

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2020090157

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PARENTS ON BEHALF OF STUDENT,

v.

CITRUS SPRINGS CHARTER SCHOOL AND  
EMPIRE SPRINGS CHARTER SCHOOL.

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DECISION

DECEMBER 22, 2020

On September 3, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Citrus Springs Charter School and Empire Springs Charter School. On October 15, 2020, OAH granted the parties' joint request for a continuance. Administrative Law Judge Alexa Hohensee heard this matter by videoconference on November 3, 4, 5, 9, 10 and 12, 2020.

Danielle Augustin and Elizabeth Curtis, Attorneys at Law, represented Student. Parents attended all hearing days on Student's behalf. Jim Sanft, Attorney at Law, represented Citrus Springs and Empire Springs. Dr. Kathy Cox, Senior Director of Special Education Compliance Monitoring for both charter schools, attended all hearing days on behalf of Citrus Springs and Empire Springs.

At the parties' request, the matter was continued to December 3, 2020, for written closing briefs. The record was closed and the matter was submitted on December 3, 2020.

## ISSUES

1. Did Empire Springs deny Student a free appropriate public education, called a FAPE, by failing to provide an appropriate educational placement and program from September 3, 2018, to September 19, 2019?
2. Did Citrus Springs deny Student a FAPE by failing to provide an appropriate educational placement and program from September 20, 2019, to September 3, 2020?
3. Is Citrus Springs the current local educational agency for Student?

## 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.) All subsequent references to the Code of Federal Regulations are to the 2006 version. The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected.

(20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student bears the burden of proof in this matter. 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 15 years old and in ninth grade at the time of the hearing. Student was enrolled in Empire Springs, and then Citrus Springs, for the 2018-2019 and 2019-2020 school years. Student resided with Parents in the geographic boundaries of Santa Ana Unified School District. Student was eligible for special education under the category of Autism.

ISSUE 1: DID EMPIRE SPRINGS DENY STUDENT A FAPE BY FAILING TO PROVIDE AN APPROPRIATE EDUCATIONAL PLACEMENT AND PROGRAM FROM SEPTEMBER 3, 2018, THROUGH SEPTEMBER 19, 2019?

Student contends that his progress in areas of educational need was trivial prior to November 2018, and that Student required a nonpublic school placement to make appropriate advancements in academics and social skills. Student contends that Empire Springs failed to consider sufficient information to develop appropriate goals, or to offer appropriate services. He also contends that he needed occupational therapy, and an extended school year program, and that Empire Springs failed to implement the speech-language pathologist consultation. Empire Springs contends that it considered sufficient information, identified Student's educational needs, developed appropriate goals, and offered and provided Student a FAPE in the least restrictive environment.

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, called 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), 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services 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].)

Two IEPs were developed while Student attended Empire Springs, on November 6, 2018, and September 20, 2019. Each is addressed separately.

## NOVEMBER 6, 2018 IEP

### PLACEMENT

Both federal and state law require a school district to provide special education in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a); Ed. Code, § 56040.1.) This means that the local educational agency must educate a special needs pupil with non-disabled peers to the maximum extent appropriate. The pupil may be removed from the general education environment only when the nature or severity of the pupil's disabilities is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii); Ed. Code, § 56040.1.)

To determine whether a child can be placed in a general education setting, the Ninth Circuit Court of Appeals adopted a balancing test that requires the consideration of four factors. These include the educational benefits of full-time placement in a regular class, the non-academic benefits of such placement, the effect of the student on the teacher and children in the regular class, and the costs of maintaining the student in a general education classroom. (*Sacramento City Unified School Dist. v. Rachel H.* (1994) 14 F.3d 1398, 1403.)

The local educational agency must also ensure the following:

- The placement decision must be made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. This team must consider the requirement that children be educated in the least restrictive environment.
- Placement must be determined annually, based on the child's IEP and be as close as possible to the child's home.
- Unless the IEP specifies otherwise, the child must attend the school that he or she would if non-disabled.
- In selecting the LRE, consideration must be given to any potential harmful effect on the child or on the quality of services that he or she needs.
- The child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(34 C.F.R. § 300.116.)

In deciding on the least restrictive environment, the continuum of the program options includes, but is not limited to, regular education, resource specialist programs, designated instruction and services, special classes, nonpublic nonsectarian schools, state special schools, specially designed instruction in settings other than classrooms, itinerant instruction in settings other than classrooms, and instruction using telecommunication, and instruction in the home, in hospitals or other institutions.

(Ed. Code, § 56361.)

California statutes do not explicitly authorize home schooling, but California has a growing number of charter schools that offer schooling in non-traditional settings. (Cal. Dept. of Educ., *Private Schools Frequently asked Questions, Schooling at Home*, <https://www.cde.ca.gov/sp/ps/psfaq.asp#d1>.) Springs Charter is a network of charter schools, including Empire Springs and Citrus Springs, that are each their own local educational agency, similar to individual school districts.

All the local educational agencies in Springs Charter have as their main purpose to support parents who want to educate their children at home. They are schools of choice. A parent must elect to send their child to a Springs Charter school, and every school year must enter into a contract with that school describing the parent's responsibilities as the primary teacher of their child. Each school provides the curriculum materials, chosen by the parent in collaboration with a general education teacher assigned to guide and supervise the parent. The supervising general education teacher is called an education specialist. Each student is issued a Chromebook pre-programmed with educational software such as speech-to-text. Although the curriculum materials are turned in every year, and new materials issued as the student advances from grade to grade, the student retains possession of the Chromebook throughout their course of study at a Springs Charter school, even over summer months.

Springs Charter schools each have a variety of programs to support their students, including home school programs, independent study programs, and on-site academies that a student can attend for a full or partial day, from one to five days per week. Student's home school program, called Journeys, was a regular education program using general education curriculum based upon California's common core standards. Much of the Journeys program was administered online with frequent in-program assessments of each student's understanding. Journeys' education

specialists met with each parent every 20 days to verify the student's attendance, review written work, and provide support to the parent.

Springs Charter schools also provide special education and related services designated in a student's IEP, such as specialized academic instruction, speech therapy, occupational therapy, and mental health services. Specialized academic instruction and services are provided on-site at school locations. A student with an IEP is assigned a case manager to coordinate special education services. This is usually the special education teacher who provides specialized academic instruction to the student.

Student began the 2018-2019 school year in the Journeys home school program at Empire Charter. He had been a Journeys student for three years. Student's existing 2017 IEP called for 45 minutes per week of specialized academic instruction, and 60 minutes per week of language and speech services, also called speech therapy, in a small group or individual setting. The 2017 IEP also included 30 minutes of occupational therapy four times per year, delivered online, to support keyboarding skills. As supplementary support, parent and the education specialist received 10 minutes per month of consultation with Student's specialized academic instructor and with the speech-language pathologist. He also received rewards and positive reinforcement, extra time for assignments and tests, shortened assignments where Student showed mastery, a word processor for writing, seating near an academically strong peer for modeling of appropriate behavior, simplified instructions, checks for understanding, frequent breaks, and frontloading information.

In fall 2018, Student interacted well with his typical peers in on-site elective classes, called enrichment classes, which generally had 15 to 20 students. He participated in classroom discussions, joined in group projects, and was generally well-liked. Although Student did not have behavioral issues, he did have social skills



deficits, which is one of the diagnostic criteria for autism. He did not always understand the consequences of actions such as abruptly walking away from a conversation or suddenly changing topic when he became disinterested. Student did not have a good understanding of personal space and could be perceived as rude by leaning his chair back or putting his feet on the desk. Student had goals in the area of speech to address use of body language, called brain and body engagement, and taking the perspective of others, as well as in initiating and maintaining conversation.

Student had academic goals in math and writing. Student understood grade-level mathematical concepts, but needed support on word problems to break them down and identify the correct mathematical formulas needed to solve them. Student did not like writing, and often produced the minimum amount of work without checking or correcting for grammar and punctuation errors. Student was an excellent reader, with a strong and varied vocabulary. In general, he earned good grades, advanced in the general education curriculum, and met common core standards. Regular online assessments showed steady advancement in academics. Student did not perform as well on timed annual Statewide tests, on which he scored below or as nearly meeting State curriculum standards, and those tests were less reliable indicators of Student's academic skills.

Empire Springs conducted a psychoeducational assessment of Student in November 2018 in preparation for a three-year review of Student's IEP. Student was 13-years old and in seventh grade. Student had average cognitive ability, but below average working memory and processing speed. Student scored in the average range in all academic areas, including written expression. Student had average visual perception, with low to below average visual motor ability, particularly when Student attempted to rush through written portions of a test. Parent's social emotional rating of Student as

part of the assessment was generally average, with some elevated scores for hyperactivity, evading social contact, and functional communication. On an autism rating scale, Parent rated Student as unwilling to engage in or maintain peer interaction, and unable to use verbal communication properly.

Parent reported that, academically, Student disliked writing but enjoyed math. He had improved over the past year in working independently and sustaining attention. Socially, Student socialized outside of school with friends and loved to be around other children. However, Student was socially awkward and had difficulty making new friends, particularly if he was disinterested in another child's conversational topic or activity.

Robyn Boyd, Student's specialized academic instruction teacher, reported that Student had no maladaptive behaviors in the classroom, although he sometimes blurted out what was on his mind and needed to be reminded of when and what statements were appropriate. Boyd taught in the resource specialist program, where students performing at grade level received individualized and small group instruction as extra academic support. Student's motivation to complete academic tasks was variable.

Molly Cote, a speech-language pathologist, conducted a speech assessment in November 2018. During the assessment, Student expressed that the assessment was boring, and that he liked being in his enrichment class. He appeared irritated during the assessment, was frequently off-topic, and used inappropriate body language, such as putting his feet on the desk. Student was articulate and intelligible. Although he scored well in some language areas, he was deficient in non-literal language and below average in determining meanings from context and interpreting social communication, also called pragmatics. These deficits impacted Student's critical thinking skills, and he scored very poorly in understanding the perspectives of others and problem solving.

Empire Springs held an IEP team meeting on November 6, 2018. All necessary team members attended, including Parents. Empire Springs gave Parents a copy of parent rights and procedural safeguards, on which Parents had no questions. Boyd and Cote reported their assessment results and discussed them with the IEP team. Parents reported they were concerned about Student's writing skills, and his difficulty with interpreting social cues when interacting with peers.

Student's occupational therapist reported that Student had met his keyboarding goal of typing 20 words per minute, and recommended that occupational therapy be discontinued with occasional consultation to Student's teachers to support use and maintenance of keyboarding skills for assignments.

Academically, Student continued to need heavy prompting to write multi-paragraph essays. He understood the rules of punctuation and grammar, but failed to edit his work. Student understood complex math concepts, but had difficulty applying them to word problems. Student had improved in transitioning to challenging tasks, but still required prompting to stay on task. The IEP team developed academic goals in these areas of need.

Student had made partial progress on his speech goals. He had increased identification of word meanings and relationships and demonstrated improved conversation maintenance in topics of interest. Student was able to frequently identify the perspective of others, identify problems and state the consequences of various solutions, but struggled to formulate logical problem solutions himself. He continued to often be unaware of how his own conduct, such as ignoring peers, impacted others. Student had improved but still had difficulty with following multi-step directions and answering questions about social stories.

Socially, Student was outgoing and easy to engage in conversation, although conversation maintenance depended on his interest. He was generally happy and got along well with his classmates in Boyd's classroom and during his on-site elective classes. He appeared to enjoy working both independently and with peers. The IEP team addressed Student's difficulties with initiating and maintaining conversations, reading social cues, and brain and body engagement by developing speech and language goals and offering speech services, discussed later in this analysis.

The IEP team discussed a variety of general education placement options. These included general education with home school for core classes, general education on-site enrichment classes, in-class supports for general education classes, and general education with support from related services such as speech therapy, consult services and teacher collaboration. The IEP team also discussed specialized academic instruction in a resource specialist classroom, like Boyd's classroom, where a small group of three to four students at a time, grouped by age, grade and skills, received instruction to support their individual academic needs.

Parents stated that they wanted Student to be homeschooled, and Empire Springs' IEP team members agreed that Student could make appropriate progress in general education with home school classes and on-site enrichment classes, with the support of specialized academic instruction and speech therapy. Such a program placed Student in general education for 90 percent of his school day. The IEP team determined that 10 percent of Student's school program in specialized academic instruction and speech therapy would beneficially impact Student's educational progress, and that the Journeys program with the services offered was the least restrictive environment.

The placement Empire Springs offered in the November 6, 2018 IEP was the least restrictive environment for Student. The nature of Student's disability was not so severe that he could not satisfactorily attend general education classes with the use of supplementary aids and services.

Looking at the first *Rachel H.* factor, Student received educational benefit from placement in general education with specialized academic instruction support. The November 2018 psychoeducational and periodic in-program assessments informed the IEP team that Student was performing at grade level in all academic areas with instruction in the general education curriculum and 45 minutes per week of specialized academic instructional support. Student met his November 2017 math goal, but had only made partial progress on his task completion goal and not met his writing goal, and the IEP team reasonably calculated that with an increase in specialized academic instruction to 60 minutes per week to address areas of weakness in writing and task completion, Student could remain in general education to the maximum extent appropriate for academics. Student was participating in elective general education classes with up to 20 typical peers and receiving good grades. Student did not need to be removed from general education, or require small group instruction, beyond 60 minutes per week of specialized academic instruction as academic support.

Interestingly, although Student now contends he needed a restrictive nonpublic school placement, the nonpublic school in which Parents unilaterally placed him for ninth grade did not provide specialized academic instruction in any of Student's classes. At New Vista School, Student was placed in general education classes with teachers who had either no teaching credential or a general education credential. Absolutely none of Student's teachers at New Vista possessed special education credentials, although New Vista witnesses purported unconvincingly to be providing Student with specialized

academic instruction all day, every day. Student's English language arts teacher, who had an emergency teaching credential in the single subject of English, used general education textbook readings, with graphic organizers, prewriting activities, rubrics and clear expectations to teach writing. These were general education accommodations included in Student's November 2018 IEP as small group instruction, scaffolding, front loading, and simplification and clarification of instructions. Information about Student's progress in English at New Vista in November 2020 was unpersuasive evidence that he needed to be removed from general education to make progress in writing in November 2018, or at any time. Rather, it established that Student could make academic progress on his writing skills in a general education environment with a weekly period of specialized academic instruction and reasonable accommodations.

The director of New Vista placed Student in eighth grade English and math, although Student was in ninth grade in 2020-2021, because she wanted Student to work on foundational writing and homework skills. Although the director had a special education credential, she was not Student's teacher, and her testimony regarding Student's abilities was unpersuasive. She freely reported on rating scales in October 2020 that she did not know Student well, and testified that she expected all students seeking admission into New Vista to score in the 80th percentile or better on its academic pre-admission testing because New Vista had a rigorous college-bound curriculum. Student scored at grade level in written expression and math in standardized academic testing in November 2018, again on regular in-program assessments in November 2019, and passed his eighth grade classes with A's and one B. New Vista's placement of Student in eighth grade English and math for reasons unrelated to whether he could perform at grade level with supplementary aids and services did not establish a need to remove Student from general education in November 2018, or at any other time.

As to the second *Rachel H.* factor, Student received non-academic benefit from placement in general education elective classes with typical peers. Student enjoyed working on group projects, interacting with typical peers, and had friends in his enrichment classes at Empire Springs. Typical peers were role models for Student, and Cote testified persuasively that Student was successfully, albeit slowly, generalizing lessons learned in speech therapy to his classes with typical peers.

Mother's opinion that the typical peers in Student's classroom were not really friends because they did not come over to Student's house for playdates was not logical or persuasive. There was abundant testimony that Student preferred to interact with his friends through online games. Also, by the time of Mother's testimony at hearing, California school closures and safer-at-home guidelines had been in effect for seven months as a result of the worldwide COVID-19 pandemic. Teenage friendships online rather than in-person were the rule, and not the exception.

Jeremy Warren, a very experienced, credentialed and well-qualified Springs Charter school psychologist, opined persuasively that counting the number of Student's friends was not a valid measure of Student's social skills. He explained that school is naturally a place where extroverts shine, and just because a student is an introvert does not make that student socially deficient. Warren cautioned that difficulty taking the perspective of others, initiating and maintaining conversations, and understanding verbal and body language cues were inherent manifestations of autism, and would be a challenge for Student for the rest of his life. Warren's opinion that improvements would be incremental as Student learned strategies for coping with these deficits was persuasive and not contradicted by Student's witnesses.

The New Vista director's opinion that Student had poor social skills in fall 2020, which implied a lack of social skills gains in previous years, was given little weight due to general statements that undermined her credibility. She stated that the pre-admission testing instruments used by New Vista defined the 80th percentile as average, when by definition the 50th percentile signifies average. She also stated that Student was receiving speech services at New Vista because she had observed him during speech therapy. However, Student was not receiving speech therapy there, which strongly suggested that her knowledge of Student and his program was faulty. New Vista began the 2020-2021 school year online, and Student did not attend on-campus classes until October 2020, so at most she had observed him on campus as she went about her administrative duties for 30 days. The director's asserted confidence in recall at hearing contradicted her contemporaneous written statements in October 2020 that she did not know Student well.

The New Vista director's testimony was also often unsupported or illogical. For instance, she conceded that she could not say if her opinion that Student did not display strong social skills on campus was because he lacked them or chose not to interact with other students at New Vista. She criticized Student's time management skills for the minor reason that he walked slowly between classes, but admitted that Student was transferred to an additional elective class after he consistently completed assignments during allotted class time. She said Student's facial expressions were inappropriate, but gave the example that Student scowled when being asked to do a non-preferred activity, which does not seem atypical of a teenager or necessarily inappropriate. She explained that Student liked to tell jokes and perform stand-up comedy, but vaguely commented that Student's jokes were sometimes inappropriate, which is a common characteristic of comedy and poor support for her opinion that Student lacked social skills, particularly as performance for others is itself a social undertaking.



The New Vista director stated that Student could not self-advocate, but then relayed a story in which Student informed a teacher he did not want to be in that class and subsequently did not attend that class for a week before New Vista staff detected Student's self-initiated schedule change. Multiple witnesses confirmed that Student was a strong self-advocate before and after attending New Vista. The director concluded Student could not make friends because he wanted to be alone, although the two are not equivalent. Most notably, the director's testimony was inconsistent with multiple written New Vista teacher reports from October 2020 that Student arrived at class on time, came to class prepared, worked independently, participated in class discussions, was respectful toward teachers and peers, and used critical thinking skills.

Student's evidence of insufficient social skills to function in a general education environment must be viewed in context. Parents planned to tell Student for the first time that he had autism on his 15th birthday in March 2020, and unilaterally place him in a school for autistic students for high school. In fall 2020, they unilaterally placed Student at New Vista, a nonpublic school with a population of students with autism and both social skill deficits and maladaptive behaviors that could not be managed in a general education school setting. There were no neurotypical students at New Vista. Student was vocal about not wanting to be at New Vista, and cleverly avoided New Vista's attempts to foster student interactions during breaks and at lunch. Student took time-consuming circuitous routes to the bathroom, often circumnavigating the farthest fields of the school, and found spots to quietly read. When told of a mandatory requirement to ask three questions or make three comments in conversation with other students during a break period, Student quickly complied and then spent the rest of the break by himself. Student chose not to actively participate in New Vista's social clubs.

New Vista's two social skills experts, the head of the social skills department and Student's social skills teacher, were both straightforward and transparent in stating that they could not definitively state if Student lacked social skills, or was intentionally choosing not to socialize with other New Vista students. Under the circumstances, evidence of Student's lack of socialization with the rest of the New Vista student population did not persuasively demonstrate that Student's social skill deficits required him to be pulled from general education and placed in a restrictive nonpublic school setting to work on social skills goals, or to make appropriate progress in his educational program, in November 2018 or at any other time.

*Rachel H.* also requires an examination of whether Student's behavior had an adverse effect on the teacher or other students in the general education classroom, and whether the cost of supports was a factor in seeking to exclude Student from general education. Here, all evidence demonstrated that Student was well-liked and a valuable participant in his general education classes, whether at Empire Springs, Citrus Springs or New Vista, and there was no evidence that Empire Springs or Citrus Springs ever sought to remove Student from general education classes, due to cost or any other factor.

The placement offered by Empire Springs in November 2018 was made by an IEP team composed of persons knowledgeable about Student and autism, and after consideration of a continuum of placement options. The IEP offered Student placement close to Student's home. The offer was carefully considered and included specialized support services and supplementary supports in the classroom rather than removal from general education. In light of the fact that Student could be satisfactorily educated in regular education classrooms without removal beyond 10 percent of Student's school day for special education and speech therapy, there was no need for the IEP team to discuss more restrictive options, such as placement at a nonpublic school.

Student argues that the November 2018 IEP team should have discussed more restrictive placements than Student needed, simply because they are on the continuum. However, the determination by an IEP team that Student could be appropriately educated in a general education program with supplementary aids and services, after discussion of the multiple general education options, satisfies the requirement that the IEP team discuss placement options for Student on the continuum. Student cites no authority requiring local educational agencies to consider placements that are not a reasonable option for the child. Consideration of such options would be inappropriate because they do not meet the least restrictive environment mandate.

Student also argues, again with no authority, that the IEP team was required to inform Parents of a local educational agency's funding responsibilities for alternative placements, such as nonpublic schools and residential treatment centers, if it failed to offer a FAPE. However, while the IDEA requires school districts to notify parents of their rights and obligations under the IDEA, it does not require them to provide additional notice of its obligation to pay for certain placements under certain circumstances, or to remind parents that failure to provide notice may preclude reimbursement. (*Ashland School District v Parents of E.H.* (9th Cir. 2009) 587 F.3d 1175, 1184-1185 (*Ashland*).) An IEP team is composed of educational professionals and parents whose time is valuable, and whose focus is mandated to be on the child whose educational program is being decided. Parents' wish that Empire Springs or Citrus Springs staff had taken the time to educate them on additional intricacies of special education law, based upon a hypothetical that the IEP team was not developing an IEP that offered a FAPE, did not impose on these agencies an obligation to do so.

In addition, Parents received a copy of parental rights and procedural safeguards at the November 6, 2018 IEP team meeting. Parents were given the opportunity to receive explanations about those rights and safeguards from Empire Springs' team members, but declined the offer. Parents received copies of parental rights and procedural safeguards each of the five years he was enrolled in the Journeys program. Parents cannot now be heard to complain that they were not given notice of their rights under the IDEA.

Student argues that Parents' choice of home school was more restrictive than a nonpublic school because his home school classroom had only one student, requiring Empire Springs and Citrus Springs to fund a nonpublic school placement as a less restrictive environment. This argument fails for several reasons. First, this Decision finds that the placement offered in the November 6, 2018 IEP was the least restrictive environment. Second, if Student's definition of the least restrictive environment as the one with higher classroom numbers is followed to its logical conclusion, any local educational agency supporting home school programs for a single child would be liable to fund nonpublic school placements because a home school classroom is always a classroom of one, with less students than in a nonpublic school classroom. This line of reasoning is contrary to law, as it would require IEP teams to disregard program components as a whole to focus exclusively on classroom population, dispensing with the *Rachel H.* analysis. Such logic would have the disturbing outcome that parents could shop around for a preferred nonpublic school and obtain public funding simply by enrolling in a home school program supported by a local educational agency first. Such a reading of the least restrictive environment mandate would reward parental dishonesty and penalize charter schools for supporting an important parental choice. Federal and State courts have long held that the IDEA is not a public resource for funding parents' preferred placements. (*Rowley, supra*, 458 U.S. at p. 207).

Third, the IDEA recognizes that parents may choose not to accept public services for their child, either by enrolling their child in private school, or simply declining special education services. (See Ed. Code §§ 56170 and 56346, subd. (b); *Memo 00-14, Questions and Answers on Obligations of Public Agencies in Serving Children with Disabilities Placed by Their Parents at Private Schools* (Office of Special Education Programs, May 4, 2000).) It is illogical to place the onus of funding a private program on the public as the result of an intentional parental choice to school their child at home. Lastly, and particular to this case, all Charter Springs schools had on-campus general education academies of approximately 15 to 20 students available five days per week. Parents' deliberate choice to give Student individualized instruction at home, rather than availing themselves of broader general education classes, does not justify now bypassing the Springs Charter program at public expense.

In sum, the weight of the evidence did not establish that the placement offered in the November 6, 2018 IEP was inappropriate, or not the least restrictive environment.

## SPECIAL EDUCATION AND RELATED SERVICES

For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314; 20 U.S.C. § 1401(9).) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) The IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an education designed

according to the parent's desires], citing *Rowley, supra*, 458 U.S. at p. 207; see also *Miller v. Board of Education of the Albuquerque Public Schools* (D.N.M. 2006) 455 F.Supp.2d 1286, 1307-1309; aff'd on other grounds, *Miller v. Board of Education of the Albuquerque Public Schools* (10th Cir. 2009) 565 F.3d 1232; *A.V. ex rel. Vaz Atunes v. Lemon Grove Sch. Dist.* (S.D. Cal. Feb. 24, 2017, Case No. 3:16-CV-0803-CAB-(BLM) 2017 W.L. 733424, \*7.)

No one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203 fn. 25.) A student may derive educational benefit under *Rowley* if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. A student's failure to perform at grade level is not necessarily indicative of a denial of a FAPE, if the student is making progress commensurate with his abilities. (*Walczak v. Florida Union Free School Dist.* (2nd Cir. 1998) 142 F.3d 119, 130; *E.S. v. Independent School Dist. No. 196* (8th Cir. 1998) 135 F.3d 566, 569; *In re Conklin* (4th Cir. 1991) 946 F.2d 306, 313; *El Paso Independent School Dist. v. Robert W.* (W.D.Tex. 1995) 898 F.Supp.442, 449-450; *Perusse v. Poway Unified School Dist.* (S.D. Cal. July 12, 2010, No. 09 CV 1627) 2010 WL 2735759.)

The IDEA does not contemplate that all annual goals will be achieved. It expressly provides that one of the purposes of the annual IEP review is to determine whether annual goals are being achieved and to revise the IEP to address any lack of expected progress toward those goals. (34 C.F.R. § 300.324(b)(1)(ii)(A).)

Annual goals must be designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general curriculum, and to meet each of the student's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R.

§ 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) 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*, (Office of Special Education and Rehabilitation Services, March 25, 1988); *Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4* (July 1, 1999).)

As long as a school district provides an appropriate education, methodology is left to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 208.) This rule is applied in situations involving disputes regarding choice among methodologies for educating children with autism. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141; *Pitchford v. Salem-Keizer School Dist.* (D. Ore. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick School Commission* (1st Cir. 2004) 361 F.3d 80, 84 (*T.B.*).) Courts are ill-equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods. (*T.B., supra*, 361 F.3d at p. 84; *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950.)

Applying the *Rowley* standard, as confirmed in *Endrew F.*, the weight of the evidence established that the November 6, 2018 IEP was designed to meet Student's unique needs and reasonably calculated to provide Student with educational benefit.

#### ACADEMIC SERVICES AND SUPPORTS

The IEP team heard and considered the results of the psychoeducational, language and speech and occupational therapy assessments. Parent, Boyd, and Cote reported on Student's progress on the prior year's goals and on current in-program testing and observations. The IEP team identified all academic and social needs related to Student's disability of autism that impacted his educational progress, and developed annual goals to address those needs.

Preliminarily, Student contends a lack of progress on goals written and implemented in 2015, 2016, and 2017 because they appeared similar year after year. Whether or not those goals were appropriately written, or offered a FAPE, in past years is not at issue in this case. The November 6, 2018 IEP team was charged with developing annual goals and offering special education and related services reasonably calculated to allow Student to make educational progress appropriate to his circumstances, based on Student's needs in November 2018. This Decision declines to compare 2018 goals with prior goals as a measure of their appropriateness.

On the November 2018 psychoeducational assessment, Student was reading and understanding ninth grade materials, although he was only in the seventh grade. His writing skills were at grade level, but writing was a nonpreferred task for Student, and he required heavy prompting, modeling and guidance to produce one or more paragraphs. Student rushed through writing assignments, and did not check for obvious punctuation, grammatical, and capitalization errors. Student scored in the average range on math skills and had strong math scores on regular math curriculum assessments, but still required teacher support in breaking down problems into sequential component parts to solve them. Parent reported that Student had shown improvement in sustaining attention to academic work and independently completing assignments, although this was still an area of concern.

The November 6, 2018 IEP team developed four academic goals to address Student's identified areas of need in math, writing and editing, and task initiation and completion.

Student had met his prior math goal to solve algebraic problems, and the new math goal required him to apply math concepts to solving word problems, with supports such as teacher prompts, examples, and modeling.



Student had not met his writing goal of independently writing a clear and coherent three-paragraph essay with supported reasoning, and the IEP team broke the goal into two separate writing goals. One goal required Student to write a one- to three-paragraph essay that stated an opinion and was structured to provide supporting ideas, reasoning and opinions, with mild to moderate teacher support. Another required Student to edit the sentences for complexity, grammar, and punctuation. These goals targeted grade-level literacy skills that Student would need, as well as underlying foundational writing and reasoning skills in which Student needed improvement.

Student made good progress on, but did not meet, his vocational task completion goal to stay focused on a non-preferred task for 15 minutes with no more than two prompts. Student timely completed his assignments, and independently completed many academic tasks, but the IEP team recognized that Student needed to continue working on this skill as academic tasks became more complex in advanced grades. The IEP team decided to retain this goal and increased the time for attention to task to 15 to 20 minutes with no more than two teacher prompts.

These four goals accurately identified Student's academic needs and were designed to enable Student to make appropriate progress in grade-level curriculum.

Empire Springs offered Student 240 minutes per month, or the equivalent of 60 minutes per week, of specialized academic instruction in Boyd's resource specialist class to support these goals. This was an increase of 15 minutes per week, or approximately 33 percent, from the prior year's IEP. Empire Springs offered Student supplementary aids and services including scaffolding techniques, additional time for assignments, shortened assignments where Student demonstrated mastery of skills and concepts, small group instruction, small group for test taking, a word processor for

writing assignments, frontloading, simplified instructions, and checks for understanding. For academic support, the IEP added 10 minutes per month of specialized academic instruction consultation between the special education teacher and the general education teacher and Parent. This support was in addition to the approximately one-hour consultation between the general education teacher and Parent every 20 days that was built into the Journeys program.

Boyd testified persuasively that the November 6, 2018 IEP team considered sufficient information regarding Student's abilities and academic progress to identify his academic needs, develop annual goals to address those needs, and develop a program of services adequate for Student to make progress on those goals. Boyd was a well-qualified special education teacher with a credential to teach children with mild to moderate disabilities. She had a master's degree in communicative disorders. She had been Student's resource teacher for two years. She saw Student in her resource class, and during her observations of enrichment classes once or twice each week. Her recall of observations of Student and interactions with Student and Parent were good, her demeanor at hearing was calm and professional, and her opinions were well-reasoned and supported by reference to corroborating information.

#### COMMUNICATION SERVICES AND SUPPORTS

The November 2018 psychoeducational assessment showed that Student had average verbal reasoning, conceptualization, verbal comprehension and expression skills. These skills generally require a knowledge of conventional standards of behavior, social judgment, maturity, and common sense. However, Student's working memory skills were poor, impacting his short-term memory, concentration and the reasoning process. Student was below average in understanding relationships among objects or tasks that required him to rapidly identify information and make decisions. On a scale

to assess Student's behavioral, social, and emotional functioning, Parent scored Student as average in all areas except for a tendency to avoid social contact and communicate easily with others. This was consistent with Parent's rating on an autism scale, and with Student's diagnosis of autism.

The speech assessment by Cote informed the November 6, 2018 IEP team that Student had many average spoken language skills, but deficits in receptive and expressive language in the area of nonliteral language, deriving meaning from context, and making inferences. He exhibited deficits in pragmatic language, also known as social language and social skills. Student had difficulty understanding the perspective of others, identifying and understanding non-verbal cues, and understanding the impact of his words and behaviors on others.

Student had made progress on his prior speech goals, but did not meet all of them. In topic maintenance, Student did not consistently ask three questions or make three comments in a five-minute conversation, although he did demonstrate topic maintenance by making two to three comments with moderate cues. The IEP team decided to retain this conversation skills goal and modify it to require Student to maintain a conversation with four comments or questions in a seven-minute exchange with moderate prompting.

Student met his pragmatics goal of brain and body engagement, to maintain eye contact, keep appropriate distance, and use appropriate body position during a five-minute group task with no more than five prompts. However, although Student needed no prompting on some days, he did need prompting on others. The IEP team decided to retain and modify this goal for Student to demonstrate appropriate brain and body engagement for 10 minutes with no more than three prompts.

Student met his perspective-taking goal, which required him to identify ideas, details and sequence of events in social scenarios and stories, but he continued to have difficulty with inferencing and perspective taking. The IEP team modified and broadened this goal to require Student to identify the perspective of at least two characters in a social scenario or short story. As Student advanced in school, perspective taking would become more important in the curriculum, and in social interactions with teenagers.

The team also added a goal for nonliteral language, requiring Student to explain the nonliteral meanings of language constructs, such as similes, metaphors, and idioms, with moderate prompts. Familiarity with nonliteral language would be important for analyzing increasingly complex reading materials, and in socializing with peers.

Student made good progress on a goal to follow three-step directions with no more than one verbal repetition, although he did not meet the goal because he sometimes needed additional prompting. The IEP team decided that Student had matured and was more conscientious, and no longer needed a goal in this area.

Student did not meet his goal of identifying the consequences of his behaviors and actions on others during a group interaction, with moderate cues. Difficulty with perspective taking is a component of autism, and Student needed to understand perspective taking before he could generalize this skill to situations outside of the speech therapy environment where he learned them. The IEP team modified the goal to focus not just on Student's behavior, but to require Student to identify a problem from a social story or scenario, identify at least one logical solution, and explain the consequences of that solution.

The November 6, 2018 IEP offered Student 240 minutes per month, or the equivalent of 60 minutes per week, of speech therapy in a small group, or delivered individually as needed. Small group services allowed Student to practice his pragmatics goals with one or two other students. Services were to be provided in the speech therapy room, where the focus would be on the skills targeted by Student's goals, including topic maintenance, brain and body engagement, problem solving, perspective taking, and nonliteral language. For communication service support, the IEP added 10 minutes per month of consultation between the speech-language pathologist and the general education teacher and Parent.

Cote testified persuasively that the November 6, 2018 IEP team considered sufficient information regarding Student's abilities and progress in social language and social skills to identify his communication needs, develop annual goals to address those needs, and develop a program of services adequate for Student to make progress on those goals. Cote had been a licensed speech-language pathologist for over 20 years, working with children and young adults. She held a Certificate of Clinical Competence from the American Speech and Hearing Association, and provided services to Charter Springs students through her nonpublic agency, which was certified by the California Department of Education to provide language and speech services. She assessed Student's language and speech in 2015 and 2018, supervised the licensed speech-language pathologist assistant who worked with Student each week, and observed and engaged with Student herself on a monthly basis for 5 years. She observed Student during speech sessions, during enrichment classes, and on campus. Cote had a professional demeanor at hearing, and her recall of observations of Student was detailed. Cote sometimes gave short answers without elaboration, but when rendering opinions, she generally gave her reasoning and was persuasive. No other speech-language pathologist testified to contradict her expert opinions on Student's

social language and social skills deficits, his communication needs, or the educational program and services Empire Springs offered to address those needs.

Ms. Cote opined that language and speech services were the appropriate way to address Student's struggles with pragmatics and social skills. Student needed to learn and understand perspective taking with a small group in the speech therapy room before having the skills to generalize to other environments. Student did not need speech services provided in the general education classroom or outside of class. Student could engage effectively with peers, particularly on topics of shared interest. However, Student required instruction on foundational communication skills to participate in more varied communications as his peer group matured, and to understand curriculum materials as he advanced in grade. Cote cautioned that goals that sometimes looked similar were increasingly more rigorous when the student was working at age and grade level, as was Student. Body language, problems and solutions, and nonliteral language became more difficult as students matured.

Cote observed Student in his enrichment classes interacting well with neurotypical peers, which was consistent with the testimony of many other Charter Springs staff. Student's educational records are filled with contemporaneous documentation of reports of Student's classroom friendships, positive interactions with typical peers, and ready participation in group activities. Student was on the autism spectrum, and socially awkward. Social communication would continue to be an area of need throughout his educational career. Cote opined that any student could benefit from daily social skills instruction, but that the program and services offered in Student's IEPs were sufficient to enable Student to make meaningful progress on his communication goals and advance in the curriculum and social functioning.

Although two experts in social skills and autism testified for Student, their testimony did not persuasively contradict Cote's. First, they had limited experience with Student. The head of New Vista's social skills department was not one of Student's teachers, and had only seen him on campus for approximately 30 days prior to her testimony. Student's social skills teacher at New Vista, while possessing sufficient special knowledge, skills, experience and training to testify about social skills in student with autism, had only taught social skills for one year, and was not a board certified behavior analyst, credentialed teacher, or licensed speech-language pathologist. Both admitted that they could not definitively opine whether Student lacked certain social skills or was deliberately choosing not to socialize with the student population at New Vista. Cote's opinions regarding Student's social skills were better supported, persuasive, and given greater weight. The testimony of Student's experts was speculative as to whether Student had made progress on social skills goals between September 2018 and September 2020, and the New Vista social skills teacher admitted that Student could actively participate in conversations on preferred topics.

New Vista's social skills teacher stressed that the New Vista program was focused on not letting Student be comfortable with silence, which is not the same as addressing social skills deficits. The difference in opinions between experts from New Vista and Charter Springs concerned their preferred methodology to address pragmatics, with Cote and the Charter Springs IEP team members choosing to work on Student's communication and social interaction needs through small group language and speech instruction, and New Vista choosing daily social skills instruction with mandated conversational exchanges during breaks and lunch. However, Empire Springs and Citrus Springs were permitted to choose the methodology to address Student's needs, so long as Student made progress in those areas of need, which Student did. None of the teachers or administrators at New Vista were licensed speech-language pathologists,

and although they opined that New Vista could address Student's needs through their social skills curriculum, they did not, and did not have the credentials to, definitively state that Student's communication and social skills needs could not be met through the language and speech services offered by Empire Springs and Citrus Springs.

Parents unquestionably wanted Student to be more social, not just in the sense of having better communication and social skills, but in wanting to and making more friends. Most students would benefit from daily social instruction. However, the IDEA guarantees an education that is appropriate, not one that provides everything that might be thought desirable by loving parents. The evidence that Student's communication and social skills deficits could be addressed through different methodologies, and that Parents wanted a program that demanded more social interaction, did not establish that the language and speech services offered in the November 6, 2018 IEP, or other IEPs, were not appropriate. The speech and language services offered were reasonably calculated to, and did, enable Student to make progress appropriate to his circumstances.

Notably, the least persuasive opinions about Student's social skills were given by Student's expert witness, psychologist Janice Casteel, Psy.D. Dr. Casteel purported to have conducted a psychoeducational assessment of Student in October 2020, which in fact was little more than an update of rating scales on Student's social emotional functioning completed by the director and social skills department head at New Vista, neither of whom were teachers of Student. Both had only seen Student incidentally on campus for less than 30 days, and clearly stated on their responses that they did not know Student well. Parent's responses on social emotional and autism rating scales were consistent with responses they gave in 2018, and inconsistent with the responses



from New Vista, but Dr. Casteel based her opinions and recommendations primarily on the New Vista responses.

On cross-examination, Dr. Casteel admitted to many deficiencies in gathering the information that formed the basis of her report, which irreparably undermined her opinions regarding Student's social and other skills. She administered academic testing, but compared Student's October 2020 academic skills to cognitive testing from 2018 to form her opinions, which was poor practice. Even so, Student scored in the average to low average range in all academic areas except written expression, which was already a known area of need. The unreliable rating scale responses and Dr. Casteel's observations of Student at New Vista formed the basis of her opinions on Student's social skills.

After her initial testimony, Dr. Casteel reviewed October 2020 responses from Student's social skills teacher, which responses Dr. Casteel had received at the time of her assessment but failed to consider. However, when recalled on rebuttal, Dr. Casteel continued to support her recommendations with the unreliable information in her report. Her opinions on Student's educational needs, and the program components to meet those needs, was based on insufficient and outdated information, unpersuasive, and given little weight.

In summary, the November 6, 2020 IEP annual academic goals were designed to meet Student's needs resulting from his difficulties with writing, word problems, and attention to task. The annual language and speech goals were designed to meet Student's needs resulting from difficulties with pragmatics and social skills. The goals enabled Student to be involved in and make progress in grade-level curriculum. They described what Student could reasonably be expected to accomplish over the coming year. The special education and related services, and supplementary services and

supports, in the November 6, 2018 IEP were reasonably calculated to enable Student to make appropriate progress in light of his circumstances.

## OCCUPATIONAL THERAPY

By November 2017, Student had switched from paper and pencil to using a keyboard and met his goal of typing 20 words per minute. The November 2017 IEP had discontinued direct occupational therapy services, and offered an occupational therapist consult with Student's teachers to support use of a keyboard and keyboarding skills. Student's visual-motor integration scores on standardized testing in 2018 showed general improvement from three years earlier, although Student's low motor coordination score warranted continued keyboard use. The November 6, 2018 IEP continued the accommodation of a word processor for written assignments, with spelling and grammar check turned off. Student's occupational therapist attended the IEP team meeting, and told the IEP team that Student had transitioned well to keyboarding as his preferred way of writing and consultation services were no longer needed. The November 6, 2018 IEP discontinued occupational therapy consultation.

A licensed occupational therapist for Empire Springs reviewed Student's educational records and opined that discontinuing occupational therapy consultation in November 2018 was appropriate. She explained persuasively that visual-motor integration skills are established by fourth grade, and if handwriting is difficult for a student at that time, the student should be transitioned to alternative means of written expression, such as typing or speech-to-text. Young people like Student, who could write legibly but exhibited poor spacing and letter sizing, could be accommodated for handwritten tasks with modified paper and shortened homework assignments. Student could write legibly when motivated to do so, and consistency in letter spacing and sizing could be obtained with practice and repetition, and did not require specialized

occupational therapy. On long written assignments, where Student struggled with fine motor control, alternative methods of expressing himself were appropriate.

By November 2018, Student preferred keyboarding to writing and was typing at 20 words per minute with accuracy. He had plateaued in handwriting skills, and due to his age, dislike of handwriting and preference for keyboarding, the IEP team reasonably concluded that handwriting would not be Student's primary mode of communication. Student's fine motor deficits could be readily accommodated with his school-issued Chromebook, and Student did not require any further assessment for assistive technology to find ways for him to access the curriculum.

## EXTENDED SCHOOL YEAR

Extended school year services are special education and related services provided to a child with a disability beyond the local educational agency's normal school year. (34 C.F.R. 300.106(b).) These must be provided if a child's IEP team determines that the services are necessary to a FAPE for the child. (34 C.F.R. § 300.106(a)(2).) The IDEA does not establish a standard for determining a child's need for extended school year, and States have discretion to establish extended school year policies. (*Letter to Myers* (Office of Special Education Programs, August 30, 1989.)

In California, extended school year services must be provided when the student has a disability that is likely to continue indefinitely, interruption of the student's educational programming could cause regression, and when coupled with limited recoupment capacity would render it unlikely that the student would attain self-sufficiency and independence. (Cal. Code Regs., tit. 5, § 3043.) The United States Department of Education, the agency that enforces the IDEA, and other Circuits have similarly viewed significant regression in the absence of an educational program in the

summer, with excessive time taken to relearn skills, as warranting extended school year services. (*Letter to Myers* (Office of Special Education Programs, December 18, 1989; see also *Cordrey v. Eukert* (6th Cir. 1990) 917 F.2d 1460, *cert. denied* 499 U.S. 938 (1991).)

Student presented no evidence that he had ever experienced regression in academic or social skills over the summer breaks, or required excessive time for skill recoupment. Accordingly, Empire Springs was not required to offer Student extended school year in November 2018, or at any other time.

### ALLEGED FAILURES TO IMPLEMENT

Parent testified that Cote did not consult with her for 10 minutes per month during the 2018-2019 school year, or the beginning of the 2019-2020 school year. Cote corroborated this testimony, by stating that she was available for consultation, but Parent had never requested it. Cote had consulted regularly with Student's education specialist, but not made any effort to consult directly with Parent. This consultation service was one of the supplementary aids and supports offered in the November 6, 2018 IEP for teacher and parent support.

The obligation to provide a FAPE lies with the local educational agency, not the parent. (See *Anchorage School Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1054.) A local education agency must meet its obligations under the IDEA, regardless of whether it anticipates parental cooperation. (*Ibid.*) Empire Springs failed to implement Student's November 6, 2018 IEP by failing to provide, or making affirmative attempts to provide, speech consultation services to Parent.

Only material failures to implement an IEP constitute violations of the IDEA. (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d. 811, 822, citing 20 U.S.C.

§ 1401(9)(D), 1415(f)(3)(E)(i).) There is no statutory requirement of perfect adherence to the IEP and there is no reason rooted in statutory text to view minor implementation failures as a denial of FAPE. (*Ibid.*) The materiality standard does not require that the child suffer demonstrable educational harm to prevail, but the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided. (*Ibid.*)

Student made progress on his communication goals through the 2018-2019 school year and the beginning of the 2019-2020 school year, as discussed in detail at Issue 2. Testimony of Empire Springs staff and contemporaneous documentation demonstrated that although Student did not meet all his November 2018 language and speech goals, he made good progress on each. Student's conversation, body language, perspective taking, nonliteral language understanding, and problem solving skills improved over the course of 12 months, and he presented as a more mature and engaged young man. This is unsurprising given Cote's testimony that Student needed to learn these skills in the controlled environment of the speech therapy room to gain the foundation to generalize these skills into other settings. The primary delivery method for Student's communication goals was small group instruction on pragmatic and social skills.

Consultation services were offered to support Parent as needed, and Student presented no evidence that Parent required consultation services to enable Student to access the curriculum or engage with his peers, especially as Cote provided this consultation to teachers who worked with Student in the classroom with his peers. Ten minutes per month is a very small amount, totaling 100 minutes in an entire school year otherwise consisting of six hours of instruction per day, five days per week, for over 30 weeks. The weight of the evidence established that the failure to implement a small

amount of supplemental consultation did not have a material impact on Student's educational progress, and so did not constitute a violation of the IDEA.

Student also contends that Empire Springs and Citrus Springs failed to implement Student's IEPs because Parent had not been instructed in the designated supplementary aids and supports. However, the evidence showed that Mother was well-supported by education specialists while Student was in the Journeys program, and even though she may not have been familiar with the terms of art used in the IEP, she implemented the techniques and strategies identified by the IEP teams to enable Student to understand grade-level materials.

Also, scaffolding was the only support Parent claimed not to understand, and there was no evidence she was unable to implement the other supports, including additional time for assignments and tests, shortened assignments when Student displayed mastery in fewer items or paragraphs, small group instruction, small group testing, a word processor for writing paragraphs and essays, front loading schedule changes, and simplifying and clarifying instructions, and checking for understanding. In addition, Boyd used the supports listed on the IEPs to help Student access grade-level curriculum. Student's argument that there was an implementation violation because Parent could not define the term scaffolding appeared disingenuous and was unpersuasive. Any failure to implement only one of the many and varied aids and supports identified in Student's IEPs would also have been immaterial, particularly in light of Student's significant progress on all of his goals during the time period at issue, and not a denial of a FAPE.

## SEPTEMBER 19, 2019 IEP

At the beginning of the 2019-2020 school year, a new school joined the Charter Springs network, and resources were reallocated among the local educational agencies. Citrus Springs became responsible for the Journeys program Student attended in Santa Ana. This was a change in name only, with no change in instruction, services, staff, or class location for Student. Parent agreed with Empire Springs that no IEP team meeting was necessary to transfer Student to Citrus Springs, and signed consent to the September 20, 2019 amendment prepared by Citrus Springs implementing the change in responsible local educational agency.

A parent and local educational agency may agree that an IEP team meeting is unnecessary, and consent to an amendment of the IEP without a meeting. (20 U.S.C § 1414(d)(3)(D); Ed. Code § 56380.1, subds. (a), (b).) Even were a meeting required, a procedural violation constitutes a denial of FAPE only if it impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decisionmaking process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subds. (f) & (j); see also, *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484; *Rowley*, *supra*, 458 U.S. at p. 200.)

The September 19, 2019 IEP amendment did not change Student's program in any way or deprive Parent of the opportunity to participate in decisionmaking regarding components of Student's educational program. Therefore, the September 20, 2019 amendment did not deny Student a FAPE, and served only to change the local educational agency responsible for Student's program from Empire Springs to Citrus Springs on that date.

In summary as to Issue 1, the November 6, 2018 IEP offered Student placement in the least restrictive environment, and was reasonably calculated to enable Student to make progress appropriate in light of his circumstances. Student did not need occupational therapy services, an assistive technology assessment, or extended school year at that time. Empire Springs' failure to provide a small amount of speech consultation to Parent was not a material failure to implement Student's IEP. The failure to hold an IEP team meeting to transfer responsibility for Student's program from Empire Springs to Citrus Springs without any change to Student's educational program was not a material procedural error.

Accordingly, Student failed to meet his burden of proving that Empire Springs denied Student a FAPE by failing to provide an appropriate educational placement and program from September 3, 2018, to September 19, 2019. Empire Springs prevailed on Issue 1.

## ISSUE 2: DID CITRUS SPRINGS DENY STUDENT A FAPE BY FAILING TO PROVIDE AN APPROPRIATE EDUCATIONAL PLACEMENT AND PROGRAM FROM SEPTEMBER 20, 2019, TO SEPTEMBER 3, 2020?

Student contends that he made trivial progress from September 2019 through September 2020 because Citrus Springs did not provide sufficient specialized academic instruction and related services, and retained Student in a restrictive environment that did not foster development of his social skills. Student also contends Citrus Springs disenrolled Student on June 11, 2020, without Parents' knowledge or consent, depriving him of a FAPE from the start of the 2020-2021 school year through the filing of the due process complaint. Citrus Springs contends that it considered sufficient information, identified Student's educational needs, developed appropriate goals, and offered



Student a FAPE in the least restrictive environment. It also contends that Parents requested that Student be disenrolled at the end of the 2019-2020 school year.

On November 4, 2019, Student's IEP team held an annual review of his program. On June 11, 2020, Citrus Springs prepared a transition IEP with language added at Parent's request to take to his new school. Each IEP is addressed separately.

#### NOVEMBER 4, 2019 IEP

Citrus Springs convened an annual IEP team meeting to review Student's educational program on November 4, 2019. All necessary members attended, including Parents. Parents were again given a copy of parental rights and procedural safeguards, and had no questions on these for the team.

The IEP team reviewed Student's educational progress over the past year. Student had advanced to eighth grade, and scores on academic assessments done as part of his online learning program indicated Student had abilities at the tenth grade level in reading, and early- to mid-eighth grade in math. Student received five As and one B+ on his final 2019-2020 report card. Citrus Springs staff reported that Student was friendly and got along well with peers and teachers, and easily engaged in conversations. He enjoyed reading and video games. Parents reported their concerns for the upcoming year as Student's social skills, writing, and getting Student prepared for high school.

Boyd and Cote reported that Student met his math and task completion goals, and nearly met his nonliteral language and problem solving goals. Student made progress on his writing, editing, conversational skills, brain and body engagement and perspective-taking goals. Student was progressing well academically and socially with the special education and services provided by the November 6, 2018 IEP.

## PLACEMENT

The IEP team discussed a continuum of general education placement options, including general education only, general education with in-class supports, and general education with separate related services such as speech therapy, consult services and teacher collaboration. Student was accessing the general education curriculum with only two hours per week of special education, in Boyd's resource classroom and in small group speech therapy. Student was doing well and comfortably socializing with typical peers in his elective enrichment classes of 15 to 20 students, two partial days per week.

Citrus Springs was a school of parent choice, and Journeys was a home school general education program incorporating independent study and mastery, with Parent as the primary instructor utilizing online programs. Parents stated that they wanted Student to be homeschooled, and the IEP team members determined that Student could make appropriate progress in home school general education with on-site elective classes, supported by accommodations in the general education classroom and specialized academic instruction and speech therapy. This combination of home school general education and on-site general education and special education classes was the least restrictive environment for Student. Such a program placed student in general education for 93 percent of his school day. The IEP team found that seven percent of Student's school program in specialized academic instruction and speech therapy did not adversely impact Student's educational progress, and that the Journeys program with the services offered was the least restrictive environment.

The placement Citrus Springs offered in the November 4, 2019 IEP was the least restrictive environment for Student. The nature of Student's disability was not so severe that he could not satisfactorily attend general education classes with the use of supplementary aids and services.

Looking at the first *Rachel H.* factor, Student received educational benefit from placement in general education with specialized academic instruction support in November 2019. Student met his math and task completion goals, and made progress on his writing and editing goals. Online curriculum assessments in September 2019 placed Student above grade level in reading, and at grade level in math. Student had made progress in writing, although it was still a nonpreferred task and area of need. The IEP team reasonably calculated that with continued 60 minutes per week of specialized academic instruction to address areas of weakness in writing and support continued progress in math and task completion, Student could academically remain in general education to the maximum extent appropriate. Student was participating in elective general education classes with typical peers, and received As and Bs on his first quarter report card for 2019-2020 school year. To benefit academically, Student did not need to be removed from general education for more than 60 minutes per week of specialized academic instruction.

Student asserts his poor Statewide testing scores establish that he made minimal progress academically, but those were timed tests on which Student historically performed poorly. New Vista's evidence that Student was at or below eighth grade standards in October 2020 was suspect and unconvincing. New Vista's academic testing scored Student at two years below grade level in June 2020, but at the sixth grade level in reading and the tenth grade level in math in August 2020, without intervening instruction or explanation for the wide discrepancy. In October 2019, Student's regular online curriculum assessment scored him at the tenth grade level or above in reading, and at the mid-eighth grade level in math, and these assessments were given year after year showing steady progress, with achievement at grade level and above. Even in Spring 2019, while Student was still in seventh grade, he had scored at nearly standard on Statewide tests in which he routinely did poorly in all areas except writing and math

problem solving, his known areas of need. Student's report cards for the 2018-2019 and 2019-2020 school years demonstrated that Student was an A student in seventh and eighth grade, and the reports of his progress on goals, discussed in more detail below, established that Student was making steady progress in math and writing.

New Vista had placed Student in eighth grade math and English because its director wanted him to work on foundational skills in those areas. Criticisms of Student's work on a single writing project during his first 60 days in eighth grade English at New Vista were not persuasive evidence that Student could not do ninth grade level work with support. The New Vista English language arts teacher's experience had been teaching pre-kindergarten for 10 years, without a teaching credential. The 2020-2021 school year was her first teaching eighth grade English on an emergency credential with degrees in comparative literature, not education. In October 2020, she reported at the parent-teacher conference that Student was earning 96 percent on projects, 89 percent on homework, 98 percent in classwork, and 99 percent in participation, which suggested Student was not challenged by work at the eighth grade level. Student's evidence fell far short of establishing a need to remove Student from general education in November 2019, or at any time, for academic reasons.

As to the second *Rachel H.* factor, Student received non-academic benefit at Citrus Springs from placement in general education elective classes with typical peers. Journeys staff reported to the November 2019 IEP team that Student had many friends at school and got along with peers and teachers. He also enjoyed the Learning Center enrichment classes and engaging with typical peers. He was a kind, caring, polite student who enjoyed being with others, and demonstrated good behavior at school and at home. Cote testified convincingly that by November 2019, Student was interrupting

peers and adults less, and had improved over the course of the past year in participating in conversations.

As discussed at Issue 1, Student's observed lack of social skills at New Vista was unpersuasive evidence that he needed to be removed from a learning environment with typical peers and placed in a more restrictive environment of students with communication and behavior difficulties. Student's clearly articulated desire not to be at New Vista, to not want to converse with the other students during his break and lunch time, and his refusal to join the social clubs suggested strong opinions and self-advocacy rather than a lack of social skills, particularly in contrast to his enjoyment and success at interacting with typical peers at Citrus Springs. Mother's testimony was unpersuasive due to her skewed definition of friends and disregard of online socialization during the COVID-19 pandemic. Student's evidence of lack of socialization with the rest of the New Vista student population did not persuasively demonstrate that Student's social skills deficits required him to be removed from general education and placed in a restrictive nonpublic school setting to work on social skills goals, or to make appropriate progress in his educational program, in November 2019 or any other time.

As to the third *Rachel H.* factor, the effect of Student's presence in the classroom, Student was well liked and a pleasure to have in class. He got along with peers in Boyd's resource class and his enrichment classes. When COVID-19 restrictions were relaxed and Student attended in-person classes at New Vista beginning October 2020, the teachers' reports to Parents rated Student as an active participant in each of his classes. All evidence demonstrated that Student contributed to class discussions and joint projects in his general education classes, whether at Empire Springs, Citrus Springs, or New Vista. There was no evidence of the fourth factor, that Citrus Springs did not want Student in general education due to the cost of supports, as Citrus Springs offered

the special education and related services needed to support Student in the general education environment.

The placement offered by Citrus Springs in November 2019 was made by an IEP team composed of persons knowledgeable about Student and autism, and after consideration of a continuum of placement options. The IEP offered Student placement close to Student's home. The offer was carefully considered and included specialized support services and supplementary supports in the classroom rather than removal from general education. Student could be satisfactorily educated in regular education classrooms without removal beyond seven percent of Student's school day for special education and speech therapy, and there was no need for the IEP team to discuss more restrictive options, such as full-day placement at a nonpublic school without typical peers as classmates or role models.

Student's argument that Citrus Springs should have explained to Parents its possible responsibility to fund alternative placements if it did not offer a FAPE fails for the reasons given in Issue 1. Similarly, Student's argument that Citrus Springs should have offered nonpublic school as a less restrictive option than Parents' choice of homeschool instruction in November 2019 is unpersuasive, as discussed at Issue 1.

In sum, the weight of the evidence did not establish that the placement Citrus Springs offered in the November 4, 2019 IEP was inappropriate, or not the least restrictive environment.

## SPECIAL EDUCATION AND RELATED SERVICES

### ACADEMIC SERVICES

Academically, Student met his task completion goal of working on non-preferred tasks for 15 to 20 minutes with only two prompts. Citrus Springs staff and Parent saw Student as more mature and self-directed. The IEP team no longer saw task completion as an area of need and did not write another goal in this area.

Student also met his math goal. Student could solve most grade-level word problems with mild prompts, although he had difficulty with word problems that required him to break down fractions and percentages. The IEP team decided that despite Student's current-grade-level math scores, this was still an area of weakness, and drafted a goal to solve multi-step word problems with ratios and percentages with minimal prompting.

Student did not meet his first writing goal, to write a one- to three-paragraph essay with reasoning and support. Although Student had learned to use a graphic organizer, he still required heavy prompting to fill in paragraph details on half of his work, particularly when the writing task was nonpreferred. The IEP team retained and modified the goal to require Student to write a three- to five-paragraph essay in formal style using phrases and clauses to create cohesion. This goal aligned with eighth grade curriculum standards.

Student partially met his editing goal of editing sentences with moderate prompts. He correctly edited short essays for grammar, but continued to need to work on editing and revising for complexity. The IEP team developed an editing and revision goal for Student to plan, revise, edit, and rewrite assignments to focus on addressing

the reader, with guidance from both adults and peers. This goal was also aligned with eighth grade common core standards.

These math and writing goals accurately identified Student's academic needs and were designed to enable Student to make progress in the eighth grade curriculum.

Citrus Springs offered Student 240 minutes per month of specialized academic instruction in Boyd's resource specialist class to support these goals. The IEP team continued Student's supplementary supports and services including scaffolding techniques, additional time for assignments, shortened assignments where Student demonstrated mastery of skills and concepts, small group instruction, small group for test taking, a word processor for writing assignments, frontloading, simplified instructions, and checks for understanding. An additional 10 minutes per month of specialized academic instruction consultation between the special education teacher and the general education teacher and Parent was also retained for academic support, in addition to the approximately one-hour consultation between the general education teacher and Parent every 20 days as part of the Journeys program.

Boyd testified persuasively that the November 4, 2019 IEP team considered sufficient information regarding Student's abilities and academic progress to identify his academic needs, develop annual goals to address those needs, and develop a program of services adequate for Student to make progress on those goals. Student's May 27, 2020 progress report subsequently reflected progress on these academic goals. By May 2020, Student demonstrated improved writing style, and made progress in working with a small group of classmates to identify the perspective of the writer and keep that in mind with writing. In particular, he was accurately learning to identify the differences between first person and third person writing, and adjust his writing style between persuasive and informational text. In math, Student was accurately solving



word problems with ratios and proportions, although he continued to need significant guidance when calculating tax.

Student's contention that Citrus Springs erred in discontinuing the task completion goal because Student had executive functioning needs was unpersuasive. First, it relied on Dr. Casteel's opinion that Student had severe executive functioning deficits in October 2020, which were based on reports by New Vista administrators who were not familiar with Student. Dr. Casteel's opinion was contradicted by multiple October 2020 parent-teacher conference reports by Student's New Vista teachers that Student came to class on time and prepared, timely completed work in class, and timely turned in homework. Rather than evidence of the need for further assessment in executive functioning skills, the New Vista teacher reports were convincing evidence that Student had learned to complete school work, preferred or nonpreferred, and the November 4, 2019 IEP team had correctly determined that executive functioning was no longer an area of educational need.

#### PRAGMATICS AND SOCIAL SKILLS SERVICES

As to pragmatics and social skills, Student made progress on all of his speech and language goals, and nearly met two of them. In conversational skills, Student was initiating conversation with peers, commenting appropriately, and less frequently veering off-topic. He was more easily redirected, listened to the speech therapist, and had stopped making rude or insulting comments. He was politely greeting and saying goodbye to all group participants, but still needed cues to keep from blurting out. He did not meet his goal of making four comments and four questions in a seven-minute exchange. He was still averaging at two to three comments and questions, and still needed frequent redirection.

The IEP team retained and modified the conversational skills goal for Student to engage in reciprocal conversation by asking four questions and making four comments in a five-minute exchange with moderate prompting. The new goal retained the same number of questions and comments by Student, but shortened the time of the exchange, requiring Student to provide more input in a shorter period of time. The revised goal also reduced the prompting level, requiring Student to show more initiation in a reciprocal exchange.

Student showed good progress on demonstrating brain and body engagement with three prompts for 10 minutes. Student improved in maintaining eye contact, staying seated, and using proper body position. However, Student occasionally engaged in inappropriate behaviors, such as brushing off dandruff from his shoulders onto other people and picking his nose. The IEP team saw this as a continued area of need, and developed a goal for Student to maintain improved brain and body engagement for the increased time of 15 minutes with fewer prompts.

Student made partial progress on his perspectives-taking goal to identify the perspectives of two characters in a social story or scenario. Student correctly identified the perspective of others 65 percent of the time, with moderate prompts. The IEP team retained and modified the goal for Student to focus not only on identifying the perspective of two characters in a social story or scenario, but also to identify two cues that supported his explanations, with moderate prompting. This revision increased complexity and included multi-media presentations of social scenarios. Perspective taking was important for both social interactions and increasingly nuanced academics, and progress on this goal would increase Student's academic comprehension.

Student nearly met his goal to explain the meaning of nonliteral language constructs with moderate prompting. He was correct 75 percent of the time, and the goal required 80 percent. The IEP team retained and modified the goal for Student to explain figurative language constructs, this time with minimal prompts. Nonliteral language would become increasingly complex in typical teenage conversations as well as advanced literature, and would be a continuing area of need for Student.

Lastly, Student nearly met his problem solving goal by accurately identifying the solution to a problem in a social story or scenario 85 percent of the time, but only identifying consequences of the solution with 70 percent accuracy. Student had a difficult time drawing conclusions from social situations, which was typical of students on the autism spectrum. The IEP team continued and modified the goal to require Student to identify two logical conclusions to a problem, and to further explain the consequences of each, with moderate cues.

The November 4, 2019 IEP offered Student 240 minutes per month speech therapy in a small group, with individual therapy as needed. For communication support, the IEP added 10 minutes per month of consultation between the speech language pathologist and the general education teacher and Parent. Cote persuasively explained that the services were appropriately offered in the therapy room where Student could learn and practice strategies to progress on his goals and obtain maximum gains while out of the general education environment for the minimal amount of time.

Contrary to Student's contention, the level of services offered was not minimal, and in the past year had enabled Student to make good progress in pragmatics and social skills. Student showed steady improvement in his interactions with typical peers

in his enrichment classes, and Cote opined persuasively and convincingly that push-in services into those classes was neither necessary nor appropriate.

In fact, Student made progress in pragmatics and social skills over the course of 2019-2020. According to his May 27, 2020 progress report on speech and language goals, despite the switch to virtual speech services due to the pandemic in March 2020, Student consistently made three conversational turns in a five-minute exchange with moderate prompting. He showed improvements in brain and body engagement, and able to maintain his accuracy in identifying the perspective of characters in hypothetical situations while explaining the cues he had used. In nonliteral language, Student had a small decrease in accuracy which appeared to be due to inattention, but in problem solving he had nearly met his goal of identifying two logical solutions to a hypothetical social problem and explaining the consequences. In October 2020, although Student ignored prompts to socialize with the other students at New Vista, his English language arts teacher testified that he was quick to interact with classmates who were noisy or off-task to correct or moderate their behavior.

No speech-language pathologist testified to contradict Cote's professional opinion that the speech services offered were appropriate to meet Student's pragmatics and social skills needs. Neither Dr. Casteel or New Vista's social skills staff were licensed speech-language pathologists, and their opinions that Student's social skills needs could have been addressed with a daily social skills program constituted a disagreement in methodology. The choice of methodology in addressing Student's needs was within Citrus Springs' discretion. Further, the testimony of Student's experts that Student would benefit from a daily social skills program did not persuasively outweigh Cote's professional opinion that speech services were appropriate to address Student's pragmatics and social skills deficits in ways that addressed not only his interactions with

peers, but fostered language skills necessary to comprehend increasingly complex curriculum materials as he advanced from grade to grade.

The November 4, 2019 IEP team considered sufficient information regarding Student's abilities and progress in social language and social skills to identify his communication needs, develop annual goals to address those needs, and develop a program of services adequate for Student to make progress on those goals.

In summary, the annual academic and language and speech goals were designed to meet Student's needs resulting from his autism, and address his difficulties with math, writing, pragmatics, and social skills. They described what Student could reasonably have been expected to accomplish over the coming year. The special education and related services, and supplementary services and supports, in the November 4, 2019 IEP were reasonably calculated to enable Student to make appropriate progress on his language and speech goals appropriate in light of his circumstances.

#### OCCUPATIONAL THERAPY

Student presented no evidence that he was unable to advance in the general education curriculum with his keyboarding skills, a Chromebook, and the supplementary supports and accommodations in his November 4, 2019 IEP. No occupational therapist testified to contradict the occupational therapist for Empire Springs and Citrus Springs, whose professional opinion was that occupational therapy was not appropriate in November 2019 given Student's circumstances and that no assistive technology assessment was warranted.

#### EXTENDED SCHOOL YEAR

Student presented no evidence that Student had experienced regression in academic or social skills over the 2019 summer breaks. Therefore, Citrus Springs was

not required to offer Student extended school year in November 2019, or at any other time.

## IMPLEMENTATION OF SPEECH PATHOLOGIST CONSULTATION

As discussed at Issue 1, Cote did not consult, or attempt to consult with Parent for 10 minutes per month during the 2019-2020 school year. However, in light of Student's reported progress on all of his language and speech goals, his reported improvement in engagement with typical peers and adults in his enrichment classes, and implementation of all direct speech services required by the November 4, 2019 IEP, the lack of parental consultation service did not adversely impact Student's progress in pragmatics and social skills. Therefore, the failure to implement a small amount of supplemental consultation during the 2019-2020 school year did not have a material impact on Student's educational progress, and so did not constitute a violation of the IDEA.

## JUNE 11, 2020 IEP

As discussed in more detail in Issue 3, Parents did not respond to Citrus Springs' correspondence or calls to discuss the Journeys high school program, or to participate in a high school transition IEP, because they had decided to enroll Student in New Vista for the 2020-2021 school year.

Boyd made attempts to schedule an IEP team meeting to discuss and document Student's transition to high school. The Journeys program sent multiple packets of materials regarding its high school program, available electives, and other program options. Parent saw Boyd at the eighth grade graduation ceremony and told her that Parents did not want to attend an IEP team meeting. Instead, Parent requested that an IEP amendment be prepared without a meeting to offer the current services with a

reference to Student's social deficits, which Parent indicated would ensure financial aid for Student's attendance at a private school. Boyd followed up with a text to Parent on June 10, 2020, asking her to call and discuss the amendment, and left a voicemail message on June 11, 2020 for Parent to call her to discuss the amendment. Parent did not call Boyd or anyone else at Citrus Springs to discuss the amendment.

On June 11, 2020, Boyd prepared an IEP amendment documenting that high school information had been shared with Parent, and that Citrus Springs offered placement at the Journeys program until Student disenrolled. She complied with Parent's language request by noting on the IEP amendment that Parents anticipated enrolling Student in a specialized high school that would address Student's communications and social skills needs. No substantive parts of the November 4, 2019 IEP were changed. Boyd sent the IEP to Parent the following day, and followed up with a text and email, and Parent signed consent to the IEP amendment on June 12, 2020.

The June 11, 2020 IEP amendment did not change Student's program in any way or deprive Parent of the opportunity to participate in decisionmaking regarding components of Student's educational program. Therefore, the June 11, 2020 IEP amendment did not deny Student a FAPE, and served only to document that Citrus Springs' offer for the 2020-2021 transition to high school retained the same placement and educational program until disenrollment.

Accordingly, Student failed to meet his burden of proving that Citrus Springs denied Student a FAPE by failing to provide an appropriate educational placement and program from September 20, 2019, through the end of the 2019-2020 school year. As this Decision finds in Issue 3 that Parents intended to, and did, disenroll Student from Citrus Springs on June 11, 2020, Citrus Springs had no responsibility for providing

Student a FAPE from June 12, 2019, through September 3, 2020. Citrus Springs prevailed on Issue 2.

### ISSUE 3: IS CITRUS SPRINGS THE CURRENT LOCAL EDUCATIONAL AGENCY FOR STUDENT?

Student contends that Citrus Springs disenrolled Student without Parents' knowledge or consent, and continues to be Student's local educational agency responsible for providing Student with a FAPE. Citrus Springs contends that Parents intentionally disenrolled Student at the end of the 2019-2020 school year and enrolled him at New Vista, and that it is no longer Student's local educational agency.

A charter school may not encourage a pupil to disenroll from the charter school or transfer to another school for any reason, including because the pupil has a disability. (Ed. Code § 47605, subds. (e)(4)(C) and (e)(2)(B)(iii).)

This issue is one of factual inquiry, and this Decision finds that Citrus Springs did not encourage Parents to disenroll Student, and that Parents intended to, and did, disenroll Student from Citrus Springs.

In addition, a leading Ninth Circuit decision on remedies for denial of a FAPE is instructive on why federal courts discourage parents from disingenuous interactions with a school district for the purposes of obtaining public funding for a parentally preferred private program. In *Ashland*, the Ninth Circuit upheld a District Court decision reversing an award of tuition reimbursement for unilateral placement where the parents did not give the school district notice of disagreement with their child's IEP. (*Ashland*, *supra*, 587 F.3d at p. 1186.) It's reasoning, although not directly applicable here where Citrus Springs offered and provided a FAPE, gives context to Parents' actions.



In *Ashland*, the parents informed the school district that they were searching for a private residential treatment center for their student with emotional disturbance. They never indicated any dissatisfaction with the education the school district provided, and school district staff reasonably believed the parents sought to transfer their child for medical reasons. (*Ashland, supra*, 587 F.3d at p. 1179.) The parents unilaterally placed the student in a private residential care facility, and months later informed the school district that they had been unhappy with the school district's educational services and requested reimbursement for the cost of unilateral placement. The school district declined to reimburse the parents, and at a subsequent due process hearing, the parents were awarded full reimbursement by a hearing officer. On appeal, the District Court found that the parents had not participated in the IEP process to help the school district prepare to provide their child with a FAPE, but merely as a prelude to seeking reimbursement, and reversed the award of reimbursement. (*Id.* at p. 1183.)

The Ninth Circuit upheld the District Court's order. It explained that the IDEA grants courts discretion to reduce or deny reimbursement if parents fail to notify a school district of their objections to the child's IEP prior to withdrawing the child from public school, because local educational agencies must be given the opportunity to address parent concerns before being held responsible for funding a unilateral placement for denial of FAPE. (*Ashland, supra*, 587 F.3d at p. 1184, citing 20 U.S.C. § 1412(a)(10)(C)(iii) and *Forest Grove School Dist. v. T.A.* (9th Cir. 2008), 523 F.3d 1078, 1088.)

In May 2019, near the end of Student's seventh grade year, his education specialist had developed a friendship with Parent. The education specialist shared with Parent that she had been looking for summer programs for her own child, and had seen information about a summer program for students with autism at a school called

New Vista. This was part of a casual text exchange between Parent and the education specialist. By July 2020, a member of the New Vista admissions committee considering Student's application was familiar with Student from Spirit League, an extracurricular sports league founded by parents of New Vista students, and it was unclear whether Parents learned of New Vista from the education specialist or already knew of New Vista from Student's participation in Spirit League.

The education specialist's text message to Parent was not a recommendation that Student be placed at New Vista, for extended school year or for any other reason. Contrary to Student's contention that this text demonstrated that Empire Springs staff was encouraging Student to leave the Journeys program, in context it would have been unreasonable for Parent to interpret the text as recommending that Student be placed at New Vista for eighth grade. Parent did not understand the education specialist, or anyone at Empire Springs or Citrus Springs, to be encouraging Student to exit the Journeys program at any time.

In fall 2019, Student's eighth grade year, Parents contemplated telling Student that he was on the autism spectrum on his birthday in March 2020, and sending him to New Vista for high school. Parents were interested in sending Student to New Vista because the entire population of students at New Vista were on the autism spectrum. Parents understood that social skills were a significant part of the New Vista program, and were concerned that Student needed better social skills to develop more friendships.

Parents did not tell anyone in Springs Charter, or at the November 2019 IEP team meeting, that they wanted another program for Student, or why. The other members of Student's IEP team would gladly have answered Parent's placement questions and discussed any options raised by Parents. Rather, during the November 4, 2019 IEP team

meeting, Parents expressed how happy they were with Student's progress in the current program, and agreed with the IEP team's identification of Student's needs, the annual goals developed at that meeting, the services offered, and the placement. Parents' silence at the IEP team meeting demonstrated that they understood that Citrus Springs staff was not recommending an alternative placement for Student.

Parent testified that she told the November 4, 2019 IEP team that Parents were looking at New Vista as an alternative placement for Student. However, multiple members of that IEP team credibly testified that Parents did not mention New Vista, or raise any questions or objections to placement in Journeys, during the placement discussion at that meeting. The contemporaneous IEP team meeting notes did not reflect placement among Parents' concerns. Parents both testified that they would have done things differently had they known in November 2019 what they knew now, and this may have affected their recall. The other IEP team members who testified that there was no mention of New Vista or a desired alternative placement were more credible than Parents on these facts.

Empire Springs and Citrus Springs issued Chromebooks to all students in the Journeys program. The students retained the Chromebooks throughout their entire enrollment in Journeys. Student retained his Chromebook when Citrus Springs took responsibility for the Journeys program. Curriculum materials were turned in every year and new ones issued as Journeys students advanced from grade to grade, but Chromebooks were not returned unless the student was disenrolled. Parents were aware of this policy, and signed a new materials and equipment agreement before the beginning of each school year. Parents had not turned in Student's Chromebook at the end of the 2015-2016, 2016-2017, 2017-2018, or 2018-2019 school years, because they intended Student to attend the Journeys program the following year.

Every March, the Journeys program asked the parents of enrolled students to execute a fill-in-the-blank letter of intent, informing Journeys whether they intended to re-enroll their child for the following year. This information was important for purposes of planning and allocating resources for the next school year. In March 2020, information gathered from the letters of intent completed by eighth grade parents was forwarded to the Journeys high school administration.

Parents toured New Vista in December 2019 without Student, and decided by March 2020 to enroll Student at New Vista for high school. They were impressed by the New Vista director's emphasis on social skills and rigorous pre-college course of study. Parent completed the Citrus Springs letter of intent on March 4, 2020, by checking a paragraph that stated:

No. I will not be continuing my child's enrollment at Springs for the 2020-2021 school year. Please disenroll my student on the last day of school.

On the letter's line asking a parent to identify the school a student would be attending for the 2020-2021 school year, Parent wrote New Vista. Parent left blank the line that asked the reason for disenrolling a student.

The letter of intent was picked up from Parent on March 4, 2020, by a new education specialist assigned to Student for eighth grade, during a regular 20-day meeting with Parent. Parent told the education specialist that New Vista was a private school for students with autism. The education specialist was a general education teacher and not familiar with New Vista. At all times she believed New Vista to be a private school, and when speaking with Citrus Springs staff, told them that Parents were sending Student to a private school for ninth grade.

Citrus Springs is a school of choice, meaning that while a child has a right to attend public school in the school district in which the parents reside, only children of parents who choose to enroll in a charter school may attend those schools. Citrus Springs staff were strong advocates of parental choice, and parents of students enrolled at Citrus Springs chose the Journeys program to support them in the decision to home school their children. However, it was not uncommon for eighth grade parents to inform Journeys that they would be leaving the program and enrolling their child in a traditional school environment for ninth grade. Many parents doubted whether they could adequately teach high school curriculum in a home school program. This was particularly true for college-bound students who wanted to have opportunities to take Advanced Placement courses for college credit. Parent's March 4, 2020, letter of intent to enroll Student at New Vista for ninth grade did not warrant an IEP team meeting to be called to discuss Student's placement. Particularly in light of Parents' consistent positive feedback concerning the Journeys program for their son, and Student's solid academic and social growth, there was no reason for Journeys staff to view Parent's intention to enroll their child in a traditional school for high school as a criticism or concern regarding Student's current placement.

The letters of intent, and the disenrollment process, were handled by Citrus Springs' education specialists and administrative staff. Student's education specialist informed Boyd, Student's resource teacher and special education case manager, of the March 4, 2020 letter of intent.

In mid-March 2020, the State of California issued shelter-at-home orders as a result of the COVID-19 pandemic, resulting in statewide school closures. It soon became apparent that schools would not be re-opening campuses for in-person instruction for at least several months. On March 18, 2020, Boyd sent a letter to parents

of students with IEPs, including Parents, asking them to respond by email if they wanted to sign an amendment changing their child's special education services to an online model, or if they wanted to opt out of related services until in-person classes resumed. Parent called Boyd to verbally request that Student's services continue online. Boyd prepared and sent Parents an April 1, 2020 amendment converting Student's specialized academic instruction and speech services to a distance-learning model during the school closure. She also provided Parents with information to arrange and access the resource and small group speech classes online. Parents did not sign and return the amendment, but Student did access the online resource and small group speech classes, and no services were missed.

Parents experienced temporary concern that New Vista might not have a program in place for the 2020-2021 school year in light of the school closures. At a 20-day meeting in April, Parent told the education specialist that Parents were unsure if New Vista would have a program open in fall 2020, and wanted to keep Student in Journeys as a back-up plan. At a 20-day meeting in May 2020, Parent told the education specialist that they were attempting to contact their school district of residence to arrange enrollment at New Vista. At the 20-day meeting on June 3, 2020, Parent told the education specialist that New Vista had a program in place, that Parents would enroll Student at New Vista for ninth grade, and confirmed that they wanted Student disenrolled at the end of the 2019-2020 school year.

Throughout the Spring 2020 semester, Journeys' high school division and the education specialist provided parents of eighth grade students, including Parents, with information about the Journeys high school program. The high school division offered online informational seminars for the parents, and provided contact information for Citrus Springs high school staff familiar with a wide variety of Charter Springs programs

available to high school students. Parents did not attend informational seminars on Charter Springs high school program options or contact anyone at Citrus Springs about high school options because they had already requested that Citrus Springs disenroll Student on the last day of the 2019-2020 school year, and intended to enroll Student at New Vista for high school.

On May 8, 2020, the education specialist sent an email to Parent with a complete inventory list of materials that Student needed to return upon exiting the Journeys program. She indicated that socially distanced arrangements would be made to pick up the materials the following month. Parent made arrangements for the education specialist to pick up all Journeys materials still in Parents' possession on June 10, 2020. Parent put all of Student's supplies, including his Chromebook, in a box to be picked up, with a completed and signed inventory list indicating a few lost items, for which Citrus Springs would bill Parents.

A staff member from the Journeys high school program telephoned Parent on May 22, 2020 and left a voicemail message offering to discuss Journey's high school programs. Parent did not return the call.

Parent saw the educational specialist at the socially distanced drive-through graduation ceremony for eighth graders on June 10, 2020, and texted her that the ceremony was a nice send off for Student.

The last day of school of the Journeys 2019-2020 school year was June 11, 2020. However, Citrus Springs began entering disenrollment information into the California statewide enrollment system a few days earlier. Citrus Springs input that Student was exiting on June 11, 2020. Because Citrus Springs was a school of choice, it also notified

the school district of residence when a student disenrolled. Citrus Springs notified Santa Ana Unified that Student was exiting Citrus Springs as of June 11, 2020.

Boyd made multiple attempts to schedule an IEP team meeting to discuss and document Student's transition to high school. Parent saw Boyd at the graduation ceremony, and told her that Parents did not want to attend an IEP team meeting, but did request an IEP amendment that referenced Student's social deficits, which they indicated would ensure Student's admission to, and funding of, New Vista. Parents had understood from speaking with New Vista's director that Student's school district of residence, Santa Ana Unified, would fund Student's placement at New Vista if Student's social skills deficits were so extreme as to require a nonpublic school placement.

During Parent's brief chat with Boyd, she told Boyd that New Vista was a specialized school for students with autism that focused on social skills. Boyd texted Parent on June 10, 2020, asking her to call and discuss the amendment, and left a voicemail message on June 11, 2020 for Parent to call her to discuss the amendment. Parent did not call Boyd or anyone else at Citrus Springs to discuss the amendment.

On June 11, 2020, Boyd prepared an IEP amendment that documented the high school materials that had been shared with Parent, and that Citrus Springs offered placement at the Journeys program until Student disenrolled. She complied with Parent's language request by noting on the IEP amendment that Parents anticipated enrolling Student in a specialized high school that would address Student's communications and social skills needs. No substantive parts of the November 4, 2019 IEP were changed. Boyd sent the IEP to Parent the following day, and followed up with a text and email. Parent signed consent to the IEP amendment on June 12, 2020.



In June 2020, Parents and Student toured New Vista and its director conducted academic testing of Student. Parents provided New Vista with Student's school records in late June or early July 2020. The director prepared a schedule of classes for Student, emailed his educational records to the admissions committee members, and asked them to approve Student for admission. She told the committee that Student was coming from Santa Ana Unified.

On July 10, 2020, New Vista sent a letter informing Parents that Student had been accepted to New Vista, and instructing Parents to complete the online registration. Parents completed the online registration and signed the contract to pay tuition for the 2020-2021 school year on July 13, 2020. The contract obligated Parents to pay for the entire school year.

On August 19, 2020, Student's attorney sent Citrus Springs a notice of unilateral placement at New Vista, and stated that Parents would be seeking tuition reimbursement from Citrus Springs. The letter stated the reason for the unilateral placement was Citrus Springs' failure to provide Student with a FAPE.

Citrus Springs responded on August 28, 2020, by denying that it had failed to provide Student a FAPE, and declining to fund the unilateral placement. Student filed his due process complaint on September 3, 2020.

Parents sought to place Student at a private school, New Vista, for ninth grade. Parents had no intention placing Student in a public school program for the 2020-2021 school year, and there was no evidence that they contacted Santa Ana Unified to explore public school programs. Parents indicated by their written March 2020 request to disenroll Student, their June 3, 2020 verbal confirmation that they were withdrawing Student, their acknowledgement of eighth grade graduation as a send-off for Student,

their return of Student's Chromebook and all materials, and an express request that the transition IEP reference Student's social skills to solidify his attendance at the private school of Parents' choice, that they had no intention of retaining Student at Citrus Springs despite their consistent praise and agreement with the programs offered. Less than 30 days after Student's graduation from Journeys, Parents had applied and Student had been accepted to New Vista. Parents enrolled Student two days later, just as they had stated they would in their March 4, 2020 letter of intent.

There is little doubt that after the school closures in March 2020, Parents were concerned about whether New Vista would have a program in fall 2020, and informed the education specialist of their momentary hesitation to commit to exiting Student from Journeys until they were reassured by New Vista that it would be open for the 2020-2021 school year. However, Parents otherwise consistently told Journeys staff that they would be disenrolling Student to enroll him in a private school for ninth grade.

Parents' testimony that they were uncertain about whether they wanted to enroll Student at New Vista, other than during a brief period after the initial school closures, was not credible or convincing. Parents contended they did not want Student to attend New Vista if classes were online, but Student did start New Vista in fall 2020 with online classes. Parents consistently failed to respond to correspondence or calls to discuss the Journeys high school program. When Parents did request an IEP amendment for the transition to high school, they requested language that would reference New Vista. Parents attempt to characterize Student's disenrollment as a surprise, and that they intended to continue enrollment in the Journeys program, was disingenuous as it was inconsistent with their contemporaneous actions.

Parents clearly understood by the time of hearing that disenrolling Student from Citrus Springs terminated that local educational agency's responsibility for providing a FAPE to Student. Their demeanor at hearing was depressed, uncomfortable, and regretful. Parents carefully and unconvincingly attempted to assert that Student had made progress and earned good grades from Parent's teaching, but otherwise obtained little to no benefit from the Journeys program. Parents repeatedly confirmed that their actions should be viewed in light of the need to obtain public funding for Student's attendance at New Vista. This demonstrated a motive for a post-disenrollment narrative that would recast their actions in unilaterally placing Student at New Vista as a response to Citrus Springs' failure to offer a FAPE, without actual intent to exit Student from Citrus Springs. Parents' testimony was unconvincing, and an unsuccessful attempt to explain their contrary actions.

Notably, this is not a case where the parent had little knowledge or insight into the child's educational program. Parent was Student's primary teacher, and reviewed his progress with an education specialist every 20 days throughout the time period at issue. This is also not a case where school staff was encouraging more restrictive settings. Parents chose home instruction as the primary teaching methodology for Student's educational program, as Parents were entitled to do, and Citrus Springs provided support for that choice within the requirements of the IDEA. Citrus Springs could, and did, provide Student with a FAPE in that context.

Parents had no intention of enrolling Student in the Journeys program for the 2020-2021 school year. They intended to, and did, disenroll Student from Citrus Springs on the last day of the 2019-2020 school year. Citrus Springs is a school of choice, and once Student was exited at Parents' request, Citrus Springs was no longer the local educational agency responsible for providing Student with a FAPE.

Student did not meet his burden of providing that Citrus Springs was, after June 11, 2020, Student's local educational agency. Citrus Springs prevailed on Issue 3.

## 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: Empire Springs provided Student an appropriate educational placement and program from September 3, 2018, to September 19, 2019, and so did not deny Student a FAPE. Empire Springs prevailed on Issue 1.

Issue 2: Citrus Springs provided an appropriate educational placement and program from September 20, 2019, to September 3, 2020, and so did not deny Student a FAPE. Citrus Springs prevailed on Issue 2.

Issue 3: Citrus Springs is not the current local educational agency for Student. Citrus Springs prevailed on Issue 3.

## 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/

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings