IEPs contained a procedural error, it did not rise to the level of a denial of FAPE.

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

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the*

Hendrick Hudson Central School Dist. v. Rowley (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

California Education Code section 56345 provides a statutory framework for the IEP. An IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum, and a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet 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; Ed. Code, § 56345, subd. (a)(1) & (2).) An IEP must include a description of how progress towards the goals developed will be measured and reported. (Ed Code, § 56345, subd. (a)(3).

A student's IEP is a formal written offer [that] creates a clear record that will do much to eliminate troublesome factual disputes...about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any." (*Union School District v. Smith*, (9th Cir. 1994) 15 F.3d 1519, 1526.) The requirement of a formal written offer should be enforced rigorously to provide parents the opportunity to accept or reject the placement offer. (*Union, supra* 15. 3d 1419 at p. 1526.) The IEP must specify the anticipated frequency, location, and duration of educational services. (20 U.S.C. § 1414(d)(1)(A)(i)(VII).)

Special education law places a premium on parental participation in the IEP process. School districts must guarantee that parents have the opportunity "to participate in meetings with respect to the identification, evaluation, and educational

placement of the child, and the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(1).) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904].)

Parental participation in the IEP process is also considered “(A)mong the most important procedural safeguards.” (*Amanda J. v. Clark County School* (9th Cir. 2001) 267 F.3d 877, 882.) An educational agency must therefore permit a child’s parents “meaningful participation” in the IEP process. (*Ms. S. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, 1131-1132.) The standard for “meaningful participation” is an adequate opportunity to participate in the development of the IEP. Although a student’s parents have a right to meaningful participation in the development of an IEP, a district “has no obligation to grant [a parent] a veto power over any individual IEP provision.” (*Ibid.*) 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 regarding 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; *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036.) Merely because the IEP team does not adopt the placement, services, or goals advanced by parents, does not mean that the parents have not had an adequate opportunity to participate in the IEP process. (*B.B. v. Hawaii Dept. of Educ.* (D. Hawaii 2006) 483 F.Supp.2d 1042, 1051.)

NOVEMBER 14, 2019 IEP AMENDMENT

On November 14, 2019, Bass Lake prepared a non-meeting IEP which amended the placement and services contained in Student’s June 4, 2019 IEP in accordance with

the terms of the November 13, 2019 settlement agreement. Student and her attorney consented to this amendment. This was the last IEP to which Parent consented.

The November 14, 2019 IEP amendment modified placement and services as follows:

1. 20 hours of individual functional instruction per week.
2. 30 minutes, twice per week of individual occupational therapy.
3. 30 minutes, twice per week of individual physical therapy.
4. 30 minutes, twice per week of individual speech and language therapy.
5. Four hours per school day of individual nursing services to be provided by a licensed vocational nurse or registered nurse under contract with Bass Lake; and
6. Two, 15-minutes per month consultations with Madera County deaf and hard of hearing services.

All remaining terms of the June 4, 2019 IEP, including goals, and accommodations, remained unchanged. Neither party presented evidence to suggest terms of the November 14, 2019 IEP amendment required modification or reconsideration prior to the completion of the independent educational evaluations completed in January and February 2020. Therefore, the terms of the November 14, 2019 IEP remained valid as to both parties, on all issues, except implementation, until the subsequent IEP team meeting on March 13, 2020.

MARCH 13, 2020 IEP

Diane Hagood, Bass Lake's special education coordinator, played an important part in Student's special education program. Ms. Hagood held a bachelor's degree in psychology, and master's degrees in special education and educational psychology. She

held a multiple subject credential, learning handicapped specialist credential, severely handicapped specialist credential, resource specialist certificate of competence, and administrative services credential. Ms. Hagood has been involved with special education at various levels since 1976.

Ms. Hagood managed Student's special education program, obtained related services and prepared the IEPs. At hearing, Ms. Hagood's testimony often seemed scattered, and at times, she expressed exhaustion and frustration with the difficulties in obtaining services for Student

The IEP team met on March 13, 2020 to review independent assessment reports discussed at length later in this Decision. The copy of the March 13, 2020 IEP amendment given to Student clearly indicated its draft status.

The IEP contained one revised goal for communication which required Student to indicate choice when two objects were presented to her in eight-out-of-10 trials as charted and measured by the teacher. The revised goal merely removed the reference to a level-one prompt from the original June 4, 2019 goal.

The IEP team added five program accommodations to address Student's cortical visual impairment. The IEP document contained no other modifications. The notes of the IEP team meeting were not part of this document. Parent signed the attendance sheet but did not provide written consent to the IEP amendment.

Ms. Hagood could not explain why Bass Lake only provided Parent an incomplete draft of the March 13, 2020 IEP document. The IEP notes were not included, and she could not explain the omissions.

APRIL 15, 2020 IEP

Parent's copy of the April 15, 2020 IEP amendment document differed from a final copy presented to her on June 5, 2020. The IEP document contained many errors. As example, although the IEP team reconvened on April 15, 2020, the IEP document reflected the March 15, 2020 IEP date. The IEP document marked the box for annual IEP, however, the April 15, 2020 IEP team meeting was not intended as Student's annual IEP. Bass Lake held the April 15, 2020 IEP team meeting to review the remaining independent educational evaluations. The basic statistical information required on IEPs as well as Student's present levels remained the same as reported in the June 4, 2019 IEP as amended. The April 14, 2020 IEP document also contained the notes from each IEP team meeting between October 7, 2019 and April 15, 2020, suggesting a continuation of the June 4, 2019 IEP amendments. Conversely, most of the services offered in the April 15, 2020 IEP contained revised start dates which ended on or after March 15, 2021, indicative of a new annual IEP.

Other inconsistencies and omissions plagued the April 15, 2020 IEP. The contents of the April 15, 2020 IEP document presented to Parent on June 5, 2020, contained expanded goals and services not discussed at either of the IEP team meetings.

INDEPENDENT ASSESSMENTS AND OFFER OF GOALS AND SERVICES

Federal and state law requires that an IEP team must consider certain information, including the results of the initial or most recent evaluation of the child. (20 U.S.C. § 1414(d)(3)(A)(iii); 34 C.F.R. § 300.324(a)(1)(iii) (2006); Ed. Code, § 56341.1, subd. (a)(3).)

If a parent obtains an independent assessment at public expense, or shares with the school district an evaluation obtained at private expense, the results of the evaluation must be considered by the school district. This procedure requires an educational agency to “consider” outside assessments of a child; it does not mandate that the agency incorporate recommendations from the assessments when developing an IEP. (*K.E. v. Independent School Dist. No. 15* (8th Cir. 2011) 647 F.3d 795, 805-806; *G.D. v. Westmoreland* (1st Cir. 1991) 930 F.2d 942, 947.) (34 C.F.R. § 300.502(c); Ed. Code §§ 56341, subd. (b)(1) and 56381, subd. (b).)

INDEPENDENT PHYSICAL THERAPY ASSESSMENT

Pamela Taylor conducted an independent physical therapy assessment of Student. Ms. Taylor was a licensed physical therapist and operated a private pediatric physical therapy practice in Elk Grove, California. She held a bachelor’s degree in human biology and a master’s degree in physical therapy. Upon completion of her evaluation, Ms. Taylor prepared a written report dated January 11, 2020.

Student did not receive physical therapy services. In February 2019, Student’s doctor referred her to Valley Children’s Hospital for medically related physical therapy, however her physical therapy evaluation was not completed.

Bass Lake did not challenge the assessment tools utilized by Ms. Taylor or Student’s scores. Ms. Taylor concluded Student presented with severe hypotonia, hypermobile range of motion, decreased strength, poor head control, poor postural control, decreased mobility, poor balance, significant gross motor delay, and an inability to access her educational environment. Ms. Taylor strongly recommended physical therapy intervention to facilitate Student’s head and postural control and mobility with the goal of helping her to better access and attend to her educational curriculum.

To access her education, Student needed specialized equipment, fitted to her. Ms. Taylor recommended specific adaptive equipment. Student required ankle foot orthoses for all upright and weightbearing activities. A physical therapist was needed to monitor the fit and function of the orthoses, evaluate them in weight bearing, and train the other members of Student's support team on how to apply them and monitor for skin breakdown.

Student required access to a variety of therapy equipment to facilitate her development of core strength, head and trunk control, and to facilitate transitions between and the ability to maintain developmental postures. Ms. Taylor recommended therapy balls to facilitate the development of gross motor skills, postural stability and bilateral coordination. She recommended positioning bolsters and wedges to facilitate developmental positions and postural stability, develop core strength and sitting balance. She suggested a therapy grade floor mat to provide a safe and firm surface for development of Student's mobility.

Student spent most of her time in a supine position, which led to the deterioration of her abdominal muscles and diaphragm, which in turn, further compromised her respiratory system. Student required an appropriate seating system. Ms. Taylor suggested 15 items.

A Rifton activity chair would provide Student a functional sitting position. Student could use and develop her own core muscles and improve her postural motor skills and the teacher could reduce accessory support over time. A P-Pod postural support system or molded position pod incorporated into a bean bag based would help Student develop and maintain proper postural alignment while seated. A device known

as a NESSIE would facilitate physical development by encouraging key postural movements, such as tummy time, sitting, side sitting and side lying.

Student needed a pediatric wheelchair to access her educational environment. Ms. Taylor recommended a formal wheelchair assessment to find the wheelchair that would best suit Student's needs. The wheelchair needed to have all-terrain capacity due to Student's rural location and unpaved road and driveway. Likewise, Ms. Taylor recommended an all-terrain jogging stroller as essential for Student to access her outside environment for recreational and leisure activities associated with her educational curriculum.

Ms. Taylor noted Student was outgrowing her adaptive car seat and needed a way to be transported in her wheelchair using braces, security brackets and access ramps. Ms. Taylor found Student would benefit from being positioned in an upright position. An upright position would improve Student's respiratory function, bowel and bladder function, cognition, as well as her levels of alertness and attention for attending to her educational curriculum. She recommended a stander to promote upright posture with good weight bearing through Student's lower extremities to improve her trunk strength.

Student required a lift system as she was approaching the weight limit for safely lifting a child. Ms. Taylor recommended that a sling lift be provided to assist Student's caregivers, therapists and teachers in lifting and moving Student.

Ms. Taylor recommended a creepster crawler, which was a mobility assistive device beneficial in developing the ability to roll over or belly crawl for children who do not have adequate head control. Student outgrew her doorway jumper. Ms. Taylor recommended A KidWalk Dynamic Mobility System which would allow Student to

maintain an upright weight bearing position and facilitate reciprocal movement of her lower extremities. Lastly, Ms. Taylor recommended a Trexo Home with Rifton Dynamic Pacer Gait Trainer to facilitate independent upright mobility. Student needed to be assessed to determine if she was an appropriate candidate for this equipment. If so, a customized unit would be built for her.

Ms. Taylor recommended further assessments. She recommended a vision therapy assessment to determine if vision therapy would be an appropriate non-surgical treatment for Student's vision problems which interfered with her learning and educational instruction. She also recommended a feeding therapy assessment to determine if Student would benefit from feeding therapy to decrease the risk of silent aspirations which might contribute to her respiratory difficulties.

Ms. Taylor recommended six physical therapy goals intended to improve Student's motor functions, muscle functions, postural stability and control, head control and upright mobility. The goals specifically included use of the Creepster Crawler, KidWalk, and Trexo Home equipment. To support the six goals, Ms. Taylor recommended two, 60-minute individual physical therapy sessions per week, during both the regular and extended school year. Additionally, she recommended 60 minutes per month to allow for consultation, collaboration and co-treatments with the members of Student's educational team.

On April 15, 2020, Ms. Taylor presented her physical therapy assessment report to the IEP team. She recalled that the IEP team indicated they agreed with her recommendations and proposed goals. The IEP team however, failed to discuss the wording of the goals and failed to develop Student's baselines to measure Student's progress on those proposed goals. As a result, on April 15, 2020, the IEP document did

not contain physical therapy goals. Ms. Hagood crafted the goals after the IEP team meeting, without further input from Ms. Taylor or the IEP team. The IEP document adopted only three of the six proposed physical therapy goals without any discussion with the IEP team.

On April 15, 2020, the IEP team expressed their agreement with Ms. Taylor's recommendation of 120 minutes per week of physical therapy services but failed to include physical therapy services in the IEP during the IEP team meeting. The April 15, 2020 IEP document presented to Parent offered only 60 minutes per week of physical therapy services instead of the recommended 120 minutes. Ms. Hagood described the discrepancy in the amount of physical therapy services as a mistake. The IEP team intended to provide 120 minutes of services. This error was not corrected.

Ms. Taylor expressed concern that the IEP team failed to identify the recommended equipment to be used during Student's school day. Ms. Taylor explained to the IEP team that much of this equipment was essential to Student's physical and educational progress. As example, Student required an appropriate seating system, such as a Rifton activity chair to provide her a functional sitting position. Student needed a device known as a NESSIE for physical therapy to facilitate her physical development by encouraging key postural movements, such as tummy time, sitting, side sitting and side lying. By failing to identify the equipment to be utilized, there was no way for Parent to determine which items Bass Lake intended to provide, nor was there any specific obligation for Bass Lake to provide any equipment at all.

INDEPENDENT FUNCTIONAL VISION ASSESSMENT AND OFFER OF VISION THERAPY GOALS AND SERVICES

Sonja Biggs conducted an independent assessment in the areas of functional vision, and orientation and mobility. Dr. Biggs held a master's degree in school counseling and guidance, and a Ph.D. in education. She held a multiple subject teaching credential and was certified as an education specialist in visual impairments. She was also certified as a rehabilitation specialist for orientation and mobility. She is currently a teacher of the visually impaired, and orientation and mobility specialist working under contracts with San Benito County Office of Education and several school districts. As a teacher of the visually impaired, Dr. Biggs specialized in assessing children with visual impairments with additional disabilities including neurological impairment, cerebral palsy, non-verbal, deaf-blindness and other challenges. Dr. Biggs provided an extensive resume recounting significant experience and training, and she presented as a highly credible and informative witness. Dr. Biggs conducted her assessments on January 29 and 30, 2020.

Based upon medical records from Valley Children's Health Care, dated January 24, 2020, Student was diagnosed with visual challenges. Medical records indicated further testing needed to be done under anesthesia. Student presented with strabismus, which is a disorder in which the two eyes do not line up in the same direction. Student displayed extropia which was a form of strabismus where the eyes are deviated outward.

Student vision was hypermetropic. She had glasses to address this farsightedness. Student exhibited mild optic nerve head pallor which resulted from

damage to the optic nerve. This resulted in a degeneration or destruction of the optic nerve in the back of the head.

To determine the extent of Student's cortical visual impairment, Dr. Biggs utilized the Cortical Visual Impairment Range Schedule. Based upon Student's responses, she had not resolved many of the characteristics which affect a student with cortical visual impairment, however important information was obtained from this assessment.

Student responded well to yellow and red colors. She was very attentive to a shiny metallic yellow pom-pom with a light shining on it. She also responded to a red dog puppet.

Student displayed difficulty with visual complexity of the service of an object, the viewing array and her sensory environment. If an object was highly patterned, Student tended to avoid them. She participated in activities where materials were simple and had no more than one or two objects present or no more than one to two words to a page. Student looked a picture while being read to and would attempt to reach for objects. Correspondingly, Student displayed difficulty discerning items on a patterned background, in pictures with highly detailed background or pictures of multiple faces. When presented with adapted pictures which were simplified on non-patterned backgrounds, Student looked at and pointed to the objects or images. Dr. Biggs recommended Student have a clutter-free, dark-colored work surface to reduce complexity of array when doing activities where looking is the desired function. Using yellow paper would help Student to be able to look and eventually use a guided reach.

Dr. Biggs found Student's ability to use her vision to be highly dependent upon the degree of visual and auditory distraction in her workspace. She recommended that

activities requiring Student to visually engage for learning be done in a room without visual or audio distractions.

Student showed a possible field loss on her left visual field. She was more visually attentive to objects held at midline in front of her eyes. Further, Student's distance viewing was limited. Dr. Biggs recommended objects be presented to Student between four-to-12 inches from her eyes at midline, increasing the distance over time.

Children with cortical visual impairment spend prolonged periods of time gazing at their primary light source. Dr. Biggs recommended keeping the room dark and using a flashlight to highlight visual targets to draw Student to what she needed to visually focus on during lessons. Student best reacted to visual targets that moved or had reflective surfaces. Student would notice things more if there was a component of movement involved in the visual target.

Dr. Biggs observed that Student utilized reach occasionally, where she would look at an object, and at the same time reach for it. Student exhibited latency, which was a delayed response between the time a target was presented, and the time Student first noticed it. This affected her independent guide reach. Dr. Biggs recommended Student be given more time to allow her to reach for visual objects on her own without physical assistance when given challenging materials or when she was fatigued or overstimulated.

Dr. Biggs opined that the prognosis for Student's cortical visual impairment condition might improve over time with appropriate intervention. Cortical visual impairment could fluctuate daily depending on lighting, visual or auditory clutter, sleep or medication. Student's extropia or optic nerve pallor would not resolve, nor would other issues associated with visual acuity and visual field loss, due to optic nerve issues

and atrophy. Additionally, Student's cortical visual impairment interrelated with her other impairments. Student's challenges with fine and gross motor skills made it difficult for her to be independently mobile or participate in activities related to written communication. Student's decreased vestibular and proprioception affected her ability to move fluidly, understand where she was in space, and balance herself. Student's speech and language deficits affected her ability to communicate effectively. Student's need for constant oxygen and feeding tubes affected her mobility.

The goal for children with cortical visual impairment is to facilitate looking, not merely expose them to visual stimuli. According to Dr. Biggs, most children with cortical visual impairment do not benefit from typical unadapted environments. They require specialized and controlled sensory inputs to visually attend. The overall goal of cortical visual impairment intervention was to help Student move through visual phases. Dr. Biggs recommended that Student's visual characteristics be mapped out on a form known as a Cortical Visual Impairment Resolution Chart to help monitor her progress over time. The IEP team could then use the information to set goals and craft a program of interventions based on Student's individual needs.

Dr. Biggs determined Student could maintain both eyes on a specific visual target, but, as previously determined, visual and audio clutter hindered her ability to fixate. Student had difficulty tracing to the left and could not track diagonally or circularly, but she could track to the right and up and down. Student displayed difficulty with focal shift, shifting her gaze from one object to another. Student could not communicate to identify color, but was attracted to yellow and red. Student exhibited severe challenges with motor skills but was able to perform a visually guided reach. Although her responses were latent, when given time, Student could do a purpose reach.

Sensory modality assessments indicated Student most efficiently utilized her auditory system. Her secondary sensory modality was visual, and third was tactual. Braille was not appropriate for Student. Rather, Dr. Biggs found Student to qualify as a large print user with materials adapted for cortical visual impairment. Large, colorful pictures with simple backgrounds and real objects were most appropriate for Student. Dr. Biggs suggested picture books with one sentence on a page that sequenced an event or activity that related to Student participating in that event, such as a toothbrushing routine book or a bath time book. This could also be done on an iPad using an app such as Pictello.

Student could not write but, Dr. Biggs observed Student grasping Parent's hand and fingers. She reported that working on grasping skills and visually guided reaching would be a first step towards writing.

Student did not understand numbers however number cards could be used in conjunction with number songs to introduce numbers. Student enjoyed music. Dr. Biggs recommended music be incorporated into Student's learning activities such as numbers and the alphabet.

Dr. Biggs strongly recommended the use of an iPad. She opined that the iPad was an incredible tool for all students, including those with cortical visual impairment. The iPad could be used to teach visual skills and to conduct vision assessments. She reported that amazingly accessible features were available to enhance Student's experience. In utilizing the iPad, a screen protector was recommended to reduce glare on the screen. Student needed to be sitting comfortably and not fatigued. Dr. Biggs recommended a program called The Stages Framework be utilized as a research-based approach to defining developmentally appropriate observable learner characteristics

and for recommending features to consider in computer software for learning, along with teaching strategies that matched and scaffolded Student's needs. Dr. Biggs considered Student a Stage One learner who was just beginning to focus visually on a target or listening to a prompt. At Stage One, Student should explore the access device with purposeful interaction and move from multiple, random access attempts toward device mastery, consistently using control site muscle in response to prompts for behavior.

Dr. Biggs found Student totally dependent on others for her care and existence. Student needed assistance dressing, bathing, toileting, breathing oxygen, and eating. Dr. Biggs opined that most multi-challenged children learn best using daily activity routines. A daily schedule of photographs and/or objects representing what was going to happen during her school time would benefit Student. It would allow her to associate a picture or object with an activity and allow her to develop an expectation of what was going to happen next.

Dr. Biggs presented her functional vision assessment report and recommendations to the IEP team. Justin Adams, the Madera County Office of Education vision specialist, attended both IEP team meetings. Neither the March 13 nor April 15, 2020 IEP documents reflected any IEP team discussions of vision services. The IEP team made no offer of vision services. The IEP notes merely reflected the IEP team would adopt Dr. Biggs' recommendations.

At hearing, Mr. Adams acknowledged he maintained a large caseload of students for the Madera County Department of Education. He had time constraints from the County and was unavailable to provide Student vision services twice a week as recommended by Dr. Biggs. The lengthy travel time to Student's remote residence also

hampered his ability to provide in-person services. The IEP team did not discuss the proposed vision therapy services or consider any impact of Mr. Adams' limited availability.

Instead, outside of the IEP team meeting, Ms. Hagood asked Mr. Adams what he thought would be an appropriate amount of vision services for Student. Mr. Adams recommended 40 minutes per month until he could determine what Student could do. The offer did not mean Student would only work on her vision goal once a month. Rather, the 40 minutes per month provided enough support to Parent and Ms. Harmelin to assist them in utilizing goal activities with Student daily. This explanation was not conveyed at the IEP team meetings. Additionally, the 40-minute offer of vision services clashed with Dr. Biggs' recommendation of two, 30-minute sessions with Student, twice per week.

When Dr. Biggs presented her assessment recommendations at the March 13, 2020 IEP team meeting, the IEP team expressed its intent to adopt her recommendations. The IEP team however failed to develop her recommendations into an offer of vision goals and services during the IEP team meeting. Instead, Ms. Hagood conferred with Mr. Adams and independently drafted the vision goal and services outside of the IEP team meeting. By acting independently from the IEP team, Ms. Hagood effectively prevented Parent from participating in the development of the vision services. Parent remained unable to question why the proposed vision services differed from Dr. Biggs' recommendation, and was prevented from requesting revisions to conform to Dr. Biggs' recommendations.

In presenting her assessment report to the IEP team, Dr. Biggs strongly recommended the use of an iPad for Student to teach visual skills. Procurement and use

of an iPad were not included in the IEP, nor were any goals or service added to the IEP to instruct Parent and service providers on how to effectively use the iPad with Student.

Dr. Biggs assessed Student in the area of orientation and mobility and presented her assessment report concurrently with her cortical visual impairment recommendations. She determined Student required a wheelchair for both mobility and academics. Prior to the IEP team meeting she emailed Ms. Hagood with two proposed goals for orientation and mobility. Goal One required Student to demonstrate her ability to purposefully identify hand, leg, fingers and head in eight-out-of-10 trials in a controlled environment for cortical visual impairment. Goal Two required Student to identify, using photo cards, which room of the house she was in from a field of two choices, such as kitchen, bedroom, bathroom, in eight-out-of-10 trials.

Dr. Biggs proposed 30 minutes per week of orientation and mobility services and 30 minutes per week of consultation. Although the IEP team agreed to adopt these recommendations, the IEP team failed to develop any orientation and mobility goals.

INDEPENDENT AUGMENTATIVE ALTERNATE COMMUNICATION ASSESSMENT GOALS AND OBJECTIVES

Kellie Henkel conducted an independent augmentative alternative communication assessment for Student, in January and February 2020. The AAC report was dated March 11, 2020. Ms. Henkel held both a bachelor's degree and master's degree in speech and language pathology. She was a licensed speech and language pathologist and held a certificate of clinical competence through the American Speech and Hearing Association. She was self-employed as a speech and language pathologist and advocate, and provided speech and language assessments, group and individualized speech therapy as well as AAC assessments to school districts in many

counties. She also acted as a per diem physical therapist for the Shriners Hospital for Children in Northern California where she provided highly specialized physical therapy services to children with congenital conditions and complex medical needs including orthopedic conditions, burns and spinal cord injuries.

Language and speech development and remediation services are considered related services in California. (Ed. Code, § 56363, subd. (b)(1).) Speech and language services are related services in California, and may include specialized instruction, services for individuals with disorders of language, speech, and consultative services to pupils, parents, or other school personnel. (Cal Code Regs., tit. 5 § 3051.1(a)(2),(3).

Ms. Henkel presented her AAC assessment report at the March 13, 2020 IEP team meeting. Student was primarily non-verbal with limited cognitive abilities. As an emerging communicator, Student did not display a reliable method of expressive communication through symbolic language. Although primarily non-verbal, Student could vocalize to gain attention, make sounds to express excitement, sadness, or displeasure. Ms. Henkel determined that without the use of AAC Student will have an extremely limited means of gaining attention without observation skills of her communication partners. Student required robust language scaffold to develop her cognition. If Student was never exposed to complex language, she could not learn communication skills. Ms. Henkel recommended Student receive two, 60-minute sessions per week of direct AAC intervention from the speech pathologist and AAC specialist, in addition to monthly consultation services with Student's other service providers and parents. Student's speech and language services could be implemented concurrently with other services. The focus of the therapy was to develop Student's communication system and teaching Student to use the AAC system, with auditory

scanning. This required consistent use of the AAC system and required significant Instruction and support for everyone who worked with Student.

Ms. Henkel recommended Student be provided with an Accent 1400 device with core scanner as her primary communication device. The IEP team indicated it would adopt Ms. Hinkel's recommendation of 120 minutes per week of speech service. March 13, 2020 IEP amendment failed to include a written determination of speech and language services. Although the IEP team agreed to adopt Ms. Taylor's recommendations for 120 minutes per week of physical therapy services, the April 15, 2020 IEP amendment offered only 60 minutes per week of speech and language service as offered in the November 14, 2019 IEP amendment.

OFFER OF EXTENDED SCHOOL YEAR SERVICES

Each IEP document indicated Student qualified for extended school year services but did not include a statement of what services were offered for the extended school year. Ms. Hagood added specialized academic instruction services to the April 15, 2020 IEP amendment after the IEP team meeting but did not provide Parent a copy of the revised IEP document until June 5, 2020.

Ms. Hagood explained that much of the confusion in the IEP documents was unintentional and resulted from her difficulty transferring Student's IEP information into Bass Lake's computer program. Computer software is commonly used to draft and store IEPs. The software, however, does not create the IEP, the IEP team does. While computer software was a tool utilized by Bass Lake, it did not replace the requirement to provide a cohesive and understandable IEP to parents pursuant to *Union*. Regardless of how the software generated or stored Student's IEP, the IEP when presented to Parent after each IEP team meeting needed to be complete. This did not happen. Bass Lake

provided Parent a series of draft IEP documents, and subsequently revised IEP amendments under the pretext of entering the IEP team information into the computer program after the IEP team meeting. Whether it was merely data entry errors or not, the final copy of the April 15, 2020 IEP document contained materially different information than the parties discussed at the IEP team meeting. Parents must be able to use the IEP to monitor and enforce the services that their child is to receive. (*M.C., by and through his guardian ad litem M.N. v. Antelope Valley Union High School District* (9th Cir. 2017) 858 F.3d 1189, 1198)(*Antelope Valley*.)

The purpose of the IEP team meeting was to collaboratively develop the student's education plan for the school year. To do so required meaningful parental participation in the IEP process. When the goals and services were not fully discussed at the IEP team meeting, Parent did not receive full disclosure of what parts of the assessments Bass Lake intended to adopt or a clear offer of what they intended to implement. Ms. Hagood's creation of the IEP goals and services after the IEP team meeting effectively neutralized Parent's meaningful involvement in the IEP process and prevented her from expressing her disagreement regarding services being offered and her ability to request revisions in the IEPs.

The confusion caused by inaccurate information compromised Parent's ability to understand of what special education services were offered to Student and what Bass Lake intended to implement. The information discussed at the IEP team meetings was not developed into a clear offer of FAPE during the IEP team meetings and constituted a procedural violation of the IDEA.

An IEP, like a contract may not be changed unilaterally. Bass Lake's procedural violations resulting from its failure to craft clear offers goals and services were

problematic. The cumulative effect the IEP team's failure to develop goals and services during the IEP team meetings, coupled with Ms. Hagood's independent crafting those of goals and services outside of the IEP team meeting resulted in a substantive denial of FAPE. Any unilateral amendment is a per se procedural violation of the IDEA because it violates the parent's right to participate at every step of the IEP drafting process. (*Id.* at p. 1197.)

Therefore, Bass Lake denied Student a FAPE by failing to make a clear offer of FAPE by failing to correct errors in the IEP document and materially altering the content of the IEP document outside of the IEP team meeting. This denial of FAPE intensified with Ms. Hagood's failure to provide Parent a complete copy of the combined March 13, and April 15, 2020 IEP amendments until June 5, 2020.

ISSUE 2: DID BASS LAKE DENY STUDENT FAPE DURING THE 2019-2020 SCHOOL YEAR, THROUGH JUNE 29, 2020, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER GOALS IN ALL AREAS OF NEED?

Student contends that Bass Lake failed to offer sufficient goals to meet Student's unique needs at the March 13, 2020 IEP team meeting and thereafter.

Bass Lake contends the November 14, 2019 amendment incorporated the goals contained in the June 4, 2019 annual IEP and included goals for communication and adaptive behavior/personal skills. The November 14, 2019 IEP represented the last IEP to which Parent consented. Further, Bass Lake contends each of Student's subsequent IEP's collectively offered Student goals to address her unique needs and were developed in all areas of need identified by independent assessors.

Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988).) An IEP must contain a statement of measurable to enable the child involved in and make progress in the general curriculum, and to meet each of the child's other educational needs that result from the child's disability. (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).)

The crux of Issue 2 is whether Bass Lake offered goals in the areas of Student's unique needs. The analysis of this issue is focused on whether the IEP team created goals which comported to those areas identified as significant areas of Student's unique needs. The appropriateness of the individual goals is discussed independently the subsequent issues contained in this decision

The November 14, 2019 IEP amendment added direct occupational therapy and direct speech and language services to Student's IEP. The parties did not craft any goals to be implemented for these new services. Instead, the parties agreed to obtain independent educational evaluations and/or update existing assessments.

Commencing with the March 13, 2020 IEP team meeting and continuing through the completion of the April 15, 2020 IEP amendment document, the IEP team reviewed the independent educational evaluations and modified Student's goals and services to comport with her unique needs. Bass Lake offered Student the following goals:

- Goal One, by April 14, 2021, Student will indicate choice when two objects are presented eight-out-of-10 times.

- Goal Two, by April 14, 2021, using a flashlight to spotlight red and yellow targets, large balls, familiar high contrast solid color toys, in an environment of dark or light colored solid background with reduced clutter and free from noise, Student will increase her visual fixation on objects by tracking a target presented in her mid-line viewing and moving to her far right, up and down, in four-out-of-five presentations.
- Goal Three, by April 14, 2021, Student will demonstrate motor function and postural stability and control, will hold a hook lying and bridge to assist with assist with toileting and dressing.
- Goal Four, by April 14, 2021, Student will demonstrate improved muscle function and motor control. Student will navigate herself around her academic environment utilizing sequential continuous rolling to access her educational environment.
- Goal Five, by April 14, 2021, Student will demonstrate her ability to purposefully reach to motor plan sequenced steps of activity. Student will develop head control and the postural control and dissociation of distal limb muscles from proximal support muscles to allow reaching.

Each of the goals comported to a significant identified need for Student. Goal One addressed Student's need to develop communication skills. Goal Two addressed cortical visual impairment and vision needs as recommended by Dr. Biggs. Goal Three addressed Student's need to improve her motor function and postural stability as identified by Ms. Henkel, Ms. Taylor, and Dr. Biggs. Goal Four addressed Student's muscle function and motor control. Goal Five addressed Student's need to develop sequential motor planning as reported by Ms. Taylor.

Both Parent and Bass Lake identified occupational therapy as an area of need for Student as evidenced by the inclusion of occupational therapy services in the November 14, 2019 IEP amendment. At that time, the IEP team failed to develop any occupational therapy goals for Student. The parties agreed to obtain an independent occupational therapy assessment from Dr. John Goodfellow. Bass Lake anticipated receipt of the Dr. Goodfellow's assessment report for the April 15, 2020 IEP team meeting, to consider development of occupational therapy goals. Dr. Goodfellow however, did not conduct his assessment until June 6, 2020, and did not present his report until the September 8, 2020 IEP team meeting. As such, there was insufficient information available to the IEP team regarding Student's occupational therapy needs prior to the end of the 2019-2020 extended school year.

ORIENTATION AND MOBILITY GOAL

Dr. Biggs performed an orientation and mobility assessment. Orientation and mobility are the set of skills that enable a person with impaired vision to travel independently and safely within their environment. For Student this included development of basic spatial and geographic concepts, as well as movement development and sensory awareness.

Student cannot not travel independently and did not have a wheelchair. She does not have awareness of her body nor does she have an understating of self. Dr. Biggs described Student's skills for spatial awareness as just emerging. She was working towards a purposeful reach. Student cannot not communicate except by making happy or unhappy sounds. She has no receptive communication skills.

Dr. Biggs recommended Student receive direct and consultation services from an orientation and mobility specialist working together with a physical therapist and

occupational therapist to develop fine and gross motor skills. Student needed to learn body awareness and awareness of other's bodies in relationship to hers. Student needed to learn about her home environment and where things were in her home. Student needed to be exposed to different routes in her home, such as the route to the kitchen, route to the bathroom, route to the door.

Based upon the entirety of her assessments Dr. Biggs described the educational implications which were likely to result from Student's visual impairment:

- Too much visual or audio stimulation would affect how well Student could process information.
- Student would miss environmental clues which would help her understand what was happening around her and would have difficulty recognizing new faces and processing information from a distance.
- Student could not see print smaller than 42 point in a simple bold font.
- Glare from windows or the sun affected how well Student could see.
- Low contrast materials were difficult for Student to see. Colors needed to be bright and bold, using yellow and red.
- Student required a caretaker with her at all time, however, she should be taught to make choices about what is happening to her and learn orientation and mobility skills and daily living skills for as much independence as possible.
- Student required extended time in responding to questions and requests.
- Student required frequent breaks due to fatigue with visual tasks.
- Student required alternate intense visual activities with movement and music, or some sensory diet activities provided by an occupational therapist.

Dr. Biggs made 20 recommendations which repeated her findings and suggestions identified in her report.

On January 30, 2020 Dr. Biggs emailed Ms. Hagood suggested orientation and mobility goals. Goal One required Student to demonstrate her ability to purposefully identify hand, leg, fingers and head in eight-out-of-10 trials in a controlled environment for cortical visual impairment. Goal Two required Student to identify, using photo cards, which room of the house she was in from a field of two choices, such as kitchen, bedroom, bathroom, in eight-out-of-10 trials.

Bass Lake failed to offer goals in the area of orientation and mobility. Dr. Biggs determined Student had severe needs for development of basic spatial and geographic concepts, as well as movement development and sensory awareness and recommended Student receive direct and consultation services from an orientation and mobility specialist working together with a physical therapist and occupational therapist to develop fine and gross motor skills. She suggested goals be created to increase body awareness and environment awareness. The IEP team indicated it would adopt the recommendations of the orientation and mobility assessment report, but the IEP team failed to create any corresponding goals or services. Dr. Biggs reported that the orientation and mobility services could be presented in conjunction with physical therapy and occupational therapy services, but no occupational therapy goals were offered, and the physical therapy goals did not reference or corollate with Student's need to develop spacial or body awareness. Student presented with acute needs in the area of orientation and mobility. Bass Lake's omission of goals and services, even consultative in nature, denied Student educational benefit by ignoring her orientation and mobility needs which prevented access to her educational environment. As such,

Bass Lake's failure to develop an orientation and mobility goal to address body and environmental awareness, constituted a denial of FAPE.

ISSUE 3: DID BASS LAKE DENY STUDENT FAPE DURING THE 2019-2020 SCHOOL YEAR, THROUGH JUNE 29, 2020, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER OR PROVIDE ADEQUATE SPECIALIZED ACADEMIC INSTRUCTION?

In his closing brief, Student's counsel indicated he did not dispute the amount of specialized functional academic instruction offered to Student, but rather disputed whether the instructional hours provided to Student were adequate. Student contends Student received little benefit from the scant instructional hours provided because the teacher:

1. was never supplied with the equipment she required for postural support;
2. never received training in working with a child with cortical visual impairment or in using an AAC device for a child with cortical visual impairment;
3. never received training on the appropriate ways to physically support Student so she was alert and available for learning; and
4. did not engage with or speak to Student, plus and Student was asleep for most of the instructional time.

Bass Lake contends Parent consented to the November 13, 2019 IEP amendment which offered Student up to 20 hours per week of specialized functional academic instruction. Further, Student's functional academics were appropriately provided by a qualified and credentialed special education teacher with over 25 years of experience.

Nancy Harmelin came out of retirement to become Student's special education teacher. Ms. Harmelin held a bachelor's degree in education. She held a life teaching credential for general education, a life teaching credential in special education, moderate/severe, and a resource specialist credential. She partially completed a visually impaired credential. Ms. Harmelin had extensive experience as an itinerate teacher for the visually impaired, a special education teacher of the severely handicapped, and as a resource specialist.

Ms. Harmelin began working with Student on December 3, 2019. She documented each time she provided in-home teaching to Student. Student's IEP called for up to 20 hours per week of in-home teaching. Ms. Harmelin described the teaching schedule as sporadic and unrealistic. The teaching hours were arranged at Parent's convenience, often due to Student's seizures, sleeping schedule, and numerous medical appointments. Student was often sick or hospitalized. Student's rural residence at the end of a dirt road was not always passible in rain and snow, which occasionally limited access to Student. Cumulatively, Ms. Harmelin believed Student was not made available sufficiently to provide 20 hours per week of teaching.

Ms. Harmelin admitted Student's disabilities were beyond her experiences as a special education teacher for the severely handicapped. Her prior duties did not include acting as a nursing assistant as well as teacher. She did not feel adequately prepared to serve Student. Bass Lake provided no training. Mr. Adams gave her two, three to five-minute videos to watch as training for Student's cortical visual impairment needs. Parent also provided some training for things like postural support. The caretaker often assisted Ms. Harmelin by holding Student. Ms. Harmelin found it difficult to comfortably positioning Student without disturbing the multiple tubes attached to her.

Dr. Biggs observed Ms. Harmelin work with Student. Ms. Harmelin brought a bag of light-up musical toys to work with Student. Parent held Student while Ms. Harmelin pushed the buttons to make the toys light up and make music. Ms. Harmelin did not speak to Student, nor did she give Student adequate time to respond or reach for the toys. It appeared the flashing light toys contributed to Student's seizures. During this observation Dr. Biggs spent a brief time explaining to Ms. Harmelin how to work with Student's cortical visual impairment. They discussed changes to the learning environment and toys, and how to hand under instead of grabbing a hand. Dr. Biggs suggested Ms. Harmelin needed to verbalize and celebrate successes by giving praise when Student accomplished a task. Based upon her brief instruction from Dr. Biggs regarding Student's cortical visual impairment, Ms. Harmelin eliminated flashing lights, and sought to adopt additional recommendations to help Student focus and reduce distraction. She utilized music and talked to Student. Postural support equipment was critical for Student to hold herself up to focus. Bass Lake provided no equipment to position Student correctly. Ms. Harmelin improvised and placed Student in her car seat to position her more appropriately and increase her ability to focus on activities.

Ms. Harmelin reported her frustrations to Ms. Hagood. She reported the IEP goals were unrealistic due to Student's head bobbing, her seizures and medication, constant sleeping, and her ventilator and the tubing attached to her body. Student was unresponsive to the goals. Ms. Hagood instructed Ms. Harmelin to simply do what Parent wanted. Ms. Harmelin recalled that the situation got to the point that she simply gave up on implementing the goals. By January 2020 Ms. Harmelin expressed her belief that Student was unteachable under the terms of the IEP. Student had the cognitive level of a six-month old child. Her teaching schedule was inconsistent. When available

for teaching sessions, Student slept most of the time. Her ventilator impeded implementation of the IEP goals.

As of March 10, 2020, Ms. Harmelin ceased providing in-home instruction to Student due to California's stay-at-home mandates initiated by the COVID-19 pandemic. During the April 15, 2020 IEP team meeting, Ms. Harmelin reported that prior to the mandatory school closure, Student had only been awake and available for instruction 10 out of 34 hours because of her medical needs. Ms. Harmelin resumed in-home services one hour per week in June 2020 but permanently ceased the services at the end of the month.

Each of the assessors stressed that for Student to be successful in learning, her service team needed to work together to develop and implement the appropriate educational program. Just as Student's disabilities were comorbid, her services interrelated and required collaboration. As example, occupational therapy and physical therapy interacted on positioning, seating and mobility. The physical therapist positioned the child in the stander or other equipment. The occupational therapist then initiated the activity. All the assessors told the IEP team that the teacher needed rigorous and ongoing training to further understand how to modify materials specifically for Student to provide instruction to her. Direct services provided by video conference were designed as consultations with Ms. Harmelin to model the exercises she needed to master to implement the services daily. No additional training or support was forthcoming. Each of the assessors agreed that Student required highly structured, predictable and consistent daily routines. Bass Lake failed to create a set schedule for the provision of services, and an educational routine was never established. Each of the assessors indicated specific equipment was necessary for Student to access her education and her environment. No equipment, especially those items necessary to

properly support Student in an upright position, was obtained during the 2019-2020 school year.

Bass Lake's failure to provide Ms. Harmelin with the training and tools she needed to education Student resulted in Ms. Harmelin simply giving up on attempting to teach Student. The provision of sporadic teaching time provided by a teacher admittedly beyond her special education abilities, and without the additional intensive training required to support Student's unique needs, resulted in no educational benefit to Student. The specialized academic instruction provided to Student between November 14, 2019 and June 29, 2020, provided Student with absolutely no educational benefit, and thusly denied Student a FAPE.

ISSUE 4: DID BASS LAKE DENY STUDENT FAPE DURING THE 2019-2020 SCHOOL YEAR, THROUGH JUNE 29, 2020, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER OR PROVIDE ADEQUATE VISION SERVICES?

Student contends the severity of Student's vision issues were fully evaluated by Dr. Biggs and her findings and recommendations were presented to the IEP team on March 13, 2020, yet the IEP team made no clear offer of vision services at the IEP team meeting. Rather, Bass Lake made decisions regarding Student's vision services outside of the IEP team meeting, based upon the vision service provider's availability which were not based upon her unique needs.

Bass Lake contends not all of Dr. Bigg's recommendations were appropriate or necessary for Student. The offer of vision services for the March 13, 2020 IEP were developed by a credentialed teacher for the visually impaired specialist and appropriate based upon Dr. Bigg's findings.

In California, vision services are a related service and include vision therapy. (Ed. Code, § 56363, sub. (b).) Vision services may include providing adaptation in curriculum, media, and the environment, as well as instruction in special skills, and consultative services to pupils, parents, teachers and other school personnel. (Cal. Code Regs., tit. 5 § 3051.7(a).)

The Madera County Office of Education assigned Justin Adams to provide Student's vision services. Mr. Adams held a bachelor's degree in liberal studies, a multiple subject teaching credential, and a visual impairments credential. As a small school district, Bass Lake did not have its own vision specialist but relied upon contract services from the Madera County Office of Education to provide vision services. Mr. Adams was not contracted to provide orientation and mobility services.

Madera County Office of Education assigned Student to Mr. Adams' caseload in March 2020. Due to COVID-19 restrictions, Madera County Office of Education determined vision services would be provided remotely through Zoom. Under normal circumstances, Mr. Adams conducted face-to-face evaluations of his students prior to starting vision services. Due to the COVID-19 restrictions, Mr. Adams could not assess Student. He reviewed Dr. Biggs' assessments and agreed with the conclusions and recommendations presented in her assessment report.

Mr. Adams created the vision goal ultimately added to the April 15, 2020 IEP. He opined the vision goal was appropriate for Student as it addressed visual fixation recommended by Dr. Biggs. Since the services were offered via Zoom, the actual goal-related vision exercises and activities needed to be implemented by either Parent or Ms. Harmelin. Mr. Adams would observe Student during the video conference to assess her progress. The IEP offered 40 minutes per month of vision therapy which was

intended to provide Parent and Ms. Harmelin consultation and training to physically assist in goal related activities. The vision service offer of 40 minutes per month, dramatically differed from Dr. Biggs's recommendation of 60 minutes per week.

Dr. Biggs qualified as an accomplished expert in the area of cortical visual impairment and visual deficits. Her assessment report was comprehensive. She presented as a highly credible and fascinating witness. The Bass Lake members of the IEP team did not disagree with her findings and recommendations. Ms. Hagood stated she intended to adopt the recommendations contained in the assessment report. Mr. Adams, while less experienced, concurred with Dr. Biggs' assessment report.

While Bass Lake did not adopt Dr. Biggs' recommendations verbatim, the vision goal substantially addressed Student's vision needs as determined by Dr. Biggs. At hearing, Dr. Biggs explained that Student could make progress by improving focus and recognition. This was the base for scaffolding to other skills. As example, the ability to identify faces leads to identifying objects which leads to increased comprehension. Starting with a single foundational goal for Student based upon Dr. Biggs' recommendations as offered by Bass Lake was appropriate.

In her testimony, Dr. Biggs emphasized the need for those persons working with Student be trained to work with her and understand her environment to maximize her visual abilities. She opined that if a teacher did not understand the disability, the teacher did not know how to teach the student. The teacher needed to learn what tools to bring to the table in order to appropriately teach Student. Dr. Biggs observed Ms. Harmelin interacting with Student. She concluded Student had the ability to learn if given the proper environment and right tools. Ms. Harmelin could teach Student if properly trained to teach her according to her needs. Student's vision service was

intended to teach Parent and Ms. Harmelin how to utilize vision strategies daily. This could reasonably be accomplished in 40 minutes per month.

Student argued Mr. Adams did not possess the training or experience with cortical visual impairment to be successful in training Parent and Ms. Harmelin or in providing direct services to Student. Mr. Adams possessed the necessary credentials and qualifications to provide special education vision services through the Madera County Department of Education. At hearing, Mr. Adams' demeanor did not instill confidence in his understanding of cortical visual impairment or in his ability to provide the rigorous training and support envisioned by Dr. Biggs. Student, however, offered no evidence Mr. Adams was academically unqualified to provide vision services to Student or that he could not sufficiently implement vision services to provide Student with educational benefit commiserate with her abilities.

In the context of Issue 4, the vision goal and services, as written, were sufficient to provide Student educational benefit and did not constitute a denial of FAPE.

ISSUE 5: DID BASS LAKE DENY STUDENT FAPE DURING THE 2019-2020 SCHOOL YEAR, THROUGH JUNE 29, 2020, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO PROVIDE DEAF AND HARD OF HEARING SERVICES?

Student contends Bass Lake failed to provide Student with the 30 minutes per month of deaf and hard of hearing consultations services as offered in the November 14, 2020 IEP. Bass Lake contends Student failed to present sufficient evidence to establish she required more or different deaf and hard of hearing services other than the 30 minutes per month of consultations services provided in the November 14, 2019 IEP amendment.

A child who is deaf or hard of hearing is one who exhibits a hearing loss, that whether permanent or fluctuating, interferes with the acquisition or maintenance of auditory skills necessary for the normal development of speech, language, and academic achievement, and therefore, adversely affects a child's educational performance. (34 C.F.R. § 300.8(c)(3) and (5).)

Instruction and related services for deaf and hard of hearing pupils may include consultation to pupils, parents, teachers, and other school personnel as necessary to maximize the pupil's experience in the regular education program (Cal. Code Regs., tit. 5, § 3051.18, subd. (a)(5)).

Student's November 14, 2020 IEP amendment provided Student 30 minutes per month of deaf and hard of hearing consultation, to be provided through the Madera County Office of Education in accordance with the November 13, 2019 Settlement Agreement of the parties. The parties also agreed to conduct a deaf and hard of hearing assessment.

Bass Lake received a deaf and hard of hearing assessment report from Lisa Rogers dated March 2, 2020. Ms. Rogers held both a bachelor's and master's degree in communication disorders and deaf studies and education. She held a multiple subject credential and an education specialist instructional credential, clear level II, authorized deaf and hard of hearing. Ms. Rogers was a contract employee with the Madera County Office of Education as an Early Start teacher and deaf and hard of hearing itinerate teacher for Madera County.

The purpose of the assessment was to determine whether Student presented with reduced hearing which required education placement, services and equipment to access her educational curriculum. Ms. Rogers reviewed Student's educational records

and IEPs, interviewed Parent and caregiver, and observed Student as part of her assessment. During her one-hour home visit, Student fell asleep during the observation. Ms. Rogers was unable to conduct a second observation due to implementation of COVID-19 stay-at-home orders.

According to Parent, Student was seen at Rady Children's Hospital in San Diego, CA, at age six months to receive pressure equalization tubes to reduce middle ear fluid. Subsequently, again at Rady, Student received a Brainstem Auditory Evoked Response test. Parent indicated Student did not pass the test, and results suggested some level of reduced hearing. On the other hand, Student had not received any audiological care services nor had Parent requested any services for Student from her other health care providers including Valley Children's Hospital in Madera, California and Lucile Packard Children's Hospital in Palo Alto, California.

Parent did not have Student's medical records from Rady. Bass Lake requested these records, however they were never produced for Ms. Rogers.

Ms. Rogers administered the SKI-HI Language Development Scale by providing Parent with the rating scale to obtain Parent's observation of Student's receptive and expressive language skills. Pursuant to California Senate Bill 210, children aged birth to five years who are deaf and hard of hearing must be assessed every six months for language growth and the results must be reported to the California Department of Education. The SKI-HI was designed for deaf and hard of hearing children and has been adopted by the California Department of Education.

In rating Student's expressive language skills, Parent reported Student previously said, "mama and papa" and could lift her arms to be picked up. After a health crisis in August 2019, Student was unable to speak words and only made growling and grunting

noises or airy laughs. As to receptive language skills. Student responds to someone's laughter with laughter of her own. She responded to her name and responded to the words "bath time" by raising her eyebrows and pointing to her toes to show excitement. Student fell asleep to music and held her musical bear close to her ear.

Ms. Rogers determined that without Student's medical records, test results, and current audiological treatment reports, she did not have enough information to make a full determination of Student's hearing acuity or her eligibility as a deaf and hard of hearing student. Ms. Rogers suggested Parent seek audiological care for Student. Once the data from Student's medical professionals was obtained, further assessment could be completed, and eligibility determined by the IEP team.

Based upon the SKI-HI, Student presented with a receptive and expressive language delay. Ms. Rogers could only recommend Student's language development be provided in a language rich environment.

Ms. Rogers presented what information she had in her assessment report at the March 13, 2020 IEP team meeting. The information contained in the IEP team notes conform with her assessment. Ms. Rogers attended the April 15, 2020 IEP team meeting but provided no additional input because the requested medical information remained unavailable.

Ms. Rogers testified she was unaware of the November 14, 2019 IEP amendment which provided 15 minutes of deaf and hard of hearing consultation twice per month. This indicates her review of Student's educational records was incomplete. It remains uncertain however, if that information would have made a difference in her recommendation denying deaf and hard of hearing eligibility. It is just as likely the consultation offered would monitor Student's hearing for new information to be

reconsidered once the data from Student's medical professionals was received and further assessment be completed.

Student failed to sustain her burden of proof to show she needed additional or direct services beyond the 30 minutes per month consultation provided in the November 14, 2019 IEP amendment to make appropriate educational progress in light of her circumstances.

ISSUE 6: DID BASS LAKE DENY STUDENT FAPE DURING THE 2019-2020 SCHOOL YEAR, THROUGH JUNE 29, 2020, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER OR PROVIDE ADEQUATE PHYSICAL THERAPY SERVICES?

Student contends Bass Lake's offer of 60 minutes per week failed to offer Student an appropriate amount of physical therapy.

Bass Lake contends it offered an appropriate amount of physical therapy.

Physical therapy services are considered related services in California. (Ed. Code, § 56363, subd. (b)(6).)

Student's Issue 6 requires no further discussion of the adequacy of Bass Lake's offer of physical therapy. The determination of Bass Lake's denial of FAPE based upon the procedural violations contained in Issue 1 pursuant to *Union* and *Antelope Valley* renders further discussion unnecessary.

The November 14, 2019 IEP amendment offered Student physical therapy services for 30 minutes, twice per week. Bass Lake failed to implement the IEP by failing to provide Student physical therapy services pursuant to the offer of this IEP.

On April 15, 2020, the IEP team expressed their agreement with Ms. Taylor's recommendation of 120 minutes per week of physical therapy services but failed to include physical therapy services in the IEP during the IEP team meeting. The April 15, 2020 IEP document presented to Parent offered its prior offer of only 60 minutes per week of physical therapy services instead of the recommended 120 minutes. Ms. Hagood described the discrepancy in the amount of physical therapy services as a mistake. The IEP team intended to provide 120 minutes of services. Based upon Ms. Hagood's testimony of error, Bass Lake's offer of 120 minutes of physical therapy is appropriate.

The determination of the appropriateness of the physical therapy contained in Issue 6, its failure to implement the physical therapy services. That issue is determined in the discussion and analysis contained in Issue 11 respectively.

ISSUE 7: DID BASS LAKE DENY STUDENT FAPE DURING THE 2019-2020 SCHOOL YEAR, THROUGH JUNE 29, 2020, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER OR PROVIDE ADEQUATE SPEECH AND LANGUAGE SERVICES?

Student contends Bass Lake failed to offer an adequate offer of speech and language services based upon the AAC report which recommended 120 minutes per week of speech and language services

Bass Lake contends its offer of individual speech and language services was appropriate for Student to receive educational benefit

Language and speech development and remediation services are considered related services in California. (Ed. Code, § 56363, subd. (b)(1).) Speech and language services are related services in California, and may include specialized instruction, services for individuals with disorders of language, speech, and consultative services to pupils, parents, or other school personnel. (Cal Code Regs., tit. 5 § 3051.1(a)(2),(3).

Ms. Henkel recommended Student receive two, 60-minute sessions per week of direct AAC intervention from the speech pathologist and AAC specialist, in addition to monthly consultation services with Student's other service providers and parents. The IEP team agreed to adopt Ms. Taylor's recommendations for 120 minutes per week of physical therapy services, but the April 15, 2020 IEP amendment offered only 60 minutes per week of speech and language service as offered in the November 14, 2019 IEP amendment.

Student's Issue 7 requires no further discussion of the adequacy of Bass Lake's offer of speech and language services. The determination of Bass Lake's denial of FAPE based upon the procedural violations contained in Issue 1 pursuant to *Union* and *Antelope Valley* renders further discussion unnecessary.

The IEP team intended to provide 120 minutes of services. Based upon Ms. Hagood's testimony of error, Bass Lake's offer of 120 minutes of physical therapy is appropriate.

Student argued that the speech and language services failed to provide a FAPE because Bass Lake failed to provide the necessary Accent 1400 and associated

equipment with which to provide Student's speech and language intervention. This contention bears merit. Analysis of whether Bass Lake failed to properly address the adaptive equipment recommendations is discussed below in Issue 8.

The determination of the appropriateness of the speech and language services contained in Issue 7, does not address Bass Lake's failure to make a clear offer of speech and language services or its failure to implement the speech and language services. Those issues are determined in the discussion and analysis contained in Issue 1 and Issue 11 respectively.

ISSUE 8: DID BASS LAKE DENY STUDENT FAPE DURING THE 2019-2020 SCHOOL YEAR, THROUGH JUNE 29, 2020, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER OR PROVIDE REQUIRED ASSISTIVE TECHNOLOGY?

Student contends Bass Lake failed to offer Student appropriate AAC equipment in any IEP and has failed to provide AAC equipment as recommended by the assessors. Bass Lake contends it was not required to provide Student with AAC equipment which is not educationally related or is Parent's preferred device. Bass Lake further contends that it has provided or ordered all essential AAC equipment for Student.

An IEP team must consider whether a student needs assistive technology devices. (34 C.F.R. § 300.234(a)(2)(v).) An assistive technology device means any item, piece of equipment or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. (34 C.F.R. § 300.5.)

Although a school district is responsible for providing specialized equipment for use at school that is needed to implement the IEP, school districts are not required to provide medical equipment. (20 U.S.C. § 1401(1); Ed. Code, §§ 56020.5 & 56363.1.) A public agency is not responsible for providing a personal device that the student would require regardless of whether the student was attending school unless it is required for FAPE. (*Letter to Bachus*, 22 IDELR 629 (OSEP 1995).

When a student requires a particular device or service California law requires that the IEP contain a statement to that effect. (Ed. Code, § 56341.1, subd. (b)(5),(c).) An IEP that fails to identify the assistive technology devices required by the student renders the IEP useless as a blueprint for enforcement. (*Antelope Valley*, *supra*, 858 F.3d at p. 1198.)

RECOMMENDED AAC SUPPORTS

In her assessment, Ms. Hinkel stressed the key to Student's success would be in having assistive technology supports that used appropriate adaptations, accommodations and modifications to instructions, activities and routines. She opined that as a child with reduced language development, weak concept development and less world knowledge than her typically developing peers, Student would benefit from the use of tangible objects to explore within the context of study.

Ms. Henkel provided Student a core low-tech board with eight symbols in addition to a PRC Accent 1400 using Core Scanner for assisted auditory user scanning for a 30-day trial. Student's health prevented her from training on the device with fidelity. Ms. Henkel recommended Student continue training on this device along with her support staff who can help her access the device and continue trial of the device. AAC needed to be done daily with Student.

Ms. Henkel recommended Student's repertoire of exciting toys and activities be expanded to support a goal of providing Student opportunities to say "more" which would eventually lead to the addition of more core words. These toys were described as switch activated to increase Student's ability to understand cause and effect.

In addition to new toys, Ms. Hinkel recommended Bass Lake obtain several items of assistive technology equipment to assist Student in developing a means of communication. Ms. Henkel recommended Bass Lake purchase or rent an Accent 1400 with Core Scanner as Student's primary communication device. She recommended a wireless Freedom Switch be purchased and mounted to her wheelchair. She recommended a core low-tech board for use during times when the Accent 1400 was not available, such as during bath time and a private speaker to limit audio interference to auditory prompts to prevent confusion.

RECOMMENDED FUNCTIONAL VISION ASSISTIVE TECHNOLOGY SUPPORTS

Dr. Biggs recommended Bass Lake obtain an iPad as a tool to teach Student visual skills and conduct visual assessments of Student's progress. As part of her orientation and mobility assessment, Dr. Biggs determined Student could not travel independently and did not have a wheelchair. To develop basic spatial and geographic concepts, as well as movement development and body awareness, Student required a wheelchair for educational purposes.

RECOMMENDED PHYSICAL THERAPY ASSISTIVE TECHNOLOGY

Ms. Taylor determined that, among other things, Student's extremely low muscle tone, range of motion, poor head control, poor postural control, and significant gross

motor delays prevented her from the ability to access her educational environment. Student particularly required interventions to facilitate her head and postural control and mobility with the goal of helping her to better access and attend to her educational curriculum. To accomplish this, Student required specialized adaptive equipment. Ms. Taylor recommended Bass Lake obtain a variety of therapy equipment such as therapy balls, positioning bolsters and wedges and a therapy-grade floor mat.

Due to extremely weak muscle tone, spent most of her time in a supine position. To access her education, Student required functional sitting support. Ms. Taylor recommended a P-Pod postural support system to maintain Student in a sitting position, and a device known as a NESSIE to facilitate her physical development. Student required a wheelchair to access her educational environment, as well as an all-terrain jogging stroller to access her outside environment. She suggested a new car seat for transportation as well as wheelchair braces and access ramps for the wheelchair. Ms. Taylor recommended a stander for Student to assist her in maintaining an upright position to improve her respiratory function, cognition and levels of alertness and attention for attending to her educational curriculum. Ms. Taylor recommended a KidWalk Dynamic Mobility System to maintain Student in an upright weight bearing position. Due to her increasing weight, Student required a sling lift system to safely be moved and lifted. For head control, Ms. Taylor recommended a mobility device known as a Creepster Crawler. Ms. Taylor completed her list of recommended assistive equipment with a Trexo Home with Rifton Dynamic Pacer Gait Trainer to facilitate independent upright mobility.

Bass Lake referenced none of the recommended equipment in the IEPs offered during the relevant time frame. Ms. Hagood needed to time to research some of the equipment and determine if the equipment was educationally necessary or whether it

could be obtained from a medical source such as the Regional Center or health insurance Bass Lake obtained low-incident equipment from the Mariposa SELPA which required approve before purchase of the items.

Bass Lake contends that not all the recommended equipment was educationally necessary. As an example, Bass Lake contends wheelchairs and lift systems are medical equipment which it is not obligated to provide; Student does not require the stroller to currently access her educational environment; some of the equipment was duplicative to other equipment. Bass Lake's arguments have merit but only serve to illustrate the reason why the IEP team needed to discuss the educational necessity of the equipment during the IEP team meeting, and why the IEP required a statement of what to devices were required. A procedural violation did not lie in the impediments faced in obtaining the equipment. The violation occurred with the failure to provide sufficient notice to Parent in the IEP as to which items would be obtained and which items were disputed.

Bass Lake's failure to identify the assistive and adaptive equipment Student required in the IEP was a procedural violation which only partially hindered Parent from participating in the IEP process. It would be disingenuous to suggest that Parent was not involved in the IEP process regarding the purchase of the big-ticket items. Parent signed the SELPA agreement which listed the iPad, postural support system, AC device, Trexo and floor mats as items being ordered. Parent was asked about her preferences and priorities regarding other items of the recommended equipment. Student was measured for equipment. Some of the equipment was medically available independent of Bass Lake. Further, while Student may have had an immediate need for equipment, Bass Lake was not responsible for the delays caused by SELPA bureaucracy, vendor requirements or the availability of the items.

Student failed to establish that Bass Lake's failure to identify the assistive and adaptive equipment in the IEP amounted to a material denial of parental participation in the IEP process, and therefore it did not constitute a denial of FAPE.

ISSUE 9: DID BASS LAKE DENY STUDENT FAPE, DURING THE 2019-2020 SCHOOL YEAR, THROUGH JUNE 29, 2020, INCLUDING EXTENDED SCHOOL YEAR BY FAILING TO OFFER OR PROVIDE ADEQUATE EXTENDED SCHOOL YEAR SERVICES?

Student contends Student required extended school year services, but extended school year was never discussed with the IEP team. Bass Lake contends the March 13, 2020 IEP amendment offers Student appropriate extended school year services at home; however, Parent did not consent to the IEP amendment.

A school district is required to provide extended school year services to a student with an IEP if an extended school year is necessary to provide the student a FAPE. (34 C.F.R. § 300.106(a).) Some students have disabilities that are likely to continue indefinitely or for a prolonged period. In this situation, interruption of the student's educational program may cause regression, when coupled with limited recoupment capacity rendering it impossible or unlikely that the student will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition. (Cal. Code of Regs., tit. 5, § 3043.)

The June 4, 2019 annual IEP indicated Student qualified for extended school year but contained no specific offer of extended school year services. The draft copy of the March 13, 2020 IEP amendment given to Parent contained a duplicate page from the

June 4, 2019 IEP regarding extended school year, which contained no offer of extended school year services.

The IEP team meeting notes from March 13, 2020 did not report any IEP team discussion of extended school year for 2020. The lack of discussion of extended school year was corroborated by Parent and acknowledged by Ms. Hagood.

The April 15, 2020 IEP amendment contained an offer of extended school year services consisting of 240 minutes per school day of specialized academic instruction in the home for the period of June 17, 2020 through July 15, 2020. Bass Lake argued the extended school year services included all of Student's regular school year related services. The IEP document however was unclear, and the IEP team notes did not indicate any discussion of extended school year services. Mother and Ms. Hagood again confirmed no discussion of extended school year occurred at this IEP team meeting. The IEP team notes stated the IEP would be emailed to participants, indicating the IEP was not presented to Parent for consent at the IEP team meeting. As such, the IEP team failed to make an offer of extended school year. Ms. Hagood did not provide Parent the completed April 15, 2020 IEP amendment document until June 4, 2020, which then included the offer of extended school year services which had never been discussed with the IEP team.

Bass Lake argued that any ambiguity or omission which lead to a procedural violation did not rise to the level of a denial of FAPE. Such may have been the case had extended school year services been meaningfully discussed at the IEP team meetings. This did not occur. The omission left Parent unaware of what Bass Lake intended to offer Student for extended school year services. This omission became even more indefensible when Ms. Hagood unilaterally added the extended school year offer

outside of the IEP team meeting and then failed to provide Parent with a copy of the IEP for two months. This further prevented Parent from discussing extended school year services, expressing her opinion on the subject, and potentially requesting revisions to any proposed service.

Applying the same analysis as in Issue 1, Bass Lake's unilateral inclusion of extended school year services denied parent the ability to meaningfully participate in the development of the IEP, which constituted a denial of FAPE.

ISSUE 10: DID BASS LAKE DENY STUDENT FAPE DURING THE 2019-2020 SCHOOL YEAR, THROUGH JUNE 29, 2020, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER OR PROVIDE ADEQUATE NURSING SERVICES?

Student contends Bass Lake failed to offer or provide adequate nursing services for Student. Further, Student's fragile medical condition required the services of a registered nurse.

Bass Lake contends the offer of nursing services contained in the November 14, 2019 IEP amendment offers appropriate nursing services for Student's entire school day. The IDEA does not give Parent the right to make unilateral decisions regarding the service providers used to implement Student's IEP so long as the service providers meet Student's unique needs.

Health and nursing services including school nurse services designed to enable an individual with exceptional needs to receive a FAPE as described in the IEP of the child constitute related services. (Ed. Code, § 56363, subd. (b)(12).)

Education Code section 49423.5, provides for specialized physical health care services for students with exceptional needs. Specialized physical health care includes catheterization, gastric tube feeding, suctioning or other services that require medically related training. (Ed. Code, § 49423.5, subd. (d).) An individual with exceptional health care needs who requires specialized physical health care services during the regular school day may be assisted by a qualified designated person trained in the administration of specialized physical health care services if they perform those services under the supervision of a credentialed school nurse, public health nurse, or licensed physician and the services are determined by the credentialed school nurse or licensed physician, in consultation with the physician treating the pupil be all of the following:

1. routine for the pupil;
2. pose little potential harm for the pupil;
3. performed with predictable outcomes, as defined by the pupils IEP; and
4. do not require a nursing assessment, interpretation or decision making by the designated personnel.

(Ed. Code, § 49423.5, subd. (a)(2)(A-D).)

The November 14, 2019 IEP amendment, which was Student's last agreed upon IEP, offered Student individual nursing services for four hours per school day. The nursing services reflected operative terms of a written settlement agreement between the parties. Bass Lake can do no more than offer nursing services for Student's entire school day.

The underlying conflict between the parties revolves around the qualifications required for the nursing service provider. The IEP indicates the nursing services may be provided by a licensed vocational nurse or a registered nurse. Parent, a registered nurse

herself, subsequently withdrew her consent to a licensed vocational nurse, and would only accept services provided by a registered nurse.

Student provided no evidence to suggest she requested an IEP to modify the nursing services to registered nurse only or that she raised the issue of a registered nurse at either the March 13, 2020 or April 15, 2020 IEP team meetings. She did not inform Bass Lake of any significant changes in Student's health which suggested licensed vocational nursing services were inappropriate. As a result, the provisions of the November 14, 2019 IEP continued to offer a licensed vocational or a registered nurse as the service provider.

Student's does have complex disabilities result in significant medical issues and emergencies. Student often experiences seizures which require emergency medication and frequent hospitalizations. She requires a VP shunt to address her hydrocephalus. Student's chronic lung disease requires oxygen treatments. She is connected to a ventilator during the day when her oxygen levels get too low, and she is prone to infections which often lead to respiratory distress and hospitalization. Student has bradycardia, which causes her heart to slow down well below the normal resting heart rate. She has a blood sugar disorder which required a continuously flowing daily supplements of sugar provided through her g-tube or intravenously. Student's bradycardia and blood sugar disorder are not visible, and Student cannot communicate her distress. Both disorders must be monitored and caught before Student becomes critical.

While the services of a registered nurse may be more prudent, Bass Lake was only obligated to provide specialized health care services designed to enable an individual with exceptional needs to receive a FAPE as offered in the IEP. Student did not establish

that Bass Lake's obligation equated to Parent's expectations of more extensive medical assessment and treatment. Parent agreed to provision of nursing services by a licensed vocational nurse in the November 14, 2019 IEP. Student failed to establish Bass Lake was aware of any changes in Student's medical or educational needs which required a change in its offer to registered nursing only Student failed to sustain his burden of proof to establish Bass Lake failed to offer appropriate nursing care services. Bass Lakes offer of nursing care services offered Student a FAPE.

Bass Lake was unable to obtain either a licensed vocational nurse or registered nurse to provide nursing services during the 2010-2020 school year, which resulted in Bass Lake's failure to provide nursing services, which will be analyzed in Issue 11.

ISSUE 11: DID BASS LAKE DENY STUDENT FAPE DURING THE 2019-2020 SCHOOL YEAR, THROUGH JUNE 29, 2020, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO IMPLEMENT STUDENT'S IEP?

Student contends except for a few specialized academic instructional hours, Bass Lake failed to provide any of the services offered in the November 14, 2019 IEP.

Bass Lake contends that at the time the November 14, 2019 IEP was developed Bass Lake believed it could implement the services contained therein with fidelity and did so to the maximum extent possible in spite of the difficulties associated with being geographically located in a rural area and amidst a nationwide health emergency.

A school district is responsible to provide eligible students with a FAPE by delivering special education and related services in conformity with the student's IEP. (20 U.S.C. § 1401(9)(D)). 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

and not to decide on its own no longer to implement part or all of the IEP. (*Van Duyn v. Baker School Dist. 5J*, (9th Cir. 2007) 502 F. 3d 811, 821)(citing 20 U.S.C § 1414(d)(3)(F), 1415(b)(3).) A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. (*Id.* at p. 815).

The November 14, 2019 IEP offered 20 hours of individual functional academic instruction per week. Bass Lake intended to provide Student with four hours per day of academic instruction. Ms. Harmelin was unable to provide Student with the requisite number of educational hours each week. This lack of sufficient teaching hours was due to the flexible teaching schedule imposed primarily by Student's seizures and sleep schedule. Student's continual illnesses, doctor's appointments and hospitalizations contributed to the lack of education hours. For these reasons, Bass Lake's failure to provide exactly 20 hours per week of academic instruction did not constitute a material failure to implement Student's specialized academic instruction.

On the other hand, Bass Lake failed to provide sufficient training to Ms. Hamelin to understand Student's disabilities and provide her with methods to implement the IEP goals. Bass Lake failed to provide Student with the equipment needed to appropriately support her body and focus on educational activities. Bass Lake failed to provide Ms. Harmelin with any consultation or support to assist her in providing educational services to Student. As a result, Ms. Harmelin was unable to implement the specialized academic instruction in a manner designed to provide Student with any educational benefit and abandoned any attempts to implement educational services as of January 2020.

The revised IEP offered Student 30 minutes, twice per week of individual occupational therapy and 30 minutes, twice per week of individual physical therapy. Bass Lake failed to provide any occupational therapy or physical therapy services.

The November 14, 2019 IEP offered Student 30 minutes, twice per week of individual speech and language therapy. Bass Lake failed to provide any speech and language services. Although the IEP contained a communication goal, Bass Lake failed to provide a speech and language pathologist to implement the goal. Ms. Harmelin was the only person providing services to Student. Bass Lake failed to provide Ms. Harmelin with the training and skills to implement the communication goal.

The November 14, 2019 IEP amendment offered Student 60 minutes per week of speech and language services. Bass Lake failed to provide any speech and language services to Student.

The November 14, 2019 IEP offered Student four hours per school day of individual nursing services provided by a licensed vocational nurse or registered nurse under contract with Bass Lake. Bass Lake failed to implement this service because it was unable to hire qualified personnel to provide nursing services. Ms. Hagood commenced the search for a suitable nursing professional in November 2019. At that time, she contacted Maxim Health Services to negotiate a service contract and began looking for qualified licensed vocational nurse or registered nurse candidates. To locate appropriate applicants, Maxim required additional information consisting of each doctor's orders of the procedures and protocols to be implemented by the health care personnel, which Bass Lake had difficulty producing. By January 8, 2020, Maxim questioned whether it could provide Student a nurse. Ms. Hagood continued her search for a nurse. Bass Lake's rural location, a limited school budget, and COVID-19 did not

induce job applicants to seek part-time employment to a highly complicated and severely handicapped child. Ms. Hagood was unable to hire either a registered nurse or licensed vocational nurse. Student went without nursing services for the remainder of the 2019-2020 school year.

Student required nursing services for the entire school day to access her education. Without nursing assistance, Ms. Harmelin was unable to effectively work with Student. Student would pull the tubes from her body, and Ms. Harmelin was ill-equipped to provide medical care. Without the nursing services, Student's learning opportunities came to a halt, and Student received no educational benefit.

The November 14, 2019 IEP offered Student 15 minutes per month consultations with Madera County deaf and hard of hearing services. Ms. Rogers, Madera County Office of Education deaf and hard of hearing assessor, was unaware Student's IEP offered deaf and hard of hearing consultation. Madera County Office of Education provides itinerant teachers deaf and hard of hearing teachers to implement deaf and hard of hearing services. However, no services were provided pursuant to Student's IEP, and Bass Lake failed to seek implementation.

Bass Lake argued that at the time of the November 14, 2019 IEP, it believed it could implement the services contained in the IEP with fidelity and did so to the maximum extent possible. The argument is flawed. Certainly, Bass Lake would not enter into a settlement agreement or make an offer of FAPE it knew it could not implement. Nevertheless, Bass Lake was aware it was a small rural school district without the employees needed to implement Student's IEP. Bass Lake was aware that Student presented with exceptionally complicated disabilities which required highly trained professionals, and it would be extremely difficult to obtain qualified personnel to

implement Student's services. When Bass Lake determined it could not reasonably obtain appropriate service providers, it should have convened an IEP team meeting to discuss the problem and consider alternatives to provide Student a FAPE. This was not done, therefore the simple fact that the services were not provided was sufficient to determine Bass Lake denied Student a FAPE. An IEP may be appropriate as a document, but if the services are not provided, the student is left without educational benefit. Bass Lake failed to provide Student a FAPE by failing to implement the services provided in the November 14, 2019 IEP.

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: Bass Lake denied Student a FAPE by failing to make a clear offer of FAPE in the March 13, 2020 IEP and the April 15, 2020 IEP. Student prevailed on Issue 1.

Issue 2: Bass Lake denied Student a FAPE by failing to offer goals in all areas of Student's unique needs, specifically failing to provide Student a goal for orientation and mobility. Student prevailed on Issue 2.

Issue 3: Bass Lake denied Student a FAPE by failing to provide Student adequate specialized academic instruction pursuant to the November 14, 2020 IEP. Student prevailed on Issue 3.

Issue 4: Bass Lake did not deny Student a FAPE by failing to offer or provide adequate vision services. Bass Lake prevailed on Issue 4.

Issue 5: Bass Lake did not deny Student a FAPE by failing to provide deaf and hard of hearing services. Bass Lake prevailed on Issue 5.

Issue 6: Determination of Issue 6 was contained in Issue 1. Neither party prevailed on Issue 6.

Issue 7: Determination of Issue 7 was contained in Issue 1. Neither party prevailed on Issue 7.

Issue 8: Bass Lake did not deny Student a FAPE by failing to offer or provide required assistive technology devices. Bass Lake prevailed on Issue 7.

Issue 9: Bass Lake failed to provide Student a FAPE by failing to offer or provide appropriate extended school year services. Student prevailed on Issue 9.

Issue 10: Bass Lake did not deny Student a FAPE by failing to offer or provide Student appropriate nursing services. Bass Lake prevailed on Issue 10.

Issue 11: Bass Lake failed to provide Student a FAPE by failing to appropriately implement the November 14, 2020 IEP amendment. Student prevailed on Issue 11.

REMEDIES

As to issues on which Student prevailed, Student requested an overwhelming amount of compensatory education and modifications to Student's future IEP's as remedies. Student's requested remedies will be discussed individually.

ALJ's have broad latitude to fashion appropriate equitable remedies for FAPE denials. (*School Comm. Of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed. 2d 385]; *Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th

Cir. 1994) 31 F.3d 1489, 1496.) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516 (c)(3)(2006).) Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d at p. 1497.)

IEP SERVICES

As a remedy for Issue 1, relating to the clear offer of FAPE, Student requested that Bass Lake be ordered to convene Student's annual IEP meeting within 10 days to offer several services and supports during the regular and extended school year. Those requests included direct services and consultation in the areas of home-based functional academics, nursing, vision, orientation and mobility services, physical therapy, occupational therapy, deaf and hard of hearing, and speech and language. The total request equaled to approximately 48 hours per week, plus additional time during the school year. Student's requested relief is granted in part as it relates to Issue 1.

Bass Lake failed to make a clear offer of FAPE at the March 13, 2020 and April 15, 2020 IEP team meetings. The IEP documents prepared by Bass Lake were inconsistent and contained many errors. Services were determined outside of the IEP team meeting, and other services indicated erroneous amounts of services. Additionally, Bass Lake failed to develop necessary orientation and mobility services recommended by Dr. Biggs which the IEP team agreed to adopt. Student's request that the IEP team meet and determine services in a new IEP document is reasonable. An IEP team shall meet within 10 school days of the return from Winter Break, to correct and consolidate the appropriate offer of services in the new IEP document and include those services recommended by the assessors which services they adopted at the April 14, 2020 IEP

team meeting. Student's request for inclusion of 60 minute per week of occupational therapy services is denied. Occupational therapy services were not at issue in this case and therefore Student is entitled to no remedy in the area of occupational therapy.

Student's annual IEP due June 4, 2020, has not yet taken place as of the time of hearing. Student's annual IEP was clearly overdue, however, this Decision does not make a prospective determination of the type or quantity of IEP services. As counsel for Student argued, Student is a highly complex child with severe disabilities, who effectively has not received educational services for the 2019-2020 school year. She requires updates to her present levels of performance and revision of her goals. The availability of service providers remains in question. All of these questions are best addressed by the IEP team.

Parent did not consent to the services offered in the March 13, 2020 and April 15, 2020 IEP amendments. Therefore, the determination of appropriate services contained in this Decision constitutes a form of compensatory services. The services ordered shall represent stay-put for Student's services, in the event the IEP team cannot reach agreement at Student's 2021 annual IEP team meeting.

Therefore, Bass Lake shall generate a corrected copy of the June 4, 2019 IEP as amended on November 14, 2019, which is correctly dated, paginated, and contains all part of the IEP document including all IEP team notes. The June 4, 2019 IEP shall be further amended to include the following.

1. 20 hours per week of home-based functional academics;
2. 20 hours per week of nursing services pursuant to the terms contained in the November 14, 2019 IEP amendment;
3. 60 minutes per week of direct vision services;

4. 60 minutes per week of vision consultation services;
5. 30 minutes per week of orientation and mobility services;
6. 30 minutes per month of orientation and mobility consultation services;
7. 120 minutes per weeks of direct physical therapy services;
8. 60 minutes of physical therapy consultation services provided ten times per year;
9. 60 minutes per week of direct occupational therapy;
10. 30 minutes per month of deaf and hard of hearing consultation;
11. 120 minutes per week if direct speech and language services; and
12. 60 minutes per month of speech and language consultation.

Within 10 school days of the return to school from Winter Break on January 5, 2021, Bass Lake shall convene an IEP team meeting to make all revisions and corrections to the June 1, 2019 annual IEP, and amendments through April 15, 2020, including the inclusion of the 12 itemized services recited above.

Within 30 days of the return to school from Winter Break on January 5, 2021, Bass Lake shall convene Student' 2021 annual IEP team meeting.

Student requested that Student's annual IEP include a clear description of the following pieces of assistive technology and that Student requires:

1. Accent 1400 with Core Scanner;
2. Freedom Switch;
3. Repertoire of switch-activated toys;
4. Core Low-Tech Board;
5. Private speaker;
6. iPad;
7. Therapy ball;

8. Positioning bolsters and wedges;
9. Therapy grade floor mat;
10. Rifton Activity Chair;
11. P-Pod Postural Support System;
12. NESSIE;
13. Wheelchair;
14. Stroller;
15. SuperStand HLT Stander;
16. Hoyer Lift System;
17. Red Barn Creepster Crawler;
18. KidWalk Dynamic Mobility System; and
19. Trexo Home with Rifton Dynamic Pacer Gait Trainer.

Student's request is granted in part. Student's request for inclusion of each of the items listed is too broad and has not been discussed with the IEP team. Bass Lake is ordered to utilize the list of requested assistive technology contained to prepare a spreadsheet for the IEP team which indicates which items have been provided to Student; which items have been ordered; and which items Bass Lake declines to provide. The IEP team shall include in the annual IEP a clear statement of the assistive technology the team deems required equipment. The IEP notes shall include a list of the assistive technology the IEP team declines to purchase. Bass Lake is ordered to follow up with a Prior Written Notice to Parent explaining why Bass Lake is not providing the requested equipment.

Student requests Bass Lake be ordered to fund the attendance of the independent evaluators, Sonja Biggs, Pamela Taylor, and Kellie Hinkel for the annual IEP team meeting to assist the IEP team in establishing annual goals in all areas of need for

Student. Student requests that the assessor provide updated present levels of performance to help in the development of meaningful goals. The IEP team shall develop new goals in the areas of Augmentative Alternate Communication and orientation and mobility. Student's requested relief is granted.

Student requests Bass Lake be ordered to finalize Student's healthcare plans with a registered nurse who will be present at the annual IEP team meeting. Student's request is granted in part. Bass Lake shall direct the school nurse to complete Student's healthcare plans for discussion by the IEP team at Student's 2021 IEP team meeting. Within five days of this Decision, Parent shall provide the school nurse with a written list of all health care providers she deems necessary to determine whether the services of a registered nurse are required to provide Student with educationally related nursing services and an executed Release of Information for Bass Lake to obtain Student's relevant medical records. Bass Lake shall ensure that the school nurse attends the IEP team meeting. In the event the health care plan cannot be completed for review at the annual IEP team meeting, then the school nurse shall explain the reason for the delay and complete the health care plans within an additional 30 days. Bass Lake shall then convene another IEP team meeting within 30 days to review the completed health care plans and discuss whether Student's nursing services should be revised to provide services only from a registered nurse. If Bass Lake has obtained a nursing service provider as of the date of the annual IEP team meeting, then Bass Lake shall invite that nursing service provider to the IEP team meeting.

Student requests an order requiring Bass Lake to conduct an all-staff training regarding how to serve students with complex medical issues, augmentative alternate communication, the procedural requirements of offering a Student a FAPE and statutory timelines in special education matters. Student's request is granted in part.

The evidence in this case supported a finding that Bass Lake violated several basic procedural requirements by failing to develop several of its IEP offer of services during the IEP meeting, independently creating services outside of the IEP team, failing to provide accurate copies of the IEP documents to Parent, and failing to provide completed IEP document to Parent in a timely fashion for her review and consent. This led to a massive denial of educational services and educational opportunities for Student. These procedural violations justify an order that Bass Lake staff should review the manner in which it offers its student FAPE. Therefore, as a remedy, Bass Lake shall provide no less than five hours of special education training to review the procedural requirement of a FAPE, including a discussion of determining the legal timelines involved in special education, to its special education staff, including the school nurse, and any other school district employees directly involved in providing special education and related services to students within the school district. The training shall be presented by an outside agency or by attorneys from a law firm with specialized knowledge of special education law who are not from the law firm of Bass Lake's special education attorneys in this matter.

COMPENSATORY REMEDIES

Compensatory education is an equitable remedy that depends upon a fact-specific and individualized assessment of a student's current needs. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d. 516, 524.) The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. (*Reid, supra*, 401 F.3d at p. 524; *R.P. ex rel. C.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1125.) Hour-for-hour relief for a denial of FAPE is not required by law. (*Puyallup, supra*, 31 F.3d at p. 1497.)

EQUITABLE CONSIDERATION OF EVENTS BEYOND CONTROL OF BASS LAKE

Student resides with her parents in a remote mountain community not far from Yosemite which has a population of less than 3,000 residents. Bass Lake has a total student population of approximately 850 students, ranging from pre-kindergarten through sixth grade.

Not only did Student present with complex multiple low-incident disabilities, her necessary therapy services and equipment were not readily available within Bass Lake. As a small school district, Bass Lake did not maintain a large staff. Itinerate service providers for vision and deaf and hard of hearing services are provided by the Madera County Office of Education. Bass Lake obtains low incident equipment through requisition from outside vendors which requires approval from the Madera County SELPA, in compliance with their SELPA policy and is subject to time consuming paperwork.

Student's counsel argued that that in-home services were available from the assessors. According to *MapQuest*, Ms. Henkel's office in Santa Barbara County, was over 250 miles and four hours driving time, one-way, from Bass Lake. Ms. Taylor's office in Elk Grove, California was over 160 miles and three hours away. This renders them inaccessible for weekly in-home services.

Bass Lake experienced several other significant school closure periods during 2020, including an extended forest fire evacuation, closures due to smoke, wind, power outages, and closures due to snow. As noted in one of Parent's emails to Ms. Hagood the road on which Student resided was not plowed, and 4-wheel drive was needed to reach the house in snow. With the exception of snow, the weather-related calamities of

2020 occurred after the 2019-2020 school year, and their anticipated reoccurrences is speculative.

IMPLICATIONS OF 2020 COVID-19 PANDEMIC

On March 4, 2020, California Governor Gavin Newsom declared a state of emergency in California due to the threat of novel COVID-19, which mandated stay-at-home orders and the closure of public schools. On June 18, 2020 the California Department of Public Health issued guidance mandating that, subject to certain exemptions, all people in the State of California must wear face coverings in any indoor public space, when engaged in work, and while outdoors in public spaces. The Department also requires persons to maintain social distancing of at least six feet between people, when feasible. Therefore, the compensatory relief requested by Student must take into consideration the practicality of such remediation in relation to the COVID-19 mandate.

Although Bass Lake obtained a waiver to the stay-at-home requirements and could remain open, Bass Lake employees could not provide all special education services. Student's vision services and deaf and hard of hearing consultations are provided through the Madera County Office of Education, whose employees were and remain required to provide their services through alternate distance learning. On December 6, 2020, Madera County returned to stay-at-home mandates due to a critical increase in COVID-19 cases. The continuing havoc created by a lethal pandemic has rendered determination of in-home services as speculative. This creates a dilemma in providing Student with an order for in-home services which currently conflict with mandates issued statewide and by county health departments which prohibit such in-home services.

Student requests that she be provided compensatory education by extending her IEP services to a year-round format for a period of the next four years. As example, if Student receives 20 hours per week of specialized academic instruction, over a regular school year and extended school year she receives approximately 800 hours of academic services. If that same service is extended over an entire year, Student would receive approximately an additional 240 hours per year, which equates to a total of 960 additional hours of academic services over a four-year period. The formula would apply to each of Student's services.

While such a program would benefit Student, it is not an equitable determination of compensatory services for Bass Lake's FAPE denials during the relevant statutory period. Student's proposal may be more convenient for Parent, but it fails to consider its practical application. Based on Student's medical issues, serious concerns exist about how much additional service can Student tolerate on an annual basis. Further, COVID 19 mandates may limit the availability of in-home service providers. An open question exists if Bass Lake can require employees or third-party service providers to provide Student's services on outside of the regular school year. Finally, the limited availability of in-home service providers to implement Student's IEP has to be considered.

STUDENT'S REGRESSION

Each of the assessors conveyed that Student's recent medical history was significant for an episode of bradycardia, and non-stop sleeping which began in August 2019. This severe drop in heart rhythm continued over the next three months requiring oxygen 24 hours a day. Student slept most of the time. As reported by Parent, prior to this incident, Student was much more active. Since the bradycardia episode however, Student showed a noticeable loss of strength, endurance, mobility,

balance, eye contact. Student was fully dependent on others for all activities of daily living.

While Bass Lake's failure to provide services defeated any educational progress, the evidence supported a finding that Student's regression was due to her illness in August 2019. Student did not prove that she required such a windfall of service hours in order to be remediated from any educational loss caused by Bass Lake during the 2019-2020 school year.

California does not require remediation on an hour-for-hour basis to restore educational losses for a school year. Instead, as an appropriate remedy for Bass Lake's failure to offer or provide Student a FAPE, Student is entitled to 500 hours of compensatory educational services for in-home educationally related services, in the areas of functional academics, vision, physical therapy, occupational therapy, speech and language, and nursing services. The cost for the 500 hours of compensatory services shall not exceed the sum of \$75,00.00. At her election, and subject to availability, Parent may obtain in-home services from any qualified service provider available to provide in-home services, indirect services provided through video conferencing and consultation services provided through video conferencing. The hours shall be utilized before December 31, 2024. Bass Lake shall establish direct payment to any service provider selected by Parent within 60 days of selection of the service provider.

As an equitable remedy, Student requests that Bass Lake be ordered to fund a bank of 400 nursing hours to be utilized by Parent for Student at Parent's convenience.

Parent believed that Bass Lake's failure to implement Student's IEP required her to care for Student 24 hours a day. As a result, Parent developed physical issues resulting from sleep deprivation and mental strain due to stress and anxiety. Student's

condition placed limits on her ability to care for herself and her other children with disabilities. Parent considered her situation compounded by the failure of Bass Lake to provide a wheelchair or stroller for transporting Student. Student's request closely resembles a demand for personal damages for Parent. The IDEA does not provide respite services to parents of children with disabilities, and Student has cited no legal authority to support this contention. Regional Center provides Parent with an in-home personal care attendant for 40 hours per week. Student's request for respite nursing hours is denied.

Student requests that Bass Lake be ordered to provide Student's supports and services as soon as Parent consents to the annual IEP, regardless of whether in-person instruction in the schools has resumed. If Bass Lake is unable to locate service providers, then Student argues Bass Lake should be ordered to relocate Student to a location where she can access her IEP services. Special education law has in rare instances relocated a student or a family to a location where the student can obtain necessary services. However, here, Student's request is not equitable. Bass Lake's delay in obtaining service providers is partially due to the COVID-19 pandemic. Student provided no evidence to suggest that relocating Student would provide a FAPE or would be an appropriate remedy for the denials of FAPE found in this Decision. Student's request for Bass Lake to immediately obtain service providers or relocate Student to an area where her IEP can be implemented is denied.

ORDER

1. Bass Lake shall generate a corrected copy of the June 4, 2019 IEP as amended on November 14, 2019, which is correctly dated, paginated, and contains all part of

the IEP document including all IEP team notes. The June 4, 2019 IEP shall be further amended to include the following services:

- a. 20 hours per week of home-based functional academics;
 - b. 20 hours per week of nursing services pursuant to the terms contained in the November 14, 2019 IEP amendment;
 - c. 60 minutes per week of direct vision services;
 - d. 60 minutes per week of vision consultation services;
 - e. 30 minutes per week of orientation and mobility services;
 - f. 30 minutes per month of orientation and mobility consultation services;
 - g. 120 minutes per weeks of direct physical therapy services;
 - h. 60 minutes of physical therapy consultation services provided 10 times per year;
 - i. 60 minutes per week of direct occupational therapy;
 - j. 30 minutes per month of deaf and hard of hearing consultation;
 - k. 120 minutes per week of direct speech and language services; and
 - l. 60 minutes per month of speech and language consultation.
2. This order shall constitute stay-put in the event of a dispute regarding the 2020-2021 annual IEP.
3. Within 10 school days of the return to school from Winter Break on January 5, 2021, Bass Lake shall convene an IEP team meeting to make all revisions and corrections to the June 1, 2019 annual IEP, and amendments through April 15, 2020, including the inclusion of the 12 itemized services recited above.

4. Within 30 days of the return to school from Winter Break on January 5, 2021, Bass Lake shall convene Student's 2021 annual IEP team meeting.
5. Bass Lake shall fund the attendance of the independent evaluators, Sonja Biggs, Pamela Taylor, and Kellie Hinkel for the annual IEP team meeting to assist the IEP team in establishing annual goals in all areas of need for Student.
6. Bass Lake shall fund one hour per assessor of additional observation of Student to be conducted by Sonja Biggs, Pamela Taylor and Kellie Hinkel to obtain Student's updated present levels of performance.
7. Bass Lake shall develop new goals in the areas of Augmentative Alternate Communication and orientation and mobility for Student's 2021 annual IEP.
8. Bass Lake shall prepare a spreadsheet for the 2021 annual IEP team meeting which indicates which of the following items have been provided to Student; which items have been ordered; and which items Bass Lake declines to provide:
 - a. Accent 1400 with Core Scanner;
 - b. Freedom Switch;
 - c. Repertoire of switch-activated toys;
 - d. Core Low-Tech Board;
 - e. Private speaker;
 - f. iPad;
 - g. Therapy ball;
 - h. Positioning bolsters and wedges;
 - i. Therapy grade floor mat;
 - j. Rifton Activity Chair;
 - k. P-Pod Postural Support System;
 - l. NESSIE;
 - m. Wheelchair;

- n. Stroller;
 - o. SuperStand HLT Stander;
 - p. Hoyer Lift System;
 - q. Red Barn Creepster Crawler;
 - r. KidWalk Dynamic Mobility System; and
 - s. Trexo Home with Rifton Dynamic Pacer Gait Trainer.
9. Bass Lake shall include in the 2021 annual IEP a clear statement of the assistive technology the IEP team deems required equipment. The IEP notes shall include a list of the assistive technology Bass Lake or the IEP team declines to purchase.
10. Bass Lake is ordered to follow up with a Prior Written Notice to Parent explaining why Bass Lake is not providing the requested equipment.
11. Bass Lake shall direct the school nurse to complete Student's healthcare plans for discussion by the IEP team at Student's 2021 annual IEP team meeting. Within five days of this Decision, Parent shall provide the school nurse with a written list of all health care providers she deems necessary to determine whether the services of a registered nurse are required to provide Student with educationally related nursing services and an executed Release of Information to obtain Student's relevant medical records. Bass Lake shall ensure that the school nurse attends the annual IEP team meeting.
12. In the event the health care plan cannot be completed for review at the 2021 annual IEP team meeting, then the school nurse shall explain the reason for the delay and complete the health care plans within the following 30 days. Bass Lake shall convene another IEP team meeting within 30 days to review the completed health care plans and discuss whether Student's nursing services

should be revised to provide services only from a registered nurse. If Bass Lake has obtained a nursing service provider as of the date of the annual IEP team meeting, then Bass Lake shall invite that nursing service provider to the IEP team meeting.

13. Bass Lake shall provide no less than five hours of special education training to review the procedural requirement of a FAPE, including a discussion of determining the legal timelines involved in special education, to its special education staff, including the school nurse, and any other school district employees directly involved in providing special education and related services to students within the school district. The training shall be presented by an outside agency or a law firm specializing in special education law that is not the law firm of Bass Lake's special education attorneys for this hearing.

14. Bass Lake shall fund 500 hours of compensatory educational services for the provision of Student's in-home educationally related services which relate to Student's IEP and any related services provided to Student, including in-home nursing services required during provisions of other related services. The provision of the 500 hours of compensatory services shall not exceed the sum of \$75,000 and shall remain available to Student until December 31, 2024.

Bass Lake shall establish direct payment to any service provider selected by Parent.

RIGHT TO APPEAL THIS DECISION

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

/s/

JUDITH L. PASEWARK

Administrative Law Judge

Office of Administrative Hearings