

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019100451

PARENTS ON BEHALF OF STUDENT

v.

LAS VIRGENES UNIFIED SCHOOL DISTRICT.

DECISION

FEBRUARY 7, 2020

On October 11, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Las Virgenes Unified School District. Administrative Law Judge Clifford H. Woosley heard this matter in Calabasas, California, on December 3, 4, 5, and 9, 2019.

Student's Mother and Father represented Student and attended all hearing days on Student's behalf. Attorney Wesley B. Parsons represented Las Virgenes. Director of Pupil Services Angela Falk attended all hearing days on Las Virgenes' behalf.

At the parties' request, the matter was continued until January 21, 2020, for written closing briefs. The briefs were timely filed, the record closed, and the matter submitted on January 21, 2020.

ISSUES

The issues have been reordered for purposes of analysis and remain unchanged. A free appropriate public education is referred to as a FAPE. An individualized education program is referred to as an IEP.

1. Did Las Virgenes deny Student a FAPE, at the August 28, 2019 and September 18, 2019 IEP team meetings, by failing to:
 - a. Consider the findings and implement the recommendations from the August 21, 2019 Stein Psychological Associates independent educational evaluation report;
 - b. Implement the accommodations and services in Student's IEP; and/or
 - c. Offer specialized academic instruction and other supports to address Student's dyslexia, dysgraphia and dyscalculia?
2. Did Las Virgenes deny Student a FAPE during the 2019-2020 school year because Las Virgenes did not include the following special education eligibilities in Student's IEP, at the August 28, 2019 and September 18, 2019, IEP team meetings:
 - a. Specific learning disability;
 - b. Other health impairment;
 - c. Multiple disabilities; and/or
 - d. Speech or language impairment?

3. Did Las Virgenes deny Student a FAPE, at the August 28, 2019 and September 18, 2019 IEP team meetings, and in subsequent correspondence, by failing to:
 - a. Create classes at Lindero Canyon Middle School that offer Student the proper learning environment and educational services, which are specifically designed for dyslexic students;
 - b. Provide Student with urgently needed educational interventions to address his disabilities, including weekly after-school intervention by an educational therapist; and/or
 - c. Offer placement for extended school year at a non-public school that specializes in dyslexia/language-based disabilities to compensate for 2019-2020 school year's lack of FAPE?

JURISDICTION

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

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 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, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. §1415(i)(2)(C)(iii).) Student, as the filing party, had the burden of proof by a preponderance of the evidence in this matter. The factual statements below constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. sec. 1415(h)(4); Ed. Code, sec. 56505, subd. (e)(5).)

Student was 12 years, 11 months old at the time of hearing and, at all relevant times, resided within Las Virgenes' geographic boundaries. He was a seventh grader at Lindero Middle School and enrolled in general education classes for all subjects, except one special academic instruction course in study skills. Student was eligible for special education as a student with specific learning disability and other health impairment.

APRIL 11, 2019 SETTLEMENT AND RELEASE

On February 22, 2019, Parents filed a request for due process on behalf of Student. On April 11, 2019, Parents and Las Virgenes signed a Settlement and Release Agreement. The parties' agreement included:

- Las Virgenes would fund an independent educational evaluation of Student by Stein Psychological Associates.
- Compensatory education of one-to-one intensive reading instruction for about four hours a week in Student's study skills class and of one-to-one afterschool tutoring in core academic subjects for three hours a week.
- Diagnostic placement of Student in general education math and science classes.
- The compensatory services and diagnostic placement were for the remainder of the 2018-2019 school year, could not be interpreted as necessary for FAPE, and would not constitute a basis for special education "stay put."
- Student would receive 40 hours of English language arts intensive instruction during summer 2019 extended school year.

The parties mutually released and discharged each other of all claims arising from or related to Student's education, through April 11, 2019.

Student's grades at the end of sixth grade reflected a 3.17 grade point average. He participated in a Read 180 intensive reading program. Starting seventh grade in 2019-2020, Student had two special education classes in Language Arts and Study Skills. The remainder of his classes were in general education.

ISSUE 1(A): DID LAS VIRGENES DENY STUDENT A FAPE, AT THE AUGUST 28 AND SEPTEMBER 18, 2019 IEP TEAM MEETINGS, BY FAILING TO CONSIDER THE FINDINGS AND IMPLEMENT THE RECOMMENDATIONS FROM THE AUGUST 21, 2019 STEIN PSYCHOLOGICAL ASSOCIATES' INDEPENDENT EVALUATION REPORT?

Student contends that Las Virgenes did not consider the findings of Stein Psychological Associates, who conducted an independent educational evaluation of Student at public expense pursuant to the April 2019 Settlement Agreement. Student also contends that Las Virgenes did not adopt Dr. Stein's recommendations contained in his report, which was considered at the August 28 and September 18, 2019 IEP team meetings.

Las Virgenes contends that Dr. Stein gave a full presentation of his findings at the August 2019 IEP team meeting, Las Virgenes team members listened and asked questions, and the team discussed and compared Dr. Stein's report with Las Virgenes' December 2018 triennial psychoeducational evaluation of Student. The IEP team reviewed Dr. Stein's recommendations and incorporated many of Dr. Stein's suggestions that were not already part of Student's IEP or educational program.

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

student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

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

In general, an IEP is a written statement that is developed by parents and school personnel using the IDEA's procedures. The IEP describes the child's present levels of performance, needs, and academic and functional goals related to those needs. It also provides a statement of the:

- special education;
- related services, which include transportation and other supportive services; and
- program modifications and accommodations that will be provided for the child to work towards the stated goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers.

(20 U.S.C. §§ 1401(14) and (26), 1414(d)(1)(A); Ed. Code, §§ 56031, 56032, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.17, 300.34, 300.39 Cal. Code Regs., tit. 5, § 3001, subd. (p).)

The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP team meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

A school district must consider an independent educational evaluation of a student in respect to the provision of FAPE. However, the IDEA does not require the public entity to accept the evaluation's results or recommendations. (34 C.F.R. § 300.502(c).)

An IEP team must consider a parent's input, but it need not necessarily follow a parent's wishes. For example, in *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314, (*Gregory K.*), the court stated that if a school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another program and even if the parents' preferred program would have resulted in greater educational benefit. (*Ibid.*) Similarly, when presented with an outside expert's

report, a school district need only review and consider the report; it need not follow its recommendations. (*G.D. v. Westmoreland School Dist.* (1st Cir. 1991) 930 F.2d. 942, 947.)

CONSIDERATION OF DR. STEIN'S FINDINGS

Here, Student did not provide evidence that Las Virgenes failed to consider Dr. Stein's findings from his evaluation of Student, resulting in depriving Parents of the ability to meaningfully participate, or in a FAPE denial. Las Virgenes convened an IEP team meeting on August 28, 2019, for the purpose of reviewing Dr. Stein's August 21, 2019 independent psychoeducational evaluation. All required IEP team members attended, including Parents and Dr. Stein. The documentary evidence, the testimony of Las Virgenes team members, and the audio record of the August 2019 IEP team meeting unambiguously demonstrated that Dr. Stein had no time restrictions and fully presented his report at the August 2019 IEP team meeting. Las Virgenes team members listened and participated by asking questions and making statements.

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K.*, *supra*, 811 F.2d 1307, 1314.) For a school district's offer of special education services to a student 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 student with some educational benefit in the least restrictive environment. To determine whether Las Virgenes offered Student a substantive FAPE, the analysis must focus on the adequacy of the school district's proposed program, not the parents' preferred alternative. (*Ibid.*)

Dr. Stein was a licensed clinical psychologist who assessed Student and produced a 26-page report of his findings and recommendations. He did not testify at the hearing. He observed Student in the classroom and reviewed educational records and prior assessments. He interviewed Parents, contacted Student's special education English language art teacher, and interviewed Student's school-provided home tutor Yehonathan Brodsky and Las Virgenes' special education program coordinator Ms. Falk. He administered all or portions of 14 standardized tests and five rating scales and questionnaires. Dr. Stein summarized his findings in his written report and at the IEP meetings.

Dr. Stein concluded that Student's full-scale cognitive score was not an accurate estimate of his overall functioning. He thought that Student's auditory and visual working memory difficulties affected the reliability of cognitive subtests that relied on working memory. Also, Student's processing speed was a significant weakness that affected his ability to access and make use of routine.

Dr. Stein found Student to have phonological working memory struggles and difficulties transferring sound/phonemic awareness to conventional spelling. Dr. Stein concluded that Student continued to meet the criteria for Specific Learning Disorder in the areas of reading, also called dyslexia, as defined by the Diagnostic Statistical Manual of Mental Disorders, Fifth Edition. Dr. Stein found that Student had various weaknesses in his visual/motor system when writing. Student's ability to attend to a word on a printed page might be compromised so that he misses important information. He thought that Student struggled with the verbal component of math, had diminished ability to memorize and retrieve math facts, and had less developed number sense. He also believed Student's memory for language to be overall very weak. Dr. Stein

concluded Student met the criteria for Specific Learning Disorder in the areas of writing, called dysgraphia, and mathematics, called dyscalculia, and the criteria for Language Disorder, as defined by the Diagnostic Statistical Manual.

Dr. Stein did not at any time analyze or address special education eligibility criteria. He knew Student qualified for special education under the eligibilities of specific learning disability and other health impairment. His findings did not question the appropriateness of Student's eligibilities and did not suggest any additional special education eligibilities. Therefore, Dr. Stein and the IEP team did not discuss Student's eligibilities.

Student argued that Las Virgenes school psychologist Mahsa Nouri disagreed with Dr. Stein at the IEP team meetings, showing that Las Virgenes was dismissive of his findings and recommendations. Student asserted that Dr. Nouri's opinions and testimony should be given little weight because she had not met or evaluated Student. Here, the evidence demonstrated that Dr. Nouri was qualified and respectful in fulfilling her professional duties in analyzing and addressing Dr. Stein's evaluation.

Dr. Nouri attended both the August and September 2019 IEP meetings on behalf of Las Virgenes. Dr. Nouri started working for Las Virgenes in August 2019 and testified at the hearing. She was a licensed school psychologist and obtained her doctorate of philosophy in education, master of arts in education/school psychology, and bachelor of arts in psychology from the University of California, Berkeley. She was a post-doctoral fellow at the Institute for Girls' Development and had previously worked as a school psychologist at San Rafael City Schools and Sonoma County Office of Education. She

had attended hundreds of IEP meetings. Dr. Nouri observed Student in class and reviewed all of Student's records, prior assessments, and Dr. Stein's assessment before participating in Student's IEP meetings. Her testimony was measured, insightful, and persuasive, exhibiting a caring concern for Student's education and well-being. Dr. Nouri's education, training, license, and experience qualified her to evaluate and interpret Student's triennial evaluation and Dr. Stein's August 2019 assessment.

Dr. Nouri assisted in drafting the August 2019 IEP present levels of performance, including incorporating Dr. Stein's assessment. She stated at the August 2019 IEP and opined at hearing that Dr. Stein's assessment primarily conformed with the findings made in Las Virgenes' January 2018 multidisciplinary triennial assessment of Student.

For example, Las Virgenes' triennial report had concluded Student's full-scale cognitive score on the Woodcock Johnson cognitive tests was not a reliable measure because of variabilities amongst the subtests. The triennial therefore used the Woodcock Johnson's alternative composite, which approximated Student's cognitive capabilities in the low average range. This was consistent with Las Virgenes' January 2016 triennial assessment. Dr. Stein used different cognitive instruments that likewise found Student's intellectual capacity was low average. Dr. Stein thought these cognitive scores were somewhat discrepant, but Dr. Nouri believed these cognitive estimates to be accurate. She opined that Dr. Stein's evaluation largely found the same learning deficits.

Dr. Nouri did, however, find a few areas where Las Virgenes' triennial and Dr. Stein's assessments differed and identified some testing results that Dr. Nouri would have interpreted differently. She discussed these at the August 2019 IEP meeting in Dr. Stein's presence and the hearing.

Dr. Nouri agreed that Student struggled with his reading. Both the triennial and Dr. Stein, using different instruments, found Student to have processing deficits in phonemic awareness, rapid automatic naming, and orthographic processing. However, Dr. Nouri did not believe that the processing deficits in reading were an accurate measure of Student's academic reading. Struggles with processing made reading more difficult, but Student's scores on academic achievement subtests were low average to average. Student scored higher on oral reading fluency and verbal fluency subtests than his cognitive measures. Dr. Nouri opined that Student's academic reading was more developed because he was receiving interventions to teach him to learn and read in a manner that compensated for his processing deficits and dyslexia diagnosis. Reading was a non-preferred activity for Student. However, Student's academic scores from the triennial assessment, and updated present levels of performance at the January 2019 IEP, indicated that Student's overall reading was within the average range. Therefore, Student's IEP did not have a separate reading goal.

Dr. Nouri agreed with Dr. Stein that Student had weaknesses in editing and writing essays, though Student's written language was generally in the average range. Student had an academic writing goal related to his editing, clarity, structure, transitions, and coherence.

Dr. Nouri viewed Student's math scores differently than Dr. Stein, who diagnosed Student with dyscalculia. Dr. Stein said that Student struggled with some verbal components of math. Dr. Nouri agreed and Student's triennial academic assessment found the same areas of weakness, primarily in three borderline subtests. However, she explained that these subtests were timed, which she believed affected his subtest scores. Student's academic assessment math scores were consistent with his cognitive level, in low average to average range, and Student had made significant progress on his math

goal. Dr. Nouri did not find that the data definitively indicated that Student had dyscalculia or qualified for specific learning disability eligibility because of his math. She suggested an updated assessment to better evaluate Student's math.

Student contended that Dr. Stein's assessment was more recent than the triennial evaluation and, therefore, should be determinative of Student's math deficits. However, Dr. Nouri confirmed that the professional best practice standard required psychologists and educators to consider and compare multiple assessments, over time, to gain additional individualized insight into a pupil's deficits and needs. Dr. Stein and Dr. Nouri were qualified professionals with differing views of Student's math abilities. Professionals often have different interpretations of available assessment data. Also, Las Virgenes did not outright reject Dr. Stein's views in this regard but, instead, offered further assessment to better understand Student's math capabilities and performance. Parents rejected this assessment offer.

Las Virgenes IEP team members were professional, complimentary and never questioned Dr. Stein's expertise and competence. Dr. Stein participated in the discussions and at no time registered strong disagreement with statements or observations. The evidence demonstrated that Las Virgenes fully and professionally considered Dr. Stein's recommendations and conclusions.

CONSIDERATION AND IMPLEMENTATION OF DR. STEIN'S RECOMMENDATIONS

Here, Student did not provide evidence that Las Virgenes failed to consider and implement Dr. Stein's recommendations. The audio recording of the August 2019 IEP team meeting clearly demonstrated that Las Virgenes reviewed Dr. Stein's recommendations.

Dr. Stein's report concluded with a list of 48 items in the Recommendations section. Dr. Stein did not state in his report or at the IEP team meeting that his recommendations were necessary for Student to receive a FAPE. Instead, he said they might "assist," "help," or "benefit" Student. He acknowledged in his report that many may already be part of Student's IEP plan. Three of the recommendations were suggestions for actions to be taken by Parents outside of school. 10 were teaching strategies commonly implemented for the benefit of all pupils. One related to Student's study of transitional words, which was a skill already taught in the Study Skills class. One related to a potential goal. 30 described potential accommodations or modifications. One recommended the use of the Orton-Gillingham reading program. Two related to proposals for assessments. Student's case manager Brianne Bribiesca was at the August 2019 IEP team meeting and led the team through Dr. Stein's recommendations. Las Virgenes team members noted whether a suggestion was already provided in Student's IEP, a modification of an existing accommodation or goal, a new accommodation or goal, or already an incorporated teaching strategy.

For example, Dr. Stein had nine accommodation recommendations related to reading. Of those nine, five were already accommodations and the remainder were existing teaching strategies used in Student's classes. Dr. Stein had seven recommendations to assist Student in writing. Of these, two were existing teaching strategies, two were used to update or modify existing accommodations, and the remainder were already IEP accommodations. For math, three of the six recommendations were already Student IEP accommodations, one was added, and the remainder were existing teaching strategies. The team used the same process in reviewing Dr. Stein's recommendations related to visual processing, executive functioning, auditory processing, language, and memory issues.

14 of the accommodation recommendations were already in Student's IEP. One recommended use of a laptop, but all Las Virgenes middle schoolers already had Chromebooks. The IEP team used Dr. Stein's recommendations to add eight accommodations of:

- Chunking information, by breaking into parts. Some teachers noted that this is also used as a typical teaching strategy;
- Use of alternative means to express the information learned outside of specific writing activities;
- Front loading of new concepts;
- Speech to text as needed;
- Reminders for Student to check his work;
- No penalty for spelling errors;
- Grade on targeted skills; and
- Use of a calculator.

Las Virgenes team members determined that the remaining recommendations were not necessary to provide Student with a FAPE, such as having a teacher work with Student on his posture and writing pressure. Las Virgenes team members referred to assessment data of Student's writing to be in the low average range and was not a significant weakness preventing Student from accessing his curriculum. Las Virgenes chose not to provide an Orton-Gillingham reading program, which emphasized morphological processing and phonological development. Student had already participated in the Read 180 intensive reading program and assessment data showed Student's comprehension skills as age appropriate.

Parents wrote an August 29, 2019 email to Las Virgenes disagreeing with the proposed IEP, including the assertion that the IEP team ignored Dr. Stein's findings and recommendations. Parents asked for a follow-up IEP team meeting. Las Virgenes responded to Parents' email with a September 13, 2019 prior written notice letter and stated the IEP team fully and carefully considered Dr. Stein's psychoeducational assessment findings and recommendations. Las Virgenes said it would schedule the Parents' requested follow-up IEP team meeting.

Las Virgenes convened an addendum IEP team meeting on September 18, 2019. All requisite members attended, including Ms. Bribiesca, Dr. Nouri, and Parents. Parents stated they wanted an accommodation for testing in a small setting, but further stated they did not want Student to be placed in a special education setting where other special education students are present. Generally, Parents contended that Student was distracted by special education students and their behaviors. Las Virgenes team members agreed to add this accommodation, with the understanding that there may be times when the only alternative small setting would have special education students present. In those situations, Student would have to take the test in his general education classroom or, making use of his one-day extended time accommodation for tests, complete his tests in his Study Skills class, as needed. Las Virgenes team members also agreed to Parents' request that Student's accommodation regarding alternative means to express the information learned, with teacher discretion, be applied to assessments, quizzes, and tests. Las Virgenes again invited Parents to observe Student's Study Skills class so they might evaluate how Student's accommodations were being implemented, which Parents declined. Parents raised concerns regarding Student's academic functioning in math and executive functioning. Las Virgenes offered to conduct updated assessments; Parents declined. Las Virgenes told Parents it would

respond in writing to their requests for educational therapist services and an assessment by an educational audiologist. Las Virgenes fully considered Dr. Stein's recommendations and responded to Parent's requests for further accommodations at the August IEP team meeting.

Parents generally asserted that Las Virgenes personnel could not be trusted because they worked for Las Virgenes. Parents accused Las Virgenes team members at the IEP team meeting and hearing of being untruthful or giving false opinions. Contrary to Father's argument at hearing, the audio recording failed to demonstrate that any Las Virgenes personnel falsified their hearing testimony or statements. Other than Father's hearsay testimony of what Student told him, Student presented no admissible or persuasive evidence demonstrating that Las Virgenes personnel gave false testimony.

Student presented no evidence that Dr. Stein made a recommendation which was necessary for Student to receive a FAPE that was not incorporated into Student's IEP. The audio records of the IEP team meetings, the documentation, and the witness testimony demonstrated a concerted effort by Las Virgenes to appropriately review and consider Dr. Stein's findings and recommendations. Student did not meet his burden of proof that Las Virgenes denied Student a FAPE, at the August 28 and September 18, 2019 IEP team meetings, by failing to consider the findings and or implement the recommendations from the August 21, 2019 Stein Psychological Associates' independent evaluation report.

ISSUE 1(B): DID LAS VIRGENES DENY STUDENT A FAPE, AT THE AUGUST 28 AND SEPTEMBER 18, 2019 IEP TEAM MEETINGS, BY FAILING TO IMPLEMENT THE ACCOMMODATIONS AND SERVICES IN STUDENT'S IEP?

Student generally asserts that Las Virgenes did not implement Student's IEP accommodations and services, noting large class sizes, teachers' lack of training and knowledge, failure to train Student in his technology-related accommodations, and Las Virgenes' general disregard of Student's IEP. Las Virgenes contends that it fully and properly implemented Student's last signed and implemented IEP.

A school district must implement all components of a student's IEP. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(c).) When a student alleges the denial of a FAPE based on the failure to implement an IEP, to prevail, the student must prove that any failure to implement the IEP was "material," which means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 822.) A minor discrepancy between the services provided and the services required in the IEP is not enough to amount to a denial of a FAPE. (*Ibid.*)

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) The current educational placement is typically the last agreed upon and implemented individualized educational program placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

Here, the last agreed upon and implemented IEP was Student's January 11, 2019 annual IEP, as modified by the February 12, 2019 addendum IEP and the April 2019 Settlement Agreement. At the August 2019 IEP, Las Virgenes offered to move Student's language arts from special education to general education. Student's placement would be general education, except for his special education Study Skills class for 233 weekly minutes. Las Virgenes offered to add accommodations related to Dr. Stein's recommendations and to continue with home tutoring, increasing the hours to 15 per month. Parents agreed to implementation of the increased home tutoring hours and the change of social studies to general education. They did not agree to the new or modified accommodations. At the September 2019 addendum IEP, Las Virgenes and Parents discussed and agreed to provisional modification of two accommodations.

ACCOMMODATIONS

Student argued that Las Virgenes' teachers and personnel were not equipped to provide Student with his IEP services and accommodations. Student based his argument on the premise that Las Virgenes teachers and personnel did not follow the Dyslexia Guidelines, which the California Department of Education developed in 2017, pursuant to Education Code section 56335. Student's argument was not persuasive.

The 125-page set of guidelines provided practical resources for identifying and educating dyslexic pupils. The guidelines were not mandatory. The guideline's statutory purpose was to provide guidance in developing "education services" to pupils with dyslexia that were evidence-based, multisensory, direct, explicit, structured, and sequential approach to instruction. (Ed. Code § 56335, subd. (a).)

All of the teachers and personnel who worked with Student demonstrated they were qualified to provide accommodations and support to a special education pupil

with dyslexia. As part of their formal education and credentialing, general education teachers were trained in servicing and supporting pupils in their classes who have IEP's, including those whose eligibilities were specific learning disability and other health impaired and who had characteristics of dyslexia and dysgraphia. Student's Study Skills' special education teacher, James Hession, was trained in dyslexia as part of his master's in special education. Dr. Nouri had extensive training and experience with pupils who have dyslexia.

The IEP team appropriately determined Student's educational program by his individual needs, not by his diagnosis of dyslexia. Dr. Nouri emphasized that every child with a learning disability, including dyslexia, manifested different deficits that required individually designed special educational support. Student's education services reflected his identified individual needs for special education support, as determined by qualified and credentialed educators using standardized instruments and legally appropriate evaluations to fashion an education program of evidence-based instruction. This approach was consistent with the statutory purpose of the California Dyslexia Guidelines. Student did not demonstrate that Las Virgenes failed to follow the dyslexia guidelines or that any alleged failure denied Student a FAPE.

The evidence supported a finding that Student's teachers implemented the IEP accommodations, as needed. For example, Student's general education language arts teacher Toni Cooley taught middle school for 26 years. She had special education pupils with IEPs every year. She testified at the hearing. Ms. Bribiesca personally delivered and discussed Student's IEP with Ms. Cooley. Ms. Cooley, like Student's other teachers, kept a desk file with his accommodations and educational needs. Ms. Cooley reviewed all of Student's goals and accommodation, which she implemented when needed, such as use of a word bank and testing in a small group. She checked for

understanding with Student after reading assignments, provided preferential teaching, offered extra time for assignment completion and tests, gave on-task reminders, and chunked information. Ms. Cooley did not utilize accommodations that Student did not require, such as alternative means of accessing knowledge. Student demonstrated his knowledge in class. However, Student would rush through class assignments, when the use of the available accommodation of additional time would have been helpful. At the time of hearing, Student was at grade level in Language Arts.

General education science teacher Janette Goeglein was similarly provided and aware of Student's accommodations and goals. She testified at the hearing. She used accommodations as needed for Student, such as vocabulary bank and sentence starters. She checked Student's understanding of what he read with follow-up questions. His writing was legible. She did not have to use the masking and chunking accommodations because she layered and scaffolded information for the entire class. Student was very engaged, took notes, answered questions, worked in small groups, followed directions, and completed work. Student received a 100 percent grade on a recent oral presentation before the entire class. Student would ask Ms. Goeglein questions when he did not understand a concept. Student never said he had difficulty understanding or accessing class information. Student timely completed and submitted homework, without use of additional time. Ms. Goeglein did not see any off-task behavior. At the time of hearing, Student had a grade of B in science.

Carissa Shaw was Student's general education social science teacher and testified at the hearing. She spoke directly with Ms. Bribiesca regarding Student's goals and accommodations when she received Student's IEP. Student regularly rejected offered accommodations. For example, Ms. Shaw offered a small group for each test, but Student refused. Ms. Shaw could not read information to Student because he would not

leave the classroom. She offered to provide alternative means of assessing his knowledge, but Student wanted to take his tests with the class. When Student did not do well on tests, he would not retake the test, though retaking was an accommodation. Student took appropriate notes and silently read in class daily. Student did not have a problem understanding class content. Though Student could type quite well, he tended to write on paper. Student's social science grade at the time of hearing was a B-.

Mr. Hession was Student's special education teacher for the Study Skills class, which he taught for five years. He testified at hearing. He had a master's degree in special education and held a mild/moderate special education credential for all subjects. He was a behavioral therapist for six years and trained in applied behavior analysis and discreet trial training. Student was the youngest of Study Skills' five pupils. The class was quiet, and the pupils were respectful of each other. Student's class program included homework scheduling, handling peer pressure, improving note taking skills, and assisting in understanding how he learned so he could advocate and teach himself. Mr. Hession had direct instruction and discussion with the class about two to three times a week. The remaining time was working with pupils directly on individual goals and skills. Mr. Hession spent focused time with Student on math. He received and reviewed Student's IEP at the beginning of the year. Mr. Hession used the accommodations when needed, such as assisting in reading instructions.

Student's accommodations included use of audiobooks and speech-to-text, when needed. Student asserted that he was not trained to use his technology related accommodations, rendering them useless. The evidence proved otherwise. Las Virgenes utilized Google classroom, Google docs, and other Google Apps for Education. All middle school pupils had Chromebook computers, which they used for assignments, notes, communication with teacher, calendaring, and other class supports.

Pupils could easily access speech-to-text, text-to-speech, and audiobooks features on their device.

Ms. Cooley saw that Student knew how to use the speech-to-text on his computer, but Student did not use the resource. The whole Language Arts class knew how to use audiobooks, including Student, but Student did not use on his own. Mr. Hession saw Student use speech-to-text because the feature was used in class. Ms. Shaw saw Student use audiobooks and text-to-speech, but Student seldom utilized the resources. The evidence established that a lack of training did not prevent Student from receiving or utilizing his technology related accommodations.

Student argued that the general education teachers could not implement Student's accommodations because their classes had approximately 40 students and, therefore, simply could not provide the requisite individualized one-to-one interaction. However, each general education teacher who worked with Student was trained and had extensive experience in implementing accommodations for their pupils with IEPs. None of the teachers were hampered in delivering accommodations to Student because of class size. Student presented no persuasive evidence that the teachers could not implement his accommodations because of class size.

The evidence established that Las Virgenes implemented the IEP's accommodations.

SERVICES

Student's IEP, as amended, provided special academic instruction through the Study Skills class and home tutoring. Las Virgenes contracted with Dr. Brodsky to provide Student with the 15 hours a month of tutoring. Dr. Brodsky had masters and

doctorate degrees and possessed general education and special education credentials. Dr. Brodsky previously worked for Montebello Unified School District and Chatsworth Charter School. He was a full-time special education teacher with Los Angeles Unified School District. He had worked with pupils who had many different learning disabilities, including dyslexia. He started working with Student in May 2019. He had reviewed Student's IEP, goals and accommodations. Dr. Brodsky demonstrated that he cared about Student's education, had an excellent working relationship with Student, and was profoundly aware of Student's educational strengths and challenges. His testimony was persuasive, insightful, and credible.

Before a tutoring session, Dr. Brodsky checked in with Student's teachers regarding their concerns and Student's assignments, which enabled him to make better use of his time with Student. Student could read and write text at grade level and often used words beyond seventh grade level. Student could use audiobooks, but he usually read physical books. Dr. Brodsky helped Student prepare for tests and worked on assignments, but only when needed. He did not believe that Student required a credentialed educational therapist but thought that Student should continue with his special academic instructions and home tutoring until Student further developed his skills and gained more confidence. Dr. Brodsky reported back to Student's teachers after a tutoring session, providing information on Student's progress.

In addition to the 15 hours of home tutoring, Student also attended Mr. Hession's daily study skills class. Therefore, the evidence established that Las Virgenes implemented the IEP's specialized academic instruction with home tutoring and the study skills class.

Student failed to meet his burden of proof that Las Virgenes denied Student a FAPE, at the August 28 and September 18, 2019 IEP team meetings, because it did not implement Student's accommodations and services. Student's argument was based on Parents' general assertions, without sufficient or persuasive evidence identifying implementation failures. The evidence indicated that Student's general and special education teachers had read Student's IEP, were aware of his accommodations, and had implemented his accommodations as needed. Further, Student received his special academic instruction in his Study Skills class and home tutoring.

ISSUE 1(C): DID LAS VIRGENES DENY STUDENT A FAPE, AT THE AUGUST 28 AND SEPTEMBER 18, 2019 IEP TEAM MEETINGS, BY FAILING TO OFFER SPECIALIZED ACADEMIC INSTRUCTION AND OTHER SUPPORTS TO ADDRESS STUDENT'S DYSLEXIA, DYSGRAPHIA AND DYSCALCULIA?

Student contended that Las Virgenes did not offer specialized academic instruction and other supports to address Student's dyslexia, dysgraphia, and dyscalculia. Las Virgenes stated Student's present program met Student's identified educational needs.

A special education placement is a unique combination of facilities, personnel, location or equipment necessary to provide instructional services to a Student with exceptional needs. (Cal. Code Regs., tit 5, § 3001, subd. (t), and § 3042.). School districts are required to provide each special education student with a program in the least restrictive environment. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031.) The continuum of 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, instruction in the home or instruction in hospitals or institutions. (Ed. Code, § 56361.)

Student argued that Las Virgenes rejected Parents' requests for services and change of placement, necessary to address Student's diagnoses. However, Student did not demonstrate that the services and supports Parents requested were necessary for Student to receive a FAPE.

For example, Student claimed that Las Virgenes refused to conduct an assistive technology assessment to determine what technology would support his diagnoses and, consequently, he was not receiving appropriate services. Student already had audiobooks, speech-to-text, and use of a calculator as accommodations. Student knew how to access these technological supports, which were readily available to him on his Chromebook. Dr. Stein did not identify any other needed technology in his report or at the IEP team meeting he attended. Student failed to demonstrate that he required additional technology support, or an assistive technology assessment, to address his learning deficits or diagnoses.

Parents also requested four to five hours a week of after school education therapy from a qualified educational therapist. However, Student failed to present evidence that he required education therapy to address his learning deficits or diagnoses. For example, Dr. Stein reported that Student would benefit from working with an educational professional to address weaknesses in higher level language skills. However, Dr. Stein did not recommend that an "educational therapist" provide 20 hours

a month of educational therapy. Dr. Stein also did not report that such services were necessary for Student to receive a FAPE. Student was performing at an average or above average level in general education classes and his teachers believed his grades would be higher by the end of the semester. Student was making educational progress, which Dr. Brodsky believed supported his ability to attend college. Las Virgenes properly declined Parents' request for education therapy in its prior written notice letters of September 13 and October 7, 2019. (34 C.F.R. § 300.503.)

Parents also requested that Las Virgenes provide an intensive Orton-Gillingham reading program which Dr. Stein thought would benefit Student. Las Virgenes declined because Student completed an intensive Read 180 program during summer 2019. The choice of methodologies was the prerogative of Las Virgenes. (See *Rowley, supra*, 458 U.S. at p. 208.) Orton-Gillingham based reading programs focused on phonological awareness and morphological processing. Read 180 used adaptive technology to individualize Student's instruction. Read 180 addressed phonological awareness, phonics and word study, comprehension, fluency, and vocabulary. Dr. Brodsky persuasively testified that Student could read and write at grade level and decode tenth-grade level text, opining that another intensive reading program was inappropriate. Based upon Student's assessments and present levels of performance, Ms. Cooley and Dr. Nouri confirmed that Student was reading at grade level. Here, the evidence proved the Read 180 program benefited Student. Student did not prove that the Orton-Gillingham reading program was necessary or appropriate to address Student's dyslexia and provide a FAPE.

Parents requested an assessment by an educational audiologist at the September 2019 addendum IEP team meeting. Las Virgenes notified Parents that it would conduct an educational audiology assessment in its October 7, 2019 prior written notice.

Las Virgenes attached an Assessment Plan for Parents signature. Parents did not agree and contended that the proposed audiology assessment was not what they requested. Yet, Student presented no evidence how or in what way Las Virgenes' proposed assessment was not appropriate. Also, Dr. Stein said Student would benefit from such an assessment, not that the assessment was necessary for FAPE. Student did not prove that Las Virgenes failed to offer the requested educational audiology assessment or that the assessment was necessary to address Student's diagnoses and provide a FAPE.

Student generally asserted that Las Virgenes refused to place Student in classes that address his dyslexia, dysgraphia, and dyscalculia. Parents argued in the IEP team meetings and at hearing that Las Virgenes placed special education kids into special education classes without regard for their needs and behaviors. Student claimed that his placement in a special education language arts class at the beginning of the 2019-2020 school year and Student's continued placement in the special education Study Skills class caused him emotional damage and failed to meet his needs, resulting in a denial of FAPE.

Specifically, Parents claimed at the August 28, 2019 IEP team meeting that Student was suffering emotionally because the Language Arts teacher Brian Kernochan played pounding, loud music every day, for the entire class. Mr. Kernochan had a mild-to-moderate teaching credential, taught sixth and seventh grade special education language arts, and testified at the hearing. Mr. Kernochan was trained in servicing dyslexic pupils as part of his education and credentialing and was qualified to provide services to children with specific learning disability or other health impairment eligibilities. He reviewed Student's IEP two days before the start of classes.

Student had about 10 classmates who had similar special academic instructional language arts needs. Some, like Student, had dyslexia; the others had different learning deficits. Student sat in front and attended Mr. Kernochan's class for eight school days. In one Wednesday class, Mr. Kernochan played some music while the class worked on an assignment because he had found this helpful for most pupils. Student told him he did not like the music. Student moved to the back of classroom, where it was quiet, and completed his assignment.

Las Virgenes agreed at the August 2019 IEP that Student could transfer to a general education Language Arts class, provided he continued in his Study Skills class. Parents permitted Las Virgenes to implement the transfer and Student started attending Ms. Cooley's class. Student's eight days of attendance in the special education Language Arts class did not cause Student undo harm or severe emotional damage. The only admissible evidence indicated music was played but once and Student was quickly accommodated. Student's eight days of attending Mr. Kernochan's class did not deny Student a FAPE.

Student claimed that his continued attendance in Mr. Hession's Study Skills class did not benefit him, caused distress because of the other pupils' behaviors, and prevented him from attending a class that was educationally more beneficial. Father claimed that the other four Study Skills pupils bullied Student and had behaviors that caused Student to be off task. Student, however, did not offer admissible or persuasive evidence to support these claims. Father never saw the class or talked with Mr. Hession. Mr. Hession said the class of five students were respectful of each other and worked well together.

Student also asserted that he should be taking a general education class instead but offered no evidence as to what class. Dr. Nouri and Ms. Falk warned that exchanging Study Skills for a general education course would be setting Student up for failure. As Dr. Brodsky testified, Student needed special academic support until Student further developed his skills and gained more confidence. All of Student's teachers believed Study Skills provided Student with special education academic support that enabled him to make appropriate academic progress in light of Student's unique circumstances (See *Endrew F.*, *supra*, 137 S.Ct. at 993). Student did not prove that his continuing attendance of Study Skills denied him a FAPE.

Student claimed that Las Virgenes violated the law by determining Student's IEP program with a vote. However, the audio recordings of both IEP team meetings established that Student's IEP was not determined by a majority vote. At the August 2019 IEP meeting, Las Virgenes team members agreed to move Student to general education Language Arts. Parents requested that Las Virgenes also take Student out of Study Skills. Las Virgenes IEP team members said that Student continued to need Study Skills to address accommodations, goals, and executive functioning concerns, enabling him to better access his general education class curriculums. Finally, Ms. Bribiesca asked each team member, including Parents, whether Student should remain in Study Skills. Every Las Virgenes team member believed Student needed to remain in Study Skills. Parents strongly disagreed with the IEP team members. Dr. Stein remained silent.

Student did not prove that the IEP team denied Student a FAPE by improperly determining its FAPE offer. Without Parents' agreement, the IEP team could not reach a consensus regarding Study Skills. Las Virgenes was therefore required to make a written FAPE offer. (See Letter to Richards, 55 IDELR 107 (OSEP 2010).) This was what occurred at the August and September 2019 IEP team meetings, which was confirmed in writing

to Parents. Indeed, the August 2019 IEP remained opened and unsigned by Parents through the hearing.

Student failed to meet his burden of proving that Las Virgenes denied him a FAPE, at the August 28 and September 18, 2019 IEP team meetings, by failing to offer appropriate specialized academic instruction and other supports to address Student's dyslexia, dysgraphia and dyscalculia.

ISSUE 2(A), (B), (C), AND (D): DID LAS VIRGENES DENY STUDENT A FAPE DURING THE 2019-2020 SCHOOL YEAR BECAUSE LAS VIRGENES DID NOT INCLUDE THE FOLLOWING SPECIAL EDUCATION ELIGIBILITIES IN STUDENT'S IEP, AT THE AUGUST 28, 2019 AND SEPTEMBER 18, 2019, IEP TEAM MEETINGS: SPECIFIC LEARNING DISABILITY; OTHER HEALTH IMPAIRMENT; MULTIPLE DISABILITIES; AND OR SPEECH OR LANGUAGE IMPAIRMENT?

Student claimed that his IEP did not accurately reflect the eligibilities to which he was entitled. Las Virgenes contends that the August and September 2019 IEPs found that Student continued to meet the criteria for specific learning disability and other health impairment eligibilities, and that Student presented no evidence that Student met multiple disabilities or speech and language impairment eligibility criteria.

A student is eligible for special education and related services if he is a "child with a disability" such as having intellectual disabilities, orthopedic impairments, or other health impairments, and, as a result thereof, needs special education and related services which cannot be provided with modification of the regular school program. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a)(1); Ed. Code, § 56026, subds. (a) & (b).)

Federal law does not require children to be classified by their disabilities (20 U.S.C. § 1412(a)(3)(B)). As long as a child remains eligible for special education and related services, the IDEA does not require that the child be placed in the most accurate disability category. (20 U.S.C. § 1412(a)(3)(B).)

SPECIFIC LEARNING DISABILITY AND OTHER HEALTH IMPAIRMENT ELIGIBILITIES

Specific learning disability eligibility means a pupil has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations. The term includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, *dyslexia*, and developmental aphasia. (Emphasis added.) (20 U.S.C. §1401(30); Ed. Code, § 56337, subd. (a).)

Other health impairment eligibility means a pupil “has limited strength, vitality, or alertness, including a heightened alertness . . . to environmental stimuli, that results in limited alertness with respect to the educational environment that . . . is due to chronic or acute health problems . . . and [a]dversely affects a child’s educational performance . . .” (Cal. Code Regs., tit. 5, § 3030, subd. (b)(9).)

Student’s January 2018 triennial IEP and January 2019 annual IEP designated Student’s primary eligibility as specific learning disability and secondary eligibility as other health impairment. Following Dr. Stein’s presentation at the August 2019 IEP, Las Virgenes members of the IEP team agreed that Student’s eligibilities should remain specific learning disability and other health impairment. Dr. Stein did not recommend, and Las Virgenes did not propose, changing Student’s eligibilities. Therefore, Student

did not prove that the August and September 2019 IEP's failed to identify Student's eligibility categories as specific learning disability and other health impairment eligibilities.

The September 2019 IEP documents state that the team acknowledged Student showed characteristics of dyslexia and dysgraphia, but that Las Virgenes did not agree that Student had characteristics of dyscalculia. Student contended that "characteristics of" was not sufficient acknowledgement of Student's disabilities to assure receipt of a FAPE. Student's contention in this regard was unpersuasive. The IEP record clearly reflected that Dr. Stein diagnosed Student with dyslexia, dysgraphia, and dyscalculia, as defined by the Diagnostic Statistical Manual of Mental Disorders. Las Virgenes' legal responsibility was not to diagnose Student but to determine if Student had learning disabilities which required special education and related services for Student to access and benefit from his education. In other words, the statistical manual diagnoses were not determinative of Student's special education eligibility and needs. Las Virgenes met its legal responsibility in confirming Student had characteristics of dyslexia and dysgraphia, but did not find characteristics of dyscalculia. Student presented no evidence that the use of the term "characteristics of" somehow denied him a FAPE.

Student did not prove that Las Virgenes denied Student a FAPE during the 2019-2020 school year because Las Virgenes did not include specific learning disability and other health impairment special education eligibilities in Student's IEP at the August 28, 2019 and September 18, 2019, IEP team meetings.

MULTIPLE DISABILITIES

The special education eligibility of multiple disabilities means a pupil has concomitant impairments, such as intellectual disability-blindness or intellectual

disability-orthopedic impairment, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. (Cal. Code Regs, tit. 5, § 3030, subd (b)(7); 34 C.F.R. § 300.8(c)(7).)

Here, Student presented no evidence that Student met the criteria for multiple disabilities eligibility. Student argued that Dr. Stein diagnosed him with dyslexia, dysgraphia, dyscalculia, and language disorder and, therefore, he had multiple disabilities. But the measure of multiple disabilities eligibility was not that Student had diagnoses of multiple disabilities pursuant to the statistical manual. The IEP team must make the educational determination that multiple disabilities, including intellectual disability, resulted in concomitant impairments that combined to cause severe educational needs that could not be accommodated in special education programs that addressed one impairment. Student's cognitive capabilities was low average to average. Dr. Stein did not recommend the multiple disabilities eligibility. Neither did any school psychologist or educator. No evidence supported such a determination. Student did not prove that Las Virgenes denied Student a FAPE during the 2019-2020 school year because Las Virgenes did not include multiple disabilities as a special education eligibility in Student's IEP at the August 28, 2019 and September 18, 2019, IEP team meetings.

SPEECH AND LANGUAGE IMPAIRMENT

The California Code of Regulations states that a pupil has a language or speech disorder as defined in Education Code section 56333 when it was determined that the pupil's disorder met the criteria for articulation disorder, abnormal voice, fluency disorder, or language disorder. (5 C.C.R. § 3030, subd. (b)(11).)

Student asserted that he was eligible for speech and language impairment because he had a long history of language disorder and Dr. Stein diagnosed him with a language disorder. However, Student presented no evidence that Dr. Stein's statistical manual diagnosis met the criteria for speech and language impairment eligibility. Dr. Stein did not recommend speech and language impairment eligibility.

Ms. Falk testified that Student did not meet the criteria for speech and language impairment. Ms. Falk had a masters in speech pathology and held a teaching credential in speech and language with special class authorization. She had been a speech pathologist for almost 35 years, in addition to being a special education teacher, special education program coordinator, and director of pupil services for Las Virgenes. She had been an adjunct professor in the teacher preparation program at California Lutheran University, teaching classes related to speech and language disabilities. She reviewed Student's IEPs and assessments, including Dr. Stein's report. Her education, training, credential, and experience qualified her to evaluate whether Student met the criteria for speech and language impairment eligibility.

Student did not have articulation disorder, abnormal voice, or fluency disorder that met eligibility criteria. Though Dr. Stein diagnosed Student with a language disorder, Dr. Stein's own testing verified that Student did not meet California's very precise criteria for speech and language impairment eligibility due to a language disorder. Ms. Falk reviewed Student's scores on the Clinical Evaluation of Language Fundamentals, Fifth Edition, administered by Dr. Stein. Student did not score below the seventh percentile in the four requisite areas for speech and language impairment due to a language disorder. Las Virgenes' triennial assessment also confirmed that Student did not meet speech and language impairment eligibility criteria. Dr. Nouri agreed with Ms. Falk's expert opinion.

No evidence supported speech and language impairment eligibility. Student did not prove that Las Virgenes denied Student a FAPE during the 2019-2020 school year because Las Virgenes did not include speech and language impairment as a special education eligibility in Student's IEP at the August 28, 2019 and September 18, 2019, IEP team meetings.

ISSUE 3(A): DID LAS VIRGENES DENY STUDENT A FAPE, AT THE AUGUST 28, 2019 AND SEPTEMBER 18, 2019 IEP TEAM MEETINGS, AND IN SUBSEQUENT CORRESPONDENCE, BY FAILING TO CREATE CLASSES AT LINDERO CANYON MIDDLE SCHOOL THAT OFFER STUDENT THE PROPER LEARNING ENVIRONMENT AND EDUCATIONAL SERVICES, WHICH ARE SPECIFICALLY DESIGNED FOR DYSLEXIC STUDENTS?

Student generally asserted that Las Virgenes put special education students in special education classes, regardless of their educational needs. Therefore, Student was put in special education classes with pupils who had severe behaviors and where Student did not receive the necessary individual attention for his dyslexia. Student argued that he required a learning environment and educational services that were specifically designed for dyslexic students.

Student did not submit admissible or persuasive evidence supporting his claim. Federal and state law describes the tools of assessments, observations, interviews, evaluations, and IEP team meetings to be used to individualize a student's program. Students with dyslexia manifest different deficits, requiring an individualized educational program that addresses student's unique educational needs. A special education

student “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the *child’s circumstances*” (italics added) (*Endrew F., supra*, 137 S.Ct. at pp. 1000-1001).

Here, an IEP team that included Parents met at two meetings. Parents actively participated. The Las Virgenes members of the IEP team reached a consensus and developed an IEP offer that included an appropriate placement, services and supports for Student. Student’s contention that Las Virgenes was required to develop classes and program just for dyslexic students was unsupported by evidence or law. Under the facts in this case, the opposite was true. Based upon the findings in earlier issues in this Decision, Las Virgenes offered an appropriate placement, supports and services for Student in the August and September 2019 IEP’s that were reasonably calculated to enable Student to make progress in light of his disabilities. (*Ibid.*)

Student did not prove that Las Virgenes denied Student a FAPE at the August 28, 2019 and September 18, 2019 IEP team meetings, and in subsequent correspondence, by failing to create classes at Lindero Canyon Middle School that offer Student the proper learning environment and educational services, which are specifically designed for dyslexic students.

ISSUE 3(B): DID LAS VIRGENES DENY STUDENT A FAPE, AT THE AUGUST 28, 2019 AND SEPTEMBER 18, 2019 IEP TEAM MEETINGS, AND IN SUBSEQUENT CORRESPONDENCE, BY FAILING TO PROVIDE STUDENT WITH URGENTLY NEEDED EDUCATIONAL INTERVENTIONS TO ADDRESS HIS DISABILITIES, INCLUDING WEEKLY AFTER-SCHOOL INTERVENTION BY AN EDUCATIONAL THERAPIST?

Student claimed he was in urgent need of educational interventions to address his disabilities. However, Student did not identify or present any evidence that Student was in urgent need of any educational interventions that he was not already receiving. Also, as discussed in the analysis of Issue 1(C), Student did not require after-school intervention by an educational therapist. Any other services requested by Parents were also discussed in Issue 1(C) and found to be unnecessary for a FAPE. Student did not prove that Las Virgenes denied Student a FAPE at the August 28, 2019 and September 18, 2019 IEP team meetings, and in subsequent correspondence, by failing to provide Student with urgently needed educational interventions to address his disabilities, including weekly after-school intervention by an educational therapist.

ISSUE 3(C): DID LAS VIRGENES DENY STUDENT A FAPE, AT THE AUGUST 28, 2019 AND SEPTEMBER 18, 2019 IEP TEAM MEETINGS, AND IN SUBSEQUENT CORRESPONDENCE, BY FAILING TO OFFER PLACEMENT FOR EXTENDED SCHOOL YEAR AT A NON-PUBLIC SCHOOL THAT SPECIALIZES IN DYSLEXIA/LANGUAGE-BASED DISABILITIES TO COMPENSATE FOR 2019-2020 SCHOOL YEAR'S LACK OF FAPE?

Student claimed he was entitled to an offer of extended school year services at a nonpublic school, in the August and September 2019 IEPs, to receive a FAPE or as a remedy for not having received a FAPE. Student's claim failed on both grounds. The question of extended school year for summer 2020 had yet to be addressed by Student's IEP team. The August and September 2019 IEPs were held for the purpose of reviewing Dr. Stein's evaluation report. They were addendums to Student's January 2019 annual IEP. Student's January 2020 annual IEP would address any need or request for extended school year for summer 2020. Therefore, at the time of the hearing, Las Virgenes was not obligated to offer extended school year, even if Student were entitled, until the next annual review.

Also, Student is not entitled to extended school year as a remedy because Student failed to prevail on any issue and prove a denial of FAPE. Student did not prove that Las Virgenes denied Student a FAPE at the August 28, 2019 and September 18, 2019 IEP team meetings, and in subsequent correspondence, by failing to offer placement for extended school year at a non-public school that specializes in dyslexia/language-based disabilities to compensate for 2019-2020 school year's lack of FAPE.

LEGAL CONCLUSIONS AND PREVAILING PARTY

Pursuant to 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. Las Virgenes prevailed on the issues heard and decided. Specifically:

1. Student did not prove that Las Virgenes denied Student a FAPE, at the August 28, 2019 and September 18, 2019 IEP team meetings, by failing to:
 - a. Consider the findings and implement the recommendations from the August 21, 2019 Stein Psychological Associates independent educational evaluation report;
 - b. Implement the accommodations and services in Student's IEP; and/or
 - c. Offer specialized academic instruction and other supports to address Student's dyslexia, dysgraphia and dyscalculia.
2. Student did not prove that Las Virgenes denied Student a FAPE during the 2019-2020 school year because Las Virgenes did not include the following special education eligibilities in Student's individualized education program, called an IEP, at the August 28, 2019 and September 18, 2019, IEP team meetings:
 - a. Specific learning disability;
 - b. Other health impairment;
 - c. Multiple disabilities; and/or
 - d. Speech or language impairment.

3. Student did not prove that Las Virgenes denied Student a FAPE, at the August 28, 2019 and September 18, 2019 IEP team meetings, and in subsequent correspondence, by failing to:
 - a. Create classes at Lindero Canyon Middle School that offer Student the proper learning environment and educational services, which are specifically designed for dyslexic students;
 - b. Provide Student with urgently needed educational interventions to address his disabilities, including weekly after-school intervention by an educational therapist; and/or
 - c. Offer placement for extended school year at a non-public school that specializes in dyslexia/language-based disabilities to compensate for 2019-2020 school year's lack of FAPE.

ORDER

All of Student's requests for relief are denied.

RIGHT TO APPEAL

This is a final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

/s/

Clifford Woosley

Administrative Law Judge

Office of Administrative Hearings