

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019100147

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

DECISION

OCTOBER 12, 2020

On October 2, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student naming Long Beach Unified School District, called Long Beach. OAH granted Student's motion to amend the complaint and a joint hearing continuance on April 28, 2020. Administrative Law Judge Sabrina Kong heard this matter by videoconference on July 21, 22, 23, 28, 29, 2020 and August 4, 2020.

Attorneys Jane DuBovy and Mandy Favaloro represented Student. Parent attended all hearing days on Student's behalf. Attorney Meagan Kinsey represented Long Beach. Long Beach's special education administrator Wendy Rosenquist attended the hearing for Long Beach on July 21, 2020. Special education administrator Seema

Paul attended the hearing for Long Beach on July 22, 23, 28, 29, 2020 and August 4, 2020.

At the parties' request, OAH continued the matter to September 1, 2020 for written closing briefs. The record was closed, and the matter was submitted on September 1, 2020.

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

STUDENT'S MOTION FOR STAY PUT

On September 2, 2020, after the record closed, Student filed a motion for stay put. On September 8, 2020, Long Beach filed an opposition to the motion. The last day for filing motions with OAH, before the hearing, was three business days before the July 13, 2020 prehearing conference, unless a party provided a statement under penalty of perjury stating good cause why a motion could not have been timely filed. Student did not provide a good cause declaration explaining why Student did not timely file the motion three business days before the July 13, 2020 prehearing conference. Student also did not provide good cause, or any explanation, why she waited until the day after the matter was submitted before filing the stay put motion. Student's motion is denied because it was untimely.

ISSUES

1. Did Long Beach deny Student a FAPE by failing to convene an IEP team meeting to review Student's lack of progress:
 - a. from October 2, 2017 through the 2018 extended school year;
 - b. in the 2018-2019 school year; and

- c. in the 2019-2020 school year?
- 2. Did Long Beach deny Student a FAPE during the 2018-2019 school year by failing to timely conduct a triennial evaluation?
- 3. Did Long Beach deny Student a FAPE during the March 2019, June 2019, and October 2019 IEP team meetings by failing to provide prior written notice letters regarding its refusal to offer:
 - a. educationally related mental health services; and
 - b. one-to-one aide support?
- 4. Did Long Beach deny Student a FAPE by failing to provide prior written notice letters regarding proposed changes to Student's:
 - a. June 2019 IEP; and
 - b. October 2019 IEP?
- 5. Did Long Beach deny Student a FAPE at the October 2017, October 2018, March 2019, June 2019, and October 2019 IEP team meetings by failing to include all required IEP team members including a knowledgeable administrator who had authority to make decisions about Student's IEPs?
- 6. Did Long Beach deny Student a FAPE by failing to consider Parent's concerns at the following IEP team meetings:
 - a. October 2017;
 - b. October 2018;
 - c. March 2019;
 - d. June 2019; and
 - e. October 2019?
- 7. Did Long Beach deny Student a FAPE by failing to consider appropriate behavior interventions at the following IEP team meetings:
 - a. October 2018;

- b. March 2019; and
 - c. June 2019?
8. Did Long Beach deny Student a FAPE by predetermining the IEP offer at the following IEP team meetings:
- a. October 2018;
 - b. March 2019;
 - c. June 2019; and
 - d. October 2019?
9. Did Long Beach deny Student a FAPE by failing to make a clear IEP offer at the following IEP team meetings:
- a. October 2018;
 - b. March 2019;
 - c. June 2019; and
 - d. October 2019?
10. Did Long Beach deny Student a FAPE by failing to timely convene an IEP team meeting to consider independent educational evaluations pursuant to Parent's February 18, 2020 request?
11. Did Long Beach deny Student a FAPE by failing to implement the consented to IEP services after March 13, 2020?
12. Did Long Beach deny Student a FAPE by failing to convene an IEP team meeting to discuss implementation of services during school closures in March 2020?
13. Did Long Beach deny Student a FAPE in the 2018-2019 school year by failing to assess Student in the following areas:
- a. Functional behavior; and
 - b. Educationally Related Mental Health?

14. Did Long Beach deny Student a FAPE in the 2019-2020 school year by failing to assess Student in the following areas:
 - a. Occupational therapy;
 - b. Assistive technology;
 - c. Transition;
 - d. Functional behavior; and
 - e. Educationally Related Mental Health?
15. Did Long Beach deny Student a FAPE from October 2, 2017 through the 2018 extended school year by failing to offer appropriate:
 - a. Goals;
 - b. Placement;
 - c. Academic instruction; and
 - d. Speech and language services?
16. Did Long Beach deny Student a FAPE from October 2, 2017 through the 2018 extended school year by failing to offer any:
 - a. Occupational therapy services;
 - b. Behavioral services; and
 - c. Social emotional services?
17. Did Long Beach deny Student a FAPE from the 2018-2019 school year through the 2019 extended school year by failing to offer appropriate:
 - a. Goals;
 - b. Placement;
 - c. Academic instruction;
 - d. Transition services; and
 - e. Speech and language services?

18. Did Long Beach deny Student a FAPE from the 2018-2019 school year through the 2019 extended school year by failing to offer any:
 - a. Occupational therapy services;
 - b. Behavioral services; and
 - c. Social emotional services?
19. Did Long Beach deny Student a FAPE from the 2019-2020 school year through the 2020 extended school year by failing to offer appropriate:
 - a. Goals;
 - b. Placement;
 - c. Academic instruction;
 - d. Transition services; and
 - e. Speech and language services?
20. Did Long Beach deny Student a FAPE from the 2019-2020 school year through the 2020 extended school year by failing to offer any:
 - a. Occupational therapy services;
 - b. Behavioral services; and
 - c. Social emotional services?

Student withdrew issues related to Long Beach's failures to assess in adapted physical education. Student also withdrew issues related to Long Beach's failures to revise IEPs as duplicative of her issues under 15a, 17a, and 19a above.

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student has the burden of proof as to her issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 16 years old, in the 10th grade, and eligible for special education under the category of intellectual disability at the time of the hearing. She attended Cabrillo High School's moderate to severe special day class and worked on an alternative curriculum. Student resided within Long Beach's geographic boundaries at all relevant times.

ISSUE 1A, 1B, AND 1C: DID LONG BEACH DENY STUDENT A FAPE BY FAILING TO CONVENE AN IEP TEAM MEETING TO REVIEW STUDENT'S LACK OF PROGRESS FROM OCTOBER 2, 2017 THROUGH THE 2018 EXTENDED SCHOOL YEAR; AND IN THE 2018-2019 AND 2019-2020 SCHOOL YEARS?

Student contends that Long Beach should have convened an IEP team meeting when Student did not meet her goals and progress adequately. Long Beach contends that Student progressed adequately in accordance with her intellectual disability profile and did not need other IEP team meetings than the ones Long Beach convened.

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

An IEP meeting must be held at least annually. In addition, an IEP meeting must be held when a student demonstrates a lack of anticipated progress, or when a parent or teacher requests an IEP meeting to develop, review or revise a student's IEP. (Ed.

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

STUDENT MADE PROGRESS

Student did not prove that Long Beach denied her a FAPE by failing to convene IEP team meetings during any of the three specified periods. Raymund Mison was Student’s moderate to severe special day class teacher during the 2016-2017 and 2017-2018 school years at Stephens Middle School. On October 2, 2017, Student met all her goals from the prior year except for the personal information writing goal where she progressed but did not meet because of spelling errors. He opined that Student did well, completed work, and transitioned without difficulty. Student was happy, focused, and a good fit with her peers in the class. Student did not engage in off-task, or maladaptive behaviors in Mison’s class. While Mison did not recall if Student spoke in complete sentences, he recalled that everyone in class understood Student. Student socialized and communicated appropriately with Mison, staff, and her peers using one-word, or short phrases, and self-advocated for adult help when a peer irritated her.

Mison was not concerned about Student’s progress during the 2017-2018 school year because Student did well. He opined that Student progressed towards her goals when she left his class in June 2018 to transition to Cabrillo High School. Mison opined any inattentiveness he observed in Student was minimal, as Student was easily redirected within a second by a simple call to her name. Student volunteered to answer questions, and sometimes required prompting to do so. Mison’s uncontradicted opinions as to Student’s class performance and progress were based upon Mison’s

knowledge and experience of working with Student, and therefore credible. Student progressed despite not meeting all her goals by the time of the October 2, 2018 IEP team meeting. The IEP team concluded that Student was capable of working on additional goals and added eight more goals to the October 2, 2018 IEP.

During the 2018-2019 school year, teacher Nelly Ofoegbu taught Student's special day class at Cabrillo High School from the beginning of the school year until June 2019. Jennifer Richter taught one period the entire 2018-2019 school year until June 2019, when Richter became Student's only special day class teacher for the last 10 school days of the 2018-2019 school year. Richter also taught Student during the 2019 extended school year, and during the 2019-2020 school year.

Both Ofoegbu and Richter opined that Student did well and progressed during the 2018-2019 school year until February/March 2019 when Student suffered a sudden onset of mental health issues that affected her school performance. Long Beach convened amendment IEP team meetings in March and June 2019 to consider Student's mental health impact on her education and progress. Neither Ofoegbu nor Richter was concerned about Student's progress or Student not meeting her goals from the beginning of the 2018-2019 school year until February/March 2019.

Richter opined that Student's performance in Richter's one class period changed in February 2019 because of Student's mental health issues, which improved only slightly during the 2019 extended school year. Student only met two goals, significantly progressed towards another four goals, and made only 10 to 30 percent progress toward the rest of the seven goals by the October 2019 IEP team meeting because of Student's mental health issues. Student did not improve to a point where she was fully

engaged in class until fall 2019. Student became fully engaged in class, was happy, social, and enjoyed participating in and completing classwork by the time of the COVID-19 related school closure on March 16, 2020.

Student's experts, speech and language pathologist Susan Hollar and psychologist Agnesa Papazyan, concluded when they evaluated Student in 2020 that Student functioned at the first-grade level academically and scored low in all standardized assessments including in speech and language. Hollar's and Papazyan's opinion that Student did not progress in the prior school years was based on a records review and their 2020 assessments. Their opinions on whether Student progressed during the 2017 to 2018, 2018 to 2019, and 2019-2020 school years were not as persuasive as the opinions of the teachers who taught and interacted with Student daily throughout these three years. Further, Hollar's opinion on Student's progress was also unpersuasive because she evaluated Student's communication abilities using the common core standards. Student was not using the common core standards curriculum, but an alternative curriculum. Therefore, Hollar's use of the common core standards to show Student's slow progress was inaccurate and misleading. Student's experts also inappropriately equated her academic function at the first-grade level, low standardized test scores, and not meeting all her goals to a lack of progress. Student's academic function and progress were consistent with her intellectual abilities. Student progressed towards meeting her goals despite not meeting all of them.

LONG BEACH TIMELY HELD IEP TEAM MEETINGS TO DISCUSS PROGRESS

Long Beach timely held Student's annual IEP team meetings during the 2017-2018, 2018-2019, and 2019-2020 school years. The annual IEP team meetings discussed Student's educational needs including goals, performance, progress, and services. Long Beach convened a March 7, 2019 IEP team meeting to discuss Student's

needs when Student's mental health issues surfaced. Long Beach convened another IEP team meeting on June 4, 2019, to discuss Parent's request for a classroom/teacher change and mental health impact on progress and education. Student's teachers during these three school years all opined that Student progressed and did well until February or March 2019, when Student suffered from mental health issues. Student's progress in her moderate to severe special day class was commensurate with her intellectual abilities and profile. Student did not offer any credible evidence that Long Beach needed to convene additional IEP team meetings to review Student's progress.

Student did not prove that Long Beach denied her a FAPE by not convening IEP team meetings, in addition to the annual IEP team meetings, and the amendment IEP team meetings in March and June 2019, to review Student's progress.

ISSUE 2: DID LONG BEACH DENY STUDENT A FAPE DURING THE 2018-2019 SCHOOL YEAR BY FAILING TO TIMELY CONDUCT A TRIENNIAL EVALUATION?

Student contends that Long Beach did not timely conduct comprehensive standardized assessments for her 2018-2019 triennial IEP. Long Beach contends it timely conducted triennial evaluations for Student.

The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child's educational or related service needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

Long Beach timely conducted Student's triennial evaluation. Student's triennial evaluation was due on October 8, 2018. On August 21, 2018, Long Beach sent Parent an assessment plan to evaluate Student's health, hearing, vision, academic performance, and communication status. On August 30, 2018, Parent consented to the assessment plan. Long Beach's personnel, including school psychologist Loan Wendt and speech and language pathologist Lisa Knapp assessed Student. At the October 2, 2018 triennial IEP team meeting, Wendt presented her psychoeducational report and Knapp presented her speech and language assessment report. The meeting occurred less than 60 days after Parent signed the assessment plan. Therefore, Long Beach timely conducted Student's triennial evaluation.

Student argued that Long Beach's psychoeducational evaluation was deficient because it did not include standardized assessments. Student also argued that Long Beach's speech and language assessment was deficient because it did not include various subtests including in the areas of pragmatic language. However, Long Beach funded independent evaluations in these two areas and, more importantly, the issues of whether various assessments were appropriate were not before OAH at hearing.

Student did not prove that Long Beach denied her a FAPE by not timely conducting a triennial evaluation.

ISSUE 3A, AND 3B: DID LONG BEACH DENY STUDENT A FAPE DURING THE MARCH 2019, JUNE 2019, AND OCTOBER 2019 IEP TEAM MEETINGS BY FAILING TO PROVIDE PRIOR WRITTEN NOTICE LETTERS REGARDING ITS REFUSAL TO OFFER EDUCATIONALLY RELATED MENTAL HEALTH SERVICES, AND ONE-TO-ONE AIDE SUPPORT?

Student contends that Long Beach should have provided prior written notices when it refused parental requests for educationally related mental health services and one-to-one aide support during IEP team meetings. Long Beach contends prior written notices were not needed as both requests were discussed at IEP team meetings which were memorialized by the IEP document offer.

A parent must be provided written prior notice when a school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4.) The notice must include a description of the action refused by the school district, an explanation of why the district refuses to take the action, a description of each evaluation procedure, test, record, or report used as a basis for the refused action, a description of any other factors relevant to the district's refusal, a statement that the parents have protection under the procedural safeguards of IDEA, and sources for the parents to contact to obtain assistance. (20 U.S.C. § 1415(c); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.)

States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479,

1483, superseded by statute on other grounds, as stated in *R.B. v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007), 496 F.3d 932, 939.) (*Target Range*). Citing *Rowley, supra*, the Ninth Circuit recognized the importance of adherence to the procedural requirements of the IDEA, but indicated that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at pp. 1484.) Procedural violations may constitute a denial of a FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parents' opportunity to participate in the IEP process. (*Ibid.*) These requirements are also found in the IDEA and California Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if the violation:

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

(20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *See Target Range, supra*, 960 F.2d at 1484.)

EDUCATIONALLY RELATED MENTAL HEALTH SERVICES

Long Beach did not need to send a prior written notice to Parent regarding educationally related mental health services discussed at IEP team meetings. Parent attended the March, June, and October 2019 IEP team meetings at which the Long Beach IEP team discussed with Parent and offered Student special education placement and related services. School psychologist Wendt concluded that Student qualified for educationally related mental health services by March 2019. Long Beach offered a referral for Student to receive the services at the March and June 2019 IEP team meetings, and Parent's consent was required. At the March 2019 IEP team

meeting, Parent informed Long Beach that she wished to wait until after Student's appointments with the Harbor Regional Center and Long Beach community health services before consenting to the referral for Student to receive educationally related mental health services. At the June 2019 IEP, Long Beach again requested Parent's consent for a referral to have Student receive educationally related mental health services. At the June 2019 IEP team meeting, Parent informed the Long Beach IEP team that Student was registered to receive mental health services from the Harbor Regional Center.

The trigger for a prior written notice by Long Beach did not exist. Parent did not consent to the educationally related mental health services referral at either the March or the June 2019 IEP team meetings. Therefore, Long Beach could not start the process of providing the services. Student did not need, and Parent did not request, educationally related mental health services from Long Beach at the October 2, 2019 IEP team meeting. Long Beach did not refuse to consider, or refuse to offer, educationally related mental health services.

ONE-TO-ONE AIDE SUPPORT

Long Beach did not need to send a prior written notice to Parent regarding one-to-one aide support discussed at IEP team meetings. Parent initially requested one-to-one aide support at the March and June 2019 IEP team meetings to help Student with mental health issues. At the October 2019 IEP team meeting, Parent requested one-to-one aide support to help Student with maladaptive behaviors. Long Beach explained at all three IEP team meetings that Student did not need one-to-one aide support.

Long Beach provided the proposed IEP to Parent after each of the three IEP team meetings, setting forth the basis of and describing the IEP offers. The IEP's did not

include offers for educationally related mental health services, or one-to-one aide support. The IEP document informed Parent in writing of the entire IEP offer, and was the only written notice required. (*See*, 71 Fed.Reg. 46691 (Aug. 14, 2006) [There is nothing prohibiting a public agency from using the IEP as the prior written notice.]; *See G.D. v. Westmoreland School Dist.* (1st Cir. 1991) 930 F.2d 942, 949.) Student did not provide any legal authority to support her argument that Long Beach was required to provide additional notice in a separate document following an IEP team meeting for offers made or related services refused by Long Beach during the IEP team meeting. Long Beach legally complied with its obligation to provide notice to Parent of what it was offering to Student, based on discussions at the IEP meeting. Student also did not prove that not receiving additional written notice to an IEP document significantly deprived meaningful parental participation rights, deprived her educational benefits, or a FAPE.

Student did not prove that Long Beach denied Student a FAPE by not providing additional prior written notice regarding educationally related mental health services and one-to-one aide support discussed at each of the three IEP team meetings.

ISSUE 4A, AND 4B: DID LONG BEACH DENY STUDENT A FAPE BY FAILING TO PROVIDE PRIOR WRITTEN NOTICE LETTERS REGARDING PROPOSED CHANGES TO STUDENT'S JUNE 2019 AND OCTOBER 2019 IEPs?

Student contends that Long Beach should have provided prior written notice to reflect the addition of a general education dance class and an art class in Student's IEPs. Long Beach contends prior written notices were not needed as these elective subjects were discussed at the IEP team meetings.

The IEP must be read as an entire document. No requirement exists that necessary information be included in a particular section of the IEP if that information is contained elsewhere. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2); Ed. Code, § 56345, subd. (h).)

Student argued that the dance and art elective classes were not specifically documented in the Program and Services section of the IEP documents. As for the dance elective, Student was not enrolled in a general education dance class at any time after the June 2019 IEP team meeting rendering that argument not persuasive. Parent attended the June 2019 IEP team meeting at which the Long Beach IEP team discussed with Parent possible mainstreaming opportunities. Those discussions were reflected in the June 2019 IEP document. Specifically, the Information Considered section of the June 2019 IEP document stated that Student tried mainstreaming into a general education elective dance class but could not access the curriculum. Therefore, the June 2019 IEP team offered Student 100 percent of special education services, with no mainstream elective. The June 2019 IEP team stated that it would try mainstreaming Student with another general education elective in the next school year. Parent was at the meeting and participated in the discussion. She agreed to defer mainstreaming at the June 2019 IEP team meeting. No prior written notice was required in connection with the June 2019 IEP offer.

As for the art elective, Long Beach procedurally violated the IDEA by failing to provide Parent with prior written notice before the October 2019 IEP. Long Beach did not inform Parent in writing that Student began attending a general education art class after the beginning of the 2019-2020 school year until the October 2019 IEP team meeting. Long Beach changed and added a general education elective to Student's June 2019 IEP, which was 100 percent special education, without sending Parent prior

written notice of its intention to do so. (*See*, 20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4.). The first time Long Beach informed Parent of the addition of the general education art class in writing was in the October 2019 IEP.

However, Student did not show that the procedural violation deprived Student of educational benefit or access to a FAPE. Student also did not show that Long Beach's failure to provide Parent with a prior written notice about the art elective before the October 2019 IEP team meeting significantly impeded Parent's opportunity to participate in the decision-making process. Between the beginning of the 2019-2020 school year, and the October 2019 IEP team meeting, Parent knew that Student mainstreamed into a general education elective art class because Long Beach staff discussed mainstreaming with Parent before mainstreaming Student into the art class. Parent had an opportunity when she first learned about the art elective, and again at the October 2019 IEP meeting, to object to mainstreaming Student in the art class. She did not do so. In fact, Parent welcomed the mainstreaming opportunity because Student loved art. Student benefitted from mainstreaming. Student enjoyed and was successful in the art class.

Long Beach properly documented its written offer of mainstreaming in the October 2019 IEP. The Information Considered section of the October 2019 IEP stated that Student was mainstreamed into the general education elective art class. The October 2019 IEP team decreased Student's special education services to 55 percent and offered her 45 percent of general education services because for the first time Student successfully mainstreamed in the art class. The October 2019 IEP described the art elective, which was also reflected in the 45 percent of general education services the IEP team offered to Student. The description of the art elective in the IEP was all the notice Parent was entitled. The IEP document gave Parent written notice of the change

to Student's proportion of special education and mainstreaming. Student offered no legal authority to support a finding that Long Beach was required to provide additional notice in a separate document following an IEP team meeting of the IEP offer.

Student did not prove that Long Beach denied Student a FAPE by not giving Parent an additional prior written notice following each of the June, or October 2019 IEP team meeting about Student's participation in the dance and art general education electives.

ISSUE 5: DID LONG BEACH DENY STUDENT A FAPE AT THE OCTOBER 2017, OCTOBER 2018, MARCH 2019, JUNE 2019, AND OCTOBER 2019 IEP TEAM MEETINGS BY FAILING TO INCLUDE ALL REQUIRED IEP TEAM MEMBERS INCLUDING A KNOWLEDGEABLE ADMINISTRATOR WHO HAD AUTHORITY TO MAKE DECISIONS ABOUT STUDENT'S IEPs?

Student contends that Long Beach's staff who attended Student's IEP team meetings, including the administrative designee, had no knowledge about non-public schools or placements outside of Long Beach. Student further contends that Long Beach did not have a representative who had authority to make changes requested by Parent at the IEP team meetings. Long Beach contends that it had all required members at Student's IEP team meetings to offer Student a FAPE.

An IEP team is required to include:

- one or both parents, or representative;
- a regular education teacher if a student is, or may be, participating in regular education;
- a special education teacher;

- a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about available resources;
- a person who can interpret the instructional implications of assessments results;
- at the discretion of the parties, other individuals; and
- when appropriate, the person with exceptional needs.

(34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5.)

To constitute a denial of FAPE, procedural violations must result in deprivation of educational benefit or a serious infringement of the parent's opportunity to participate in the IEP process. (*Ibid.*) (*See A.G. v. Paso Robles Joint Unified School Dist.* (9th Cir. 2014) 561 Fed.Appx. 642, 643.)

Student did not prove that the required IEP team members were absent at any of Student's IEP team meetings. Student argued that Long Beach's IEP team members, including the administrator, had no knowledge about non-public schools or programs not operated by Long Beach, and could not authorize funding, or offer those options. Shondi McGee participated in the October 2017 IEP team meeting as Long Beach's administrator. McGee was knowledgeable about special education programs at Stephens Middle School. John Tran participated in the October 2018, March 2019, June 2019, and October 2019 IEP team meetings as Long Beach's administrator. Tran was knowledgeable about special education programs at Cabrillo High School.

It was inconsequential that neither McGee, nor Tran, was knowledgeable about special education programs outside of Long Beach; or that neither could authorize funds for programs outside of Long Beach. Student offered no evidence that a non-public school setting was a viable option on the placement continuum requiring the presence

of an individual knowledgeable about non-public schools during the October 2017, October 2018, March 2019, June 2019, or October 2019 IEP team meetings. Long Beach had all the required IEP team members who were knowledgeable about placement options suitable for Student at all those meetings. The Long Beach IEP team also had authority to offer and increase related services based on the IEP team's discussions and make decisions at all five IEP team meetings.

PARENTAL PREFERENCE PARTICULAR TO THE JUNE AND OCTOBER 2019 IEP TEAM MEETINGS

Shortly before the June 2019 IEP team meeting, special education administrator Dr. Seema Paul spoke with Parent. Parent requested that Student switch from Ofoegbu's to Richter's class. Although letters from Parent referred to a "placement" change, Parent's request was not a "placement" change request, but a classroom change request based on parental preference. Both Ofoegbu and Richter taught a moderate to severe special day class, which was the appropriate placement for Student.

Paul suggested a program operated by the Orange County Department of Education as an additional class change option. Orange County Department of Education is called OCDE. OCDE through the Harbor Learning Center operated seven separate county community schools which were unaffiliated with Long Beach and were not non-public schools. The OCDE program were like Student's moderate to severe special day class, but generally had four fewer students in its classes. The OCDE program provided specialized academic instruction in a small group setting with full-time staff on site who provided related services. OCDE would determine which of the seven schools was appropriate for Student if she applied. Parent informed Paul that she wanted to tour the OCDE's schools before considering applying.

Long Beach's failure to have a person knowledgeable about the OCDE program at the June 2019 and October 2019 IEP meetings was a procedural violation because Paul proposed the OCDE option to Parent. Someone knowledgeable about the OCDE option should have been at the June 2019 and October 2019 IEP meetings.

However, Student did not show that the procedural violation deprived Student educational benefits, impeded Student's right to a FAPE, or significantly impeded Parent's right to meaningful participation at the June and October 2019 IEP meetings. Not having a person knowledgeable about the OCDE option was inconsequential because the evidence did not support that Student required a change to the OCDE program. The OCDE program was only another option to accommodate parental preference of a classroom change. Student's least restrictive environment was a moderate to severe special day class. Student's placement would not have been different regardless of the school site.

This Decision discusses placement in more detail under issues 15B, 17B, and 19B below. Student did not show that the absence of a person knowledgeable about OCDE, or a non-public school, resulted in a substantive FAPE denial to Student. Student did not prove that Long Beach denied Student a FAPE by not having necessary and knowledgeable IEP team members with authority to make decisions at any of Student's five IEPs.

ISSUE 6A, 6B, 6C, 6D, AND 6E: DID LONG BEACH DENY STUDENT A FAPE BY FAILING TO CONSIDER PARENT'S CONCERNS AT THE OCTOBER 2017, OCTOBER 2018, MARCH 2019, JUNE 2019, AND OCTOBER 2019 IEP TEAM MEETINGS?

ISSUE 8A, 8B, 8C, AND 8D: DID LONG BEACH DENY STUDENT A FAPE BY PREDETERMINING THE IEP OFFER AT THE OCTOBER 2018, MARCH 2019, JUNE 2019, AND OCTOBER 2019 IEP TEAM MEETINGS?

Student contends that Long Beach denied parental participation in IEP team meetings by not considering that Student may have autism, and not offering a one-to-one aide per Parent's request. Student also contends that Long Beach predetermined its offer at IEP team meetings by making the same FAPE offer as previous years without considering Parent's requests for additional services.

Long Beach contends that it properly considered parental concerns and discussed Student's needs at all IEP team meetings and did not engage in predetermination. Issues 6A, 6B, 6D and 6E, regarding parental participation at IEP team meetings, and Issues 8A, 8B, 8C, and 8D, regarding predetermination at IEP team meetings, will be analyzed together.

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 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 Educ.* (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].)

Predetermination occurs when an educational agency has decided on its offer prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP meeting with a “take it or leave it” offer. (*JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.) However, a school district has the right to select a program and/or service provider for a special education student, as long as the program and/or provider is able to meet the student’s needs; IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D.Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323.)

Long Beach did not significantly interfere with Parent’s opportunity to participate in the IEP process or engage in predetermination at any IEP team meeting. Although Parent contends that Long Beach ignored her request to assess Student for autism since 2009, the evidence, including Parent’s hearing testimony, did not support that Parent specifically requested that at any IEP team meeting within the time period at issue in this case.

OCTOBER 2017 IEP TEAM MEETING

Parent expressed her concern with Student’s reading, math, off-task behaviors and academic progress at the October 2017 IEP team meeting. The Long Beach IEP team addressed Mother’s concerns. The IEP team members discussed Student’s

progress, including strengths and weaknesses, in all areas of concern with Parent. The IEP team members explained that Student demonstrated basic reading comprehension by answering basic questions about the text. Student identified the date, month, year, weather and seasons, including properly spelling calendar-related words with minimal to moderate level prompts. Student read high frequency sight words and read short texts from the first to third grade levels without stuttering. She identified numbers up to 50 in and out of order. Student could rote count to 50 by ones, fives, and tens. She could write up to 50 in chronological order. Student could add up to ten when provided with visual prompts. Student identified pennies, nickels, dimes and quarters.

The Long Beach IEP team members also informed Parent that Student socialized, and conversed with peers and adults appropriately, and used appropriate greetings. Behaviorally, Student was compliant, and had no problem completing classwork. Student participated in academic activities, sometimes required prompting to answer questions, but volunteered to answer questions when she knew the answer approximately two to five times a day. Parent did not have any questions or expressed any other concerns about Student at the October 2017 IEP team meeting which were unaddressed. The IEP team discussed Students strengths and weaknesses supporting Student's placement and related services offer.

Parent meaningfully participated in the October 2017 IEP team meeting with the Long Beach IEP team addressing and discussing all of Parent's concerns regarding Student's academic performance and behaviors. Further, based upon the thorough discussions between Long Beach and Parent about Student's progress and the proposed IEP offer, Student did not prove that Long Beach predetermined the IEP offer at this IEP team meeting. Parent also reviewed the IEP and had the opportunity to request changes before she consented to the IEP offer.

OCTOBER 2018 IEP TEAM MEETING

Student's triennial IEP team meeting took place on October 2, 2018. Wendt presented the results of Student's psycho-educational assessment. Knapp presented Student's speech and language assessment results. Knapp began providing Student's speech and language services in the 2018-2019 school year. The IEP team concluded that Student continued to qualify for special education under intellectual disability. Student continued to have a speech and language impairment qualifying her for continued speech and language services.

Wendt interviewed Parent for the triennial assessment and shared at hearing that Parent did not request either during the interview or the October 2018 IEP team meeting that Student be specifically assessed for autism. This aspect of Wendt's testimony was uncontroverted. Ofoegbu did not observe Student engaging in any autistic-like, or any maladaptive behaviors which interfered with accessing her education until the February/March 2019 mental health crisis. This aspect of Ofoegbu's opinion was also uncontroverted.

The Long Beach IEP team discussed Student's strengths and weaknesses at the October 2018 IEP team meeting, and added eight more goals, an Individualized Transition Plan including transition services to Student's IEP. The IEP reflected Parent's continued concerns with Student's reading, math, attention and off-task behaviors and academic progress. Parent meaningfully participated in this IEP team meeting with the Long Beach IEP team addressing and discussing all of Parent's concerns. Parent did not ask any other questions or express any other concerns at the October 2018 IEP team meeting which were unaddressed. Further, based upon the thorough discussions between Long Beach and Parent about Student's progress and the proposed IEP offer, Student did not prove that Long Beach predetermined the IEP offer at this IEP team

meeting. Parent reviewed the IEP and had the opportunity to request changes before she consented to the IEP offer.

MARCH 2019 IEP TEAM MEETING

Parent requested an IEP team meeting to address the sudden onset of Student's mental health crisis around February 2019. Wendt assessed Student to determine Student's eligibility for educationally related mental health services when Parent reported that Student experienced behavior and mental health changes at home. Parent reported Student engaged in uncontrolled crying and laughing, repeatedly talking to herself, aggression towards some family members, had insomnia, and lost weight from refusing to eat. Parent also informed Long Beach that Student had been diagnosed with depression, bipolar disorder, and psychosis at an urgent care facility.

Long Beach concluded at the March 2019 amendment IEP team meeting that Wendt's evaluation of Student's mental health supported a referral for educationally related mental health services and offered the referral. However, Parent withheld consent, and informed the Long Beach IEP team that she wished to wait until after Student's March 2019 appointments with the Harbor Regional Center and Long Beach community health services before consenting to Long Beach's referral for Student to receive educationally related mental health services.

At this IEP team meeting Parent requested one-to-one aide support for Student to manage Student's mental health issues. The IEP team considered Parent's request for aide support and disagreed that Student required a one-to-one aide to manage her mental health issues. Long Beach IEP team members shared that Student could access her education without a one-to-one aide. Nonetheless, Long Beach added an additional

adult aide in Student's moderate to severe special day class to support the class, including Student.

At hearing, both Ofoegbu and Wendt opined that Student required additional adult support for redirection but did not require a one-to-one aide. Wendt's and Ofoegbu's opinions on this subject were credible because they were familiar with Student's needs during this time. Ofoegbu was Student's special day class teacher who worked with Student daily since the beginning of the 2018-2019 school year. Wendt was an experienced school psychologist who evaluated Student in February/March 2019 to determine her mental health status and educational needs. Further, no one disputed this aspect of their opinions. Student's experts could not credibly opine on Student's needs for a one-to-one aide because they never observed Student in class to evaluate her needs during this period.

Parent had the opportunity to express her concerns and participate in a meaningful discussion as to Student's needs, and the proposed IEP placement and services. Parent participated in the March 2019 IEP and expressed her disagreement that an educationally related mental health services evaluation referral was necessary. Parent also had the opportunity to request a one-to-one aide for Student. Long Beach denying Parent's request for a one-to-one aide was not evidence that it prevented parental participation, or that Long Beach predetermined its offer before the IEP team meeting without considering Parent's request. Further, based upon the thorough discussions between Long Beach and Parent about Student's needs and the proposed IEP offer, Student did not prove that Long Beach predetermined the IEP offer at this IEP team meeting. Parent reviewed the IEP and had the opportunity to request changes before she consented to the IEP offer.

JUNE 2019 IEP TEAM MEETING

Parent asked for the June 2019 IEP team meeting to switch Student from Ofoegbu's to Richter's moderate to severe special day class. Parent observed Student in Ofoegbu's class approximately 17 times during the 2018-2019 school year. Parent also observed Student in Richter's class approximately ten times. Parent described Student as "zoned out" and fearful of going to school when attending Ofoegbu's class around the time of the mental health crisis in February/March 2019, but was much more relaxed and complied with going to school when attending Richter's class. Parent also renewed her request for a one-to-one aide for Student at the June 2019 IEP team meeting.

Long Beach renewed its request for Parent to consent to an educationally related mental health services referral. Parent did not consent. Long Beach agreed to change Student from Ofoegbu's to Richter's class while Parent considered other class options including visiting the OCDE program. Long Beach did not offer the one-to-one aide and explained to Parent that there were enough adults in the moderate to severe class to attend to Student's needs.

Parent had the opportunity to express her concerns and participate in a meaningful discussion as to Student's needs and the proposed IEP offer at the June 2019 IEP meeting. Long Beach agreed to some of Parent's change requests, but not all. Long Beach's denial of Parent's request for a one-to-one aide was not persuasive evidence that it prevented parental participation, or that Long Beach decided its offer before the IEP team meeting without considering Parent's request. Further, based upon the thorough discussions between Long Beach and Parent about Student's needs and the proposed IEP offer, Student did not prove that Long Beach predetermined the IEP offer at this IEP team meeting. Parent reviewed the IEP and had the opportunity to request changes before she consented to the IEP offer.

OCTOBER 2019 IEP TEAM MEETING

Parent attended the October 1, 2019 annual IEP team meeting with her advocate Mayra Loza. Parent and Loza discussed concerns about Student's placement, goals, and services including one-to-one aide support. At hearing, Parent shared her opinion that Student needed a one-to-one aide to guarantee her safety so she could participate in field trips. The safety issue surfaced when Student stepped in front of a truck on the school parking lot. Richter opined at hearing that Student did not need a one-to-one aide to ensure safety, but needed travel training to learn how to safely and independently navigate her environment. The October 2019 IEP team offered Student travel training as a related service. This travel training included two aides accompanying two students on field trips on campus and in the community teaching mobility safety to enable Student to safely participate in field trips with her class.

Parent also shared that she was concerned about Student's behavior changes triggered by the February/March 2019 mental health crisis and wanted Student's behavior to return to where it had been before the crisis. Richter reviewed Student's academic performance, goals and progress. The IEP team discussed that Student did not meet all her goals but progressed towards her goals despite her mental health crisis. Long Beach discussed and added vocational education goals, and more academic and speech and language goals for the 2019-2020 school year. The IEP team also added adapted physical education, work experience education, transition, and travel services. The IEP team also modified speech and language services, and added general education time and a behavior support plan. Parent communicated her satisfaction with the behavior support plan at the IEP team meeting. Parent discussed her concerns about Student's progress in reading, writing, and math and shared that vocational education

and work experience could wait until other issues, such as Student's behaviors, stabilized.

The Long Beach IEP team described three possible classes for Student: Richter's moderate to severe special day class; another moderate to severe special day class at another high school site operated by Long Beach; and the OCDE option Paul proposed to Parent before the June 2019 IEP team meeting. Parent requested Paul's assistance in late September 2019 to schedule a tour of the OCDE program when Parent was unsuccessful in contacting OCDE to schedule a tour. At the IEP team meeting, advocate Loza shared that Parent had still not toured the OCDE program, so applying there was not a viable option.

Speech and language pathologist Knapp discussed Student's speech and language progress and goals with Parent. After listening to Parent's concerns about Student's slurred speech, Knapp added a speech and language goal to address precise articulation and to replace the fluency goal. At hearing, Parent did not recall the discussion about the change of speech and language goal. Parent's recall about what occurred during IEP team meetings was selective, and therefore not as persuasive. Further, Knapp's testimony on this aspect was credible because it was supported by the notes in the IEP reflecting the change to the speech and language goal. Parent also expressed her disagreement with Long Beach's offer of four individual speech and language sessions per month and asked for more. Long Beach increased the offer to five individual speech and language sessions per month based on Parent's request.

Parent and Loza had the opportunity to express concerns and participate in a meaningful discussion at the October 1, 2019 IEP meeting as to Student's needs. Both had the opportunity to ask questions, discuss class preferences and changes, communicate their agreement, and disagreement with the goals and services. The IEP

notes reflected that Parent informed Long Beach that she needed to think about the IEP offer first before consenting to the October 2019 IEP offer. Parent's decision not to consent to the IEP offer also supported that Parent participated in the IEP team meeting. Long Beach's denial of Parent's request at the October 1, 2019 IEP team meeting for one-to-one aide support was not evidence that Long Beach prevented parental participation, or that Long Beach decided its offer before the IEP team meeting without considering Parent's request. Further, based upon the thorough discussions between Long Beach and Parent about Student's needs and the proposed IEP offer, Student did not prove that Long Beach predetermined the IEP offer at this IEP team meeting. Parent reviewed the IEP and had the opportunity to request changes before she consented to the IEP offer.

In summary, Student did not prove that Long Beach denied Student a FAPE by not considering parental concerns at the October 2017, October 2018, March 2019, June 2019, or the October 2019 IEP team meetings. Student also did not prove that Long Beach denied Student a FAPE by predetermining the IEP offer at the October 2018, March 2019, June 2019, or the October 2019 IEP team meetings.

ISSUE 7A, 7B, AND 7C: DID LONG BEACH DENY STUDENT A FAPE BY FAILING TO CONSIDER APPROPRIATE BEHAVIOR INTERVENTIONS AT THE OCTOBER 2018, MARCH 2019, AND JUNE 2019 IEP TEAM MEETINGS?

Student contends that Long Beach did not offer appropriate behavior interventions to help her access her education and progress. Long Beach contends that Student received behavior interventions embedded in her special day class.

When a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies, including positive behavioral interventions and supports

to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) & (b); Ed. Code, § 56341.1, subd. (b)(1).) The legislature intended that children with serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions. (Ed. Code, § 56520, subd. (b)(1).) A person recognized by the National Behavior Analyst Certification Board as a board-certified behavior analyst may, but is not required to, conduct behavior assessments and provide behavior intervention services for individuals with exceptional needs. (Ed. Code, § 56525, subds. (a) and (b).) An IEP that does not appropriately address behaviors that impede a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029; *County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467-68.)

The evidence did not support that Student exhibited any behaviors interfering with her educational access until her mental health crisis in March 2019. Student did not engage in any off-task behaviors or any maladaptive behaviors in Mison's class during the 2017-2018 school year requiring additional behavior interventions to those already embedded in Mison's class. Parent agreed that Student did well in Mison's middle school class and even asked Mison to write a letter in the spring of 2019 stating that Student did well in Mison's class. Both Ofoegbu and Richter opined that Student did well, was happy, verbal, social, engaging, compliant, worked in class, and progressed during the 2018-2019 school year until February/March 2019. None of this evidence was contradicted. Although Parent reported Student flapped her hands and rocked in her chair, Student's teachers did not observe those behaviors in class. Further, Student did not show at hearing that those behaviors interfered with her access to a FAPE.

Additionally, Parent's testimony at hearing and the October 2018, March 2019, June 2019, and October 2019 IEP documents all support that Student did not have any

maladaptive behaviors which impeded her access to education until approximately March 2019. Ofoegbu opined at hearing that the box in the October 2018 IEP showing that behaviors impeded Student's learning was checked by mistake. Ofoegbu's testimony was persuasive because Student did not offer any contradictory evidence.

Long Beach held the March 2019 IEP team meeting to discuss Parent's report of a sudden change in Student's behaviors. Ofoegbu noticed changes in Student's classroom behavior including excessive crying and work completion difficulties. Ofoegbu opined that in March 2019 Student forgot how to complete work she previously knew how to complete. However, because Student was still following directions, and not defiant, Ofoegbu concluded that Student's behaviors did not interfere with her learning.

Ofoegbu's conclusion that Student's behaviors did not interfere with her learning in March and June 2019 was not persuasive because it was contradicted by Student's classroom behaviors and Richter's opinion. Richter opined at hearing that around March 2019 Student exhibited behavior changes in Richter's one period which included being noncompliant, minimally verbal, unengaged in work and in class. Richter also opined that Student's increased crying, forgetful behavior, and inability to complete work prevented Student from doing any classwork and impacted her access to the curriculum. By June 2019 when Richter became Student's teacher the entire day, Richter concluded that Student had behaviors which interfered with learning. By the extended school year 2019, Richter opined that although Student's behaviors improved, Student was still mostly non-compliant. For these reasons, Richter's opinion that Student's behaviors interfered with her education in March and June 2019 were more persuasive than Ofoegbu's conclusion that these same behaviors did not interfere with Student's education.

Long Beach did not consider any behavior interventions at either the March 2019, or the June 2019 IEP team meetings despite knowing that Student exhibited behaviors which interfered with her social interaction, class participation, and work completion. Wendt opined at hearing that Long Beach did not consider any behavior interventions, in addition to those embedded in the special day class, because Student's classroom behaviors were manageable. Wendt also opined that Long Beach's main concern was to provide Student with psychiatric support.

It was not reasonable for Long Beach to ignore Student's maladaptive behaviors simply because they surfaced at the same time as her mental health issues. Long Beach must consider strategies, including positive behavioral interventions and supports to timely address maladaptive behaviors preventing Student's class participation and work completion when they surfaced by the March 2019 IEP team meeting. (*See*, 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) & (b); Ed. Code, § 56341.1, subd. (b)(1).). Long Beach should have conducted a functional behavior assessment in March 2019 to determine additional behavior strategies to address these maladaptive behaviors. Long Beach's "wait and see" approach to how Student's mental health crisis developed before addressing her maladaptive behaviors when both prevented Student's learning, resulted in depriving Student a FAPE.

Student did not prove that Long Beach denied her a FAPE by not considering behavior interventions at the October 2018 IEP team meeting. However, Student proved that Long Beach denied her a FAPE by not considering behavior interventions at the March and June 2019 IEP team meetings.

ISSUE 9A, AND 9B: DID LONG BEACH DENY STUDENT A FAPE BY FAILING TO MAKE A CLEAR IEP OFFER AT THE OCTOBER 2018, MARCH 2019, JUNE 2019, AND OCTOBER 2019 IEP TEAM MEETINGS?

Student contends that Long Beach's offer of placement and related services were unclear because the sum of the related services exceeded the total hours in a school day. Further, Student contends that the placement offers did not specify the campus or include the correct percentage of time for Student's general education participation. Long Beach contends each IEP offer was clear.

The procedural requirement of a formal written IEP offer creates a clear record and eliminates troublesome factual disputes years later about what placement and services were offered. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526 ("Union").) A formal written offer is therefore more than a mere technicality, and this requirement should be rigorously enforced. (*Ibid.*) A formal, specific offer from a school district first alerts the parents of the need to consider seriously whether the proposed placement is appropriate under the IDEA, and secondly helps parents determine whether to reject or accept the placement with supplemental services. (See *Union, supra*, 15 F.3d at p. 1526.)

Although *Union* involved a district's failure to produce any formal written offer, numerous judicial decisions have invalidated IEPs that, although an offer was made, were insufficiently clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing. (See, e.g., *A.K. v. Alexandria City School Bd.* (4th Cir. 2007) 484 F.3d 672, 681; *Knable v. Bexley City School Dist.* (6th Cir. 2001) 238 F.3d 755, 768; *Bend- LaPine School Dist. v. K.H.* (D. Ore., June 2, 2005, No. 04-1468-AA) 2005 WL 1587241, p. 10; *Glendale Unified School Dist. v.*

Almasi (C.D. Cal. 2000) 122 F.Supp. 2d 1093, 1107-1108 ("*Glendale*"; *E.M. v. Poway Unified School Dist.* (S.D. Cal., Jan. 15, 2020, Case No.: 19cv689 MJ MSB) 2020 WL 229991, *13; see also *Marcus I. v. Department of Education* (D. Hawaii, May 9, 2011, No. 10-00381) 2011 WL 1833207, pp. 7-8.) *Union* requires "a clear, coherent offer which [parent] reasonably could evaluate and decide whether to accept or appeal." (*Glendale, supra*, 122 F.Supp. 2d at p. 1108.)

The IEP must describe the services offered and their anticipated frequency, location and duration of services. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).) The IEP must also contain a statement of supplementary aids and program modifications or supports that will be provided, along with an explanation of the extent to which the pupil will not participate with nondisabled pupils in the regular class. (*Ibid.*)

Long Beach specified in the October 2018, March 2019 and June 2019 IEPs its offer for the regular school year was from October 1, 2018 to October 1, 2019; and for the extended school year was from June 25, 2019 to July 25, 2019. Long Beach specified in the October 2019 IEP its offer for the regular school year was from October 1, 2019 to September 30, 2020; and for the extended school year was from June 29, 2020 to July 31, 2020. Each school day during the regular school year was seven and a half hours. Each school day during the extended school year day was one and a half hours.

OCTOBER 2018, MARCH 2019, AND JUNE 2019 IEPS

The October 2018, March 2019, and June 2019 IEP offers were the same. Each stated that Student would spend 100 percent of time outside of the regular education classroom. Long Beach offered Student group specialized academic instruction in a moderate to severe special day class, five 90-minute sessions daily for a total of seven and a half hours. Long Beach also offered Student group transition services, five times

weekly, 90 minutes each session; adapted physical education 13 times per school year, 90 minutes each session; group speech and language services four times each month, 25 minutes each session; and transportation. During the extended school year, Long Beach offered group specialized academic instruction in a moderate to severe special day class, five 90 minute sessions weekly, for a total of seven and a half hours each week; five 90 minute sessions weekly for group transition services for a total of seven and a half hours each week; and five 90 minute sessions weekly for group adapted physical education for a total of seven and a half hours each week.

Student argued that the IEP offers were unclear because the school day was seven and half hours during the school year and adding the daily group transition services of 90 minutes would increase the school day to nine hours. Student also argued the offer was unclear because Long Beach did not specify when or how the transition services would be delivered to fit into Student's school day. Long Beach's administrator John Tran explained persuasively that the transition services were embedded within Student's special day class because the school day was seven and a half hours. Likewise, the weekly group transition services and adapted physical education services were embedded in the specialized academic instruction in the moderate to severe special day class during the 2019 extended school year. The IEP team and document both informed Parent about the duration of those related services. The IEP team informed Parent that the related services were delivered during the day in the special day class.

Each of the IEP offers at issue were clear, coherent, and reasonably informed Parent the anticipated frequency, location, and duration of services including a listing of each of the related services offered to Student. Parent could evaluate and decide, when looking at each of the IEPs, whether to accept or reject each of the services offered. It

was unreasonable to interpret that the 90 minutes of daily transition service would be delivered outside the regular school day or lengthen the school day to nine hours. It was also unreasonable to interpret that the group transition and adapted physical education services would lengthen the extended school year day beyond 90 minutes per day. Parent understood that Student's receipt of all enumerated related services was within the seven and a half-hour school day during the regular school year, and 90 minutes per day during the 2019 extended school year.

Parent understood that Long Beach offered Student a moderate to severe special day class even though the "moderate to severe" designation was stated on a different section of the IEP than the list of offered services which stated special day class without repeating the "moderate to severe" designation. The IEP offer clearly stated that Student would attend Cabrillo High School's moderate to severe special day class. This placement was specified on page two of the IEP document under "Federal Setting" and "School of Attendance". The OCDE option, while discussed with Parent at the June 2019 IEP team meeting and reflected in the notes section, was not offered because Parent told the Long Beach IEP team she needed to visit the OCDE program before even considering applying to that site. Student's argument that discussion of the OCDE program with Parent rendered the placement offered in the June 2019 IEP unclear was therefore unpersuasive. Although the Long Beach IEP team mischaracterized the OCDE program as a non-public school, the only placement offered at all three of the IEP team meetings was a moderate to severe special day class at Cabrillo High School.

Student did not prove that Long Beach failed to make a clear written offer of placement or related services at the October 2018, March 2019, or June 2019 IEP team meetings. Student also did not prove that lack of clarity in any IEP offer significantly impeded meaningful parental participation rights, deprived her educational benefits, or

a FAPE. As discussed in Issues 6B, 6C, and 6D above, Parent attended, discussed, and participated at all three IEP team meetings. Parent was aware the school day was seven and a half hours including related services offered during the regular school year, and 90 minutes per day during the extended school year. She reviewed, signed, and consented to each IEP document.

OCTOBER 2019 IEP TEAM MEETING

The October 2019 IEP clearly stated that Student would spend 55 percent of time outside of the regular education classroom, and Student would participate in physical education, lunch, recess, passing period, school day activities, electives, and other vocational training in general education. Long Beach offered Student group specialized academic instruction in a moderate to severe special day class, five 300-minute sessions weekly for a total of five hours each session per day. Long Beach also offered Student individual speech and language services five times each month, 25 minutes each session; group adapted physical education four times each month, 30 minutes each session; group work experience education twice weekly, 50 minutes each session; group transition services five times weekly, 10 minutes each session; and group travel training twice monthly one hour each session. During the extended school year, Long Beach offered group specialized academic instruction in a moderate to severe special day class, one 300 minute-session weekly, for a total of five hours each week; and five 10 minute sessions weekly for group transition services; and group speech and language services four times during the extended school year, 25 minutes each session.

Student argued that the October 2019 IEP offer was unclear because the 55 percent in special education and 45 percent in general education offer extended the school day from seven and a half hours to 10-hours. As discussed above, it was unreasonable to interpret that Student's access to her 45 percent of general education

extended the school day from seven and a half hours to ten hours. However, the five-hour special day class would leave two and a half hours, around 33 percent, of a seven and a half hour-day, for general education. This rendered Long Beach's offer of 55 percent in special education and 45 percent of in general education mathematically inaccurate on its face, resulting in a procedural violation.

Student did not show that the procedural violation deprived her educational benefits, impeded her access to a FAPE, or significantly impeded Parent's IEP participation rights. As discussed in Issue 6E above, Parent and advocate attended, discussed, and participated in the October 2019 IEP team meeting and had the opportunity to ask and asked questions as to all aspects of Student's IEP and Long Beach's offer. Parent knew the school day was seven and a half hours including related services offered. At the October 2019 IEP team meeting Parent informed the Long Beach IEP team she would consider Long Beach's offer and respond shortly. Parent later reviewed, signed, and consented to implementing the IEP and enumerated items within the IEP document and offer with which she disagreed in an October 3, 2019 letter from her advocate. The evidence did not show that the mathematical inaccuracy in the percentage calculation impeded Parent's ability to evaluate and decide whether to accept or reject the placement or any of the related services Long Beach offered.

Student further argued that the offer section of the IEP was unclear as it did not identify the placement site. Long Beach was not required to provide information in a particular section of the IEP if that information was contained elsewhere in the IEP. (*See*, 20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2); Ed. Code, § 56345, subd. (h).). Long Beach's placement offer of a moderate to severe special day class at Cabrillo High School was specified on page one of the IEP document under "Federal Setting" and "School of Attendance". Although the IEP team discussed the options of OCDE, and of

another Long Beach operated moderate to severe special day class site, Long Beach never offered, and the IEP did not name, any site other than Cabrillo High School. Based on the totality of the evidence, Long Beach's October 2019 IEP offer to Student was only Cabrillo High School's moderate to severe special day class. Student did not present any evidence supporting that the 2019 extended school year offer, or any other aspects of the October 2019 IEP offer, were unclear.

Student did not prove that Long Beach denied her a FAPE by not making a clear offer at the October 2018, March 2019, June 2019, or October 2019 IEP team meetings.

ISSUE 10: DID LONG BEACH DENY STUDENT A FAPE BY FAILING TO TIMELY CONVENE AN IEP TEAM MEETING TO CONSIDER INDEPENDENT EDUCATIONAL EVALUATIONS PURSUANT TO PARENT'S FEBRUARY 18, 2020 REQUEST?

ISSUE 12: DID LONG BEACH DENY STUDENT A FAPE BY FAILING TO CONVENE AN IEP TEAM MEETING TO DISCUSS IMPLEMENTATION OF SERVICES DURING SCHOOL CLOSURES IN MARCH 2020?

Student contends that Long Beach did not timely convene an IEP team meeting pursuant to Parent's request on February 18, 2020. Student also contends that Long Beach should have convened an IEP team meeting to discuss implementation of Student's IEP during the COVID-19 related school closures. Long Beach contends that the COVID-19 related school closures tolled the time it had to convene an IEP team meeting per Parent's request. Further, Long Beach contends it did not need to convene at IEP team meeting to discuss implementing Student's IEP because it implemented Student's October 2019 IEP to the greatest extent possible. Issues 10 and 12 regarding

the failure of Long Beach to convene an IEP team meeting during the COVID-19 related school closures will be analyzed together.

For a child who is already in special education, an IEP meeting shall be held within 30 days from the date the district receives a Parent's written request for an IEP meeting. (Ed. Code, § 56343.5). Calendar days shall be used in determining the days within which to hold an IEP team meeting "not counting days between the pupil's regular school session, terms, or days of school vacation in excess of five schooldays, from the date of the parent's or guardian's written requests." (Ed. Code, §56043 (f)(1)).

The United States Department of Education initially issued guidance on the issue of the school shutdowns in March 2020 in response to the universal 2020 COVID-19 pandemic. A local education authority which offers "distance learning" opportunities for its general education students has a concomitant duty to "make every effort to provide special education and related services to the child in accordance with the child's individualized education program." (*U.S. Dept. of Educ., Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (March 12, 2020) at p. 2.) School districts must "ensure that students with disabilities also have equal access to the same opportunities [as general education students], including the provision of FAPE," and, "to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA." (*Id.*)

California's Governor Gavin Newsome issued an executive order on March 22, 2020, granting local educational agencies the authority to close schools, accompanied by a directive to the California Department of Education to develop guidance that included "ensuring students with disabilities" receive a FAPE consistent

with their IEP, and for local educational agencies to meet other procedural requirements under the IDEA.

The California Department of Education, called the CDE, issued guidance on March 20, 2020, and April 9, 2020. (*Cal. Dept. of Educ., Special Education Guidance for COVID-19* (March 20, 2020); *Cal. Dept. of Educ., Special Education Guidance for COVID-19, COVID-19 School Closures and Services to Students with Disabilities* (April 9, 2020)). The CDE advised that, if a local educational agency can continue providing special education and related services as outlined in the IEP, or an agreed upon amendment to the existing IEP, through a distance learning model, it should do so. (*CDE Guidance* (March 20, 2020), *supra*, at Point 1.) For purposes of determining compliance with special education timelines, the CDE will consider the days of school site closure as days between the pupil's regular school session, similar to school breaks in excess of five days planned in the instructional calendar. (*Ibid.*) The local educational agency could also consider alternative service delivery options such as in-home service delivery, meeting with individual students at school sites, or other appropriate locations to deliver services. The CDE also encouraged local educational agencies to work collaboratively with nonpublic schools and agencies to ensure continuity of services, including moving to virtual platforms for service delivery to the extent feasible and appropriate. (*Ibid.*)

On April 27, 2020, U.S. Secretary of Education Betsy DeVos announced through a Department of Education press release that she was "not recommending Congress pass any additional waiver authority" concerning the FAPE and least restrictive environment requirements of the IDEA, noting again that "learning must continue for all students during the COVID-19 national emergency." (*U.S. Dept. of Educ., Secretary DeVos Reiterates Learning Must Continue for All Students, Declines to Seek Congressional*

Waivers to FAPE, LRE Requirements of IDEA, April 27, 2020 Press Release). Finally, the California legislature did not require local education agencies to describe in IEPs how the IEPs will be implemented in emergency situations until June 29, 2020. (Ed. Code, § 56345, subd. (a)(9), as add Stats. 2020, ch. 24 (S.B. 98), § 66.)

Long Beach closed its schools on March 16, 2020 because of the COVID-19 pandemic. Long Beach also had a scheduled April 10, 2020 holiday and spring recess from April 13, to 17, 2020; both scheduled school closures were on Long Beach's 2019-2020 school year calendar. Long Beach sent a notice to all parents and a prior written notice to all special education parents on April 16, 2020, informing parents that Long Beach would resume direct teaching and offered a total of three to four-hour blend of teacher directed remote learning, and self-learning beginning April 23, 2020. Because of COVID-19, Long Beach extended the school closure of on-site teaching from March 16, 2020 through June 11, 2020, the end of the 2019-2020 school year.

Parent's advocate requested an IEP team meeting in writing on February 18, 2020 to review Hollar's and Papazyan's independent educational evaluation results. On February 20, 2020, case carrier/teacher Richter proposed three IEP team meeting dates. When Parent did not respond to Long Beach regarding the three proposed dates, Richter proposed nine alternative dates for Parent's selection on February 26, 2020. Student did not respond to Richter until March 13, 2020, the date Long Beach announced the COVID-19 related school closure. Parent asked in her response whether Long Beach intended to hold an IEP team meeting. Richter responded that IEP team meetings were on hold because Long Beach was organizing home learning triggered by the COVID-19 pandemic.

The IDEA does not have a time requirement for holding IEP team meetings following independent evaluations or parents' requests. However, the Education Code

requires that a school district hold a parent requested IEP team meeting within 30 calendar days of a parent's written request, not counting days between the regular school session, scheduled holidays, or school vacation in excess of five school days. (*See*, Ed. Code, §§56043 (f)(1), 56343.5.). Because the CDE's March 20, 2020 guidance tolled the time requirement for holding IEP team meetings, the proverbial clock stopped on March 16, 2020, the date of Long Beach's COVID-19 related school closure. By March 16, 2020, Long Beach still had three days to timely hold the IEP team meeting Parent requested on February 18, 2020, and comply with Education Code sections 56343.5, and 56043 (f)(1).

Under government guidelines, Long Beach resumed school when it resumed direct teaching to all students by videoconference on April 23, 2020, despite not having returned to on-site learning. As of April 23, 2020, the CDE's tolling under its March 20, 2020 guidance stopped, and Education Code's 30-day timeline started again. Long Beach had until April 25, 2020, to timely hold the Parent requested IEP team meeting. Long Beach did not hold the Parent requested IEP team meeting before Student filed her amended complaint on April 28, 2020. Therefore, Long Beach was three days late in holding the IEP meeting as of April 28, 2020.

Although failing to hold a timely IEP meeting was a procedural violation, Student did not prove the three-day delay in holding an IEP meeting deprived Student's educational benefits, impeded her access to a FAPE, or significantly impeded Parent's opportunity to participate in the decision-making process. First, Student received educational benefit during the three-day period. According to Richter, Student participated in distance learning when direct teaching resumed on April 23, 2020. Richter delivered all of Student's transition related services. Knapp did not have access to her speech and language records log at hearing. Therefore, she did not recall how

many hours of speech and language services she delivered to Student starting April 23, 2020. However, Knapp recalled that she delivered direct speech and language services online to all her students starting April 23, 2020. Student participated in the speech and language services online. Student did not prove that the three-day delay in holding an IEP meeting caused Student a deprivation of educational benefit.

Student's argument that the three-day delay prevented the IEP team from considering the independent evaluation results to develop strategies for Student's IEP was disingenuous and unpersuasive. Long Beach proposed dates for the IEP team meeting within two days of Parent's February 2020 written request. Parent did not respond before the March 2020 COVID-19 related closure. Regardless of the reasons why a meeting did not take place before April 28, 2020, Student did not prove how the three-day delay significantly impeded parental participation, or denied her access to a FAPE.

Student also did not prove that Long Beach was required to convene an IEP team meeting to discuss implementing Student's IEP after March 16, 2020. CDE suggested that an IEP team meeting may be needed during the COVID-19 related closures if an IEP needed changing. (*See, CDE Guidance*, (April 9, 2020), *supra*, at Point 1.) Long Beach did not need to convene an IEP team meeting because Student did not show at hearing that Student's IEP needed changing because of the COVID-19 related closures. Long Beach implemented Student's October 1, 2019 IEP, except for in-person instruction, by providing direct teaching and related services including speech and language and related services online from April 23, 2020. Student participated in the online direct teaching and related services, accessing and progressing in her education. Student did not establish a credible reason why Long Beach was required to convene an IEP team meeting under these circumstances.

Education Code section 56345, subd. (a)(9) requiring that IEPs describe IEP implementation in emergency situations did not apply to this case because it was not in effect until June 29, 2020. (*See*, Ed. Code, § 56345, subd. (a)(9), as add Stats. 2020, ch. 24 (S.B. 98), § 66.) Education Code section 56345, subd. (a)(9) did not provide for retroactive application. (*Id.*) The relevant period in this case ended on April 28, 2020.

Student did not prove that Long Beach denied Student a FAPE by not convening an IEP team meeting to discuss independent education evaluations results, or Student's IEP implementation during the COVID-19 related school closures.

ISSUE 11: DID LONG BEACH DENY STUDENT A FAPE BY FAILING TO IMPLEMENT THE CONSENTED TO IEP SERVICES AFTER MARCH 13, 2020?

Student contends that Long Beach inappropriately stopped implementing Student's IEP. Long Beach contends that it did the best it could and materially implemented Student's IEP during COVID-19 related school closures.

The Office of Special Education and Resource services, known as OSERS, recognized that educational institutions are "straining to address the challenges of this national emergency." (OSERS, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, (March 21, 2020) at p. 1.) OSERS assured school districts that "ensuring compliance with the IDEA should not prevent any school from offering educational programs through distance instruction." (*Ibid.*). OSERS noted the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically." (*Id.* at p. 1-2.) OSERS reiterated its March 12, 2020 guidance on compensatory education. "Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in

providing services” IEP teams must make an individualized determination “whether and to what extent compensatory services may be needed when schools resume normal operations.” (*Id.* at p. 2.)

When a local educational agency offers distance learning for instructional delivery in lieu of regular classroom instruction during a school site closure for students, it must also provide equitable access to those services for students with disabilities. A local educational agency must create access to the instruction, including “planning for appropriate modifications or accommodations based on the individualized needs of each student and the differences created by the change in modality such as a virtual classroom.” (*CDE Guidance*, (April 9, 2020), *supra*, at Point 2). Educational and support services provided should be commensurate with those identified in the IEP for each student to ensure educational benefit. (*Ibid.*)

Local educational agencies may consider the use of accessible distance technology, instructional phone calls, and other curriculum-based activities that have been “scaffolded” based on student need. (*Id.*) The local educational agency could also consider alternative service delivery options such as in-home service delivery, meeting with individual students at school sites, or other appropriate locations to deliver services. (*CDE Guidance* (March 20, 2020) *supra*, at Point 1.)

Minor failures by a school district in implementing an IEP should not automatically be treated as violations of the IDEA. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F. 3d 811, 821 (*Van Duyn*).) Rather, a material failure to implement an IEP violates the IDEA. (*Id.* at p. 822.) “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” (*Id.* at p. 822.) “[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail.” (*Id.* at

p. 822.) “We also emphasize that nothing in this opinion weakens schools' obligation to provide services “in conformity with” children's IEPs.” (*Id.* at p. 822.) In *N.D. v. Hawaii Dept. of Education* (9th Cir. 2010) 600 F.3d 1104 (*N.D.*), the Ninth Circuit Court of Appeals explicitly found that school closures related to a fiscal crisis did not constitute a change of placement. However, addressing a claim for “stay put” under title 20 United States Code section 1415(j), the Ninth Circuit held that a school closure caused by furloughs due to a state fiscal crisis could support a claim of “material failure to implement an IEP.” (*Id.* at p. 1117.) A one day per week shutdown of public schools resulting in failure to provide the number of minutes and type of instruction guaranteed in an IEP was a material failure to implement the IEP. (*Id.* at p. 1117, citing *Van Duyn, supra*, 502 F.3d. at p. 822.)

Long Beach did not implement any portion of Student’s October 2019 IEP from March 16, 2020 through April 9, 2020, or from April 20, 2020 through April 22, 2020. At hearing, Administrator Paul explained that Long Beach did not deliver any education or home learning opportunities to any students, including Student, from March 16, 2020 to March 22, 2020. From March 23, 2020 to April 9, 2020, Long Beach provided home learning opportunities to Student, but did not provide any direct teaching, or any related services on Student’s October 2019 IEP. Long Beach did not start implementing Student’s IEP until April 23, 2020, three days after Long Beach’s scheduled spring break ended.

As of April 23, 2020, Long Beach’s moderate to severe special day program teacher provided a three to four-hour blend of self-learning and direct teaching online by videoconference. Direct teaching was approximately one and a half hours and based on the moderate to severe special day class curriculum. Self-learning included completing activities and work assigned. The delivery model blend of self-learning and

direct teaching of the moderate to severe special day class curriculum was similar to the specialized academic instruction on Student's October 2019 IEP. (*See, CDE Guidance (March 20, 2020), supra*, at Point 1, [[a]lternative service delivery options such as a distance learning model for IEP services could be considered.] Richter taught Student by videoconference using this model. Richter opined that the alternate delivery model was appropriate for Student. Richter stated that Student was able to successfully access and benefit from this delivery model. Student did not show that this delivery model was inappropriate or materially different from her October 2019 IEP offer.

The next inquiry is whether four hours of blended instruction including one and a half hours of direct teacher instruction constituted material implementation of Student's October 2019 IEP. (*Van Duyn, supra*, 502 F. 3d at 821.) Student's October 2019 IEP specified five hours of specialized academic instruction. Long Beach's implementation of four hours of blended instruction was 80 percent of Student's five hours of specialized academic instruction offered in her October 2019 IEP. Long Beach denied Student a FAPE because it did not implement 20 percent of Student's specialized academic instruction for three school days from April 23, 2020 to April 28, 2020. However, Long Beach delivered the related services on Student's October 2019 IEP from April 23, 2020 to April 28, 2020. Richter's and Knapp's hearing testimony supported that as of April 23, 2020, they provided, and Student participated in, the related services on Student's IEP online by videoconference. Student did not contradict Richter or Knapp at hearing.

Contrary to Long Beach's contention, Student did not need to show that she suffered deprivation of educational benefits, or that Long Beach impeded her right to a FAPE when Student proved that Long Beach materially failed to implement her IEP. (*See, Van Duyn, supra*, 502 F.3d. at p. 821.) While unavoidable circumstances prevented

Long Beach from fully implementing Student's October 2019 IEP, the IDEA included no exceptions to implementation for school closures caused by pandemics or governmental directives. Under the IDEA, Long Beach remained responsible for materially implementing IEPs despite the school closure, even if by alternate methods such as distance learning. (*N.D v. Hawaii Dept. of Education, supra*, at 1117).) Further, Long Beach was responsible for any compensatory education as a result of its material failure to implement Student's IEP. Student proved that Long Beach did not materially implement Student's October 1, 2019 IEP during the COVID-19 related school closure.

Student proved that Long Beach denied her a FAPE by not implementing her IEP from March 16, 2020 to April 9, 2020, and from April 20, 2020 to April 22, 2020, and not materially implementing 20 percent of her IEP for specialized academic instruction from April 23, 2020 through April 28, 2020.

ISSUE 13A, AND 13B: DID LONG BEACH DENY STUDENT A FAPE IN THE 2018-2019 SCHOOL YEAR BY FAILING TO ASSESS STUDENT IN FUNCTIONAL BEHAVIOR, AND EDUCATIONALLY RELATED MENTAL HEALTH?

Student contends Long Beach should have assessed Student in functional behavior and mental health. Long Beach contends it did not need to assess Student's behavior in the 2018-2019 school year because the behaviors were not impeding her education. Long Beach also contends that it offered to assess Student for educationally related mental health services, but Parent refused consent.

If a school district has notice that a child has exhibited symptoms of a disability covered under the IDEA, it must assess the child for special education, and cannot circumvent that responsibility by way of informal observations or the subjective opinion

of a staff member. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1121 (*Timothy O.*)). Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(a)(1)(B)(i); Ed. Code, § 56321, subd. (a)(2).)

As discussed in Issue 7a, 7b, and 7c, Student did not have any behavior issues at the beginning of the 2018-2019 school year. Student also did not have any mental health issues impeding her education until February/March 2019, the first time Student exhibited any behavior or mental health challenges impeding her education. School psychologist Wendt assessed Student to determine Student's eligibility for an educationally related mental health services referral when Parent reported that Student experienced behavior and mental health changes at home. Long Beach and Parent discussed Student's maladaptive behaviors and mental health crisis at the March 2019 IEP team meeting. Ofoegbu's and Richter's observations of Student's maladaptive behaviors in the classroom were consistent with Parent's report of similar behaviors at home. Parent informed Long Beach that Student had been diagnosed with depression, bipolar disorder, and psychosis at an urgent care facility.

As of March 2019, Long Beach was aware that Student's classroom behaviors included excessive crying, work completion difficulties, and forgetting how to complete work she previously knew how to complete. Student continued to be noncompliant, minimally verbal, and unengaged in work and in class. Student's maladaptive behaviors continued to interfere with her learning from March 2019 through the rest of the 2018-2019 school year and 2019 extended school year as confirmed by Richter. A functional behavior assessment would assess why and how Student's maladaptive behaviors impeded education. An educationally related mental health assessment would assess how and the extent that Student's mental health impacted education.

Functional behavior and mental health were different assessments. Long Beach offered no credible reason why either should be delayed if both maladaptive behaviors and mental health interfered with Student's education. Despite this, Long Beach did not assess Student's functional behavior in March 2019, electing to wait and see how Student's mental health crisis developed before addressing her maladaptive behaviors.

At the March 2019 IEP team meeting, Long Beach concluded that Wendt's evaluation of Student's mental health supported a referral for an in-depth educationally related mental health services evaluation and the IEP team offered the referral. However, Parent withheld consent pending outside appointments/evaluations. At the June 2019 IEP team meeting, Long Beach renewed its request for Parent to consent to an in-depth educationally related mental health services assessment referral. Parent did not consent because Student was already registered to receive mental health services from Harbor Regional Center.

Long Beach complied with the IDEA by starting the process to assess Student in educationally related mental health services. It could not move forward without parental consent. Student did not prove Long Beach procedurally violated the IDEA by failing to assess Student in the area of educationally related mental health.

Student proved that Long Beach denied her a FAPE by failing to assess her functional behavior from March 7, 2019 of the 2018-2019 school year. However, Student did not prove that Long Beach denied her a FAPE by failing to assess her educationally related mental health in the 2018-2019 school year.

ISSUE 14A, 14B, 14C, 14D, AND 14E: DID LONG BEACH DENY STUDENT A FAPE IN THE 2019-2020 SCHOOL YEAR BY FAILING TO ASSESS STUDENT IN OCCUPATIONAL THERAPY, ASSISTIVE TECHNOLOGY, TRANSITION, FUNCTIONAL BEHAVIOR, AND EDUCATIONALLY RELATED MENTAL HEALTH?

Student contends Long Beach should have assessed Student in all areas of need in the 2019-2020 school year. Long Beach contends it had all the information it needed to offer Student a FAPE.

OCCUPATIONAL THERAPY

A school district has 15 days to respond to parent's request for an assessment with a proposed assessment plan, not counting the days between the regular school session, or days of school vacation in excess of five school days. (Ed. Code, § 56321, subd. (a).) If a school district refuses to assess a student based on parent's request, it must provide written notice explaining the reason for the refusal. (20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4.)

On September 11, 2019, Parent made a written request for an occupational therapy assessment. Long Beach did not provide an assessment plan, or a written response explaining why it would not assess Student by September 26, 2019, within 15 days after Parent's written request. Additionally, Parent shared with the October 2019 IEP team that she observed Student flapping her hands and rocking in her chair. Student's teachers did not observe hand flapping but observed that Student rocked her chair. The October 2019 IEP team noted that Student rocked her chair until it came up off the floor. Although Long Beach recognized that Student had sensory needs, it did

not timely respond to Parent's request for assessment, or assess Student in that area, but offered a goal to address her chair rocking at the October 2019 IEP.

Under *Timothy O.*, Long Beach was required to assess Student because she exhibited symptoms of a sensory motor disability. (*Timothy O.*, *supra*, 822 F.3d at 1121). Long Beach could not circumvent that responsibility with informal observations or the subjective opinion of its IEP team that a chair rocking goal was sufficient in lieu of assessment. (*Ibid.*) Therefore, Long Beach's failure to promptly respond in writing to Parent's request for assessment, and to assess in occupational therapy were procedural violations.

Student did not show that these procedural violations impeded her right to a FAPE, or caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *See Target Range*, *supra*, 960 F.2d at 1484.) Despite the chair rocking, Student could otherwise manipulate classroom materials, and navigate the school environment. She accessed her educational program and received some educational benefit.

However, Student proved that Long Beach's procedural violations significantly impeded Parent's participation in the decision-making process. Like the student in *Timothy O.*, this was an initial assessment request for Student in occupational therapy. Consistent with *Timothy O.*, Long Beach's failures to promptly assess and/or respond to Parent's request for an occupational therapy assessment deprived Parent the necessary information to be an informed participant in the decision-making process. Parent did not have information about Student's sensory needs at school or why Long Beach concluded that an occupation therapy assessment was unnecessary. Under *Timothy O.*, Long Beach's discussion and offer of a chair rocking goal at the October 1, 2019 IEP team meeting were insufficient for meaningful parental participation. The *Timothy O.*

court specifically articulated that parents would be substantially hindered in their ability to participate in developing an IEP with appropriate supports and services if they did not have the necessary information. (*Ibid.*) Therefore, Long Beach's failure to timely respond and/or assess in occupational therapy deprived Parent of the opportunity to meaningfully participate in making decisions regarding Student's sensory motor needs. Student proved that Long Beach denied Student a FAPE denial by not timely responding to parental request for assessment, or assessing in occupational therapy during the 2019-2020 school year.

ASSISTIVE TECHNOLOGY

When developing a pupil's IEP, the IEP team shall also "[c]onsider the communication needs of the pupil." (20 U.S.C. § 1410(1); Ed. Code, § 56341.1, subd. (b)(4).) In addition, the IEP team shall consider whether the pupil requires assistive technology services and devices. (20 U.S.C. § 1414(d)(3)(B)(v); Ed. Code, § 56020.5.) An "assistive technology device" is defined as "any item, piece of equipment or product system [other than a surgically implanted device] ...that is used to increase, maintain or improve functional capabilities of an individual with exceptional needs." (20 U.S.C. § 1410(1); Ed. Code, § 56020.5.) An IEP is a "snapshot" and must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

Parent requested an assistive technology assessment in writing on September 11, 2019. Student did not present any evidence that Long Beach should have assessed in this area. Hollar opined that Student needed an augmentative alternative communication device because Student was unintelligible in February 2020. Hollar did not share her assessment findings with the Long Beach IEP team. Hollar's opinions were not persuasive in proving that the October 1, 2019 IEP team had sufficient

knowledge in October 2019 that would have prompted the IEP team to assess Student in the area of assistive technology. (*Adams, supra*, 195 F.3d at pg. 1149.). Neither of Student's experts, Hollar or Papazyan, opined at hearing that Student required an assistive technology assessment to receive FAPE.

Student's teachers and peers at school understood Student, even though Student had speech and language needs. Long Beach's speech and language pathologists, Yi and Knapp, who worked with Student since 2017 and 2018 respectively, opined that Student was verbal, and needed practice to improve intelligibility. Knapp and teacher Richter also opined that Student did not need an augmentative alternative communication device to communicate because she was verbal. Knapp and Richter opined that augmentative alternative communication devices were primarily for nonverbal students to communicate by identifying words or pictures on the device. Knapp further opined that learning to use an augmentative alternative communication device would frustrate Student because of the learning curve in remembering the word location on the device. Student needed practice to improve her intelligibility, and assistive technology would not help Student's speech and language deficits. Student did not prove that Long Beach had any information from her communication profile that triggered the need to assess in assistive technology.

Long Beach's decision not to assess Student in assistive technology was not a procedural violation resulting in depriving Student of educational benefit or impeding her access to a FAPE. Student did not prove that this procedural violation deprived her educational benefits, or a FAPE because the evidence did not support that Student needed assistive technology.

However, Long Beach was required to explain to Parent in writing why it concluded that an assistive technology assessment Parent requested was not necessary

by September 26, 2019. (*See*, 20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4; Ed. Code, § 56321, subd. (a).) Long Beach never responded in writing to Parent's request for an assistive technology assessment. Long Beach's failure to provide a written response to Parent's request for an assistive technology assessment was a procedural violation. Student proved that Long Beach's failure to provide a written response to Parent's request for an assistive technology assessment significantly impeded meaningful parental participation rights. Like the student in *Timothy O.*, this was an initial assistive technology assessment request for Student. Consistent with *Timothy O.*, Long Beach's failure to promptly respond and explain why an assistive technology assessment was unnecessary deprived Parent of the necessary information to be an informed participant in the decision-making process. Therefore, Student proved that Long Beach denied her a FAPE by not promptly responding to Parent's request to assess in assistive technology during the 2019-2020 school year.

TRANSITION

Beginning at age 16, the IEP must include a statement of needed transitions services for the child. (Ed. Code, § 56043, subd. (h).) The IEP in effect when a student reaches 16 years of age must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. (Ed. Code, §§ 56043, subd. (g)(1), 56345, subd. (a)(8).) The plan must also contain the transition services needed to assist the pupil in reaching those goals. (Ed. Code, § 56345, subd. (a)(8)(A).)

Student contends that Long Beach did not conduct a transition assessment. However, the evidence showed that Long Beach assessed Student's transition skills since 2018 and included an Individualized Transition Plan in her October 2018 and October 2019 IEPs before Student was 16 years old. Long Beach evaluated Student's

post-secondary school goals and needs, and designed transition services to help Student achieve her post-secondary school goals. Both the 2018 and 2019 Individualized Transition Plan included relevant information about Student's employment, education/training, and independent living goals and needs. Richter drafted the October 2019 Individualized Transition Plan based on Student's vocational survey. The vocational survey reflected that Student preferred to work in retail and animal care. The evidence showed that Long Beach drafted transition and employment related goals and offered transition services from the transition assessment results. Student did not prove that Long Beach denied her a FAPE by not conducting a transition assessment during the 2019-2020 school year.

FUNCTIONAL BEHAVIOR

Student showed that Long Beach's failures to assess her functional behavior in the 2019-2020 school year to March 2020 impeded her right to a FAPE. As of March 2019, Long Beach was aware that Student's classroom behaviors included excessive crying, work completion difficulties, and forgetting how to complete work she previously knew how to complete. Student continued to be noncompliant, minimally verbal, unengaged in work and in class. Richter opined that Student needed a behavior support plan during the 2019-2020 school year. She also opined that while Student began responding to behavior strategies during the 2019 extended school year, Student's maladaptive behaviors continued to interfere with her learning when the 2019-2020 school year started. However, Long Beach did not assess Student's behaviors, and did not have a behavior support plan in place until the October 2019 IEP team meeting.

Student argued that the October 2019 behavior support plan was inappropriate because it was not supported by an assessment of Student's functional behavior.

Student's argument was persuasive because the support plan was an imprecise anecdotal summary of Student's maladaptive behaviors. For example, the behavior support plan did not have information about the antecedents triggering specific maladaptive behaviors, stating only that all of Student's maladaptive behaviors occurred throughout the day. The behavior support plan lacked the data needed to identify specific triggers for each maladaptive behavior to develop effective consequences to curtail each maladaptive behavior. Student was persuasive because informal observations and subjective opinion were not appropriate substitutes for assessing Student in her demonstrated functional behavior needs. (*See, Timothy O., supra*, 822 F.3d at 1121.)

Long Beach's failure to assess Student's functional behavior impeded Student's right to a FAPE and denied her educational benefits because the IEP team was without precise data about Student's maladaptive behaviors and how they affected her educational access. According to Richter, Student responded to behavior management strategies in the behavior support plan successfully and accessed her education by the March 16, 2020 COVID-19 related school closures. Richter opined that by March 16, 2020, Student transformed into being compliant, verbal, happy, and capable of being redirected to follow directions and complete classwork. Richter's opinion was persuasive because it was consistent with Papazyan's January 2020 assessment experience with Student, including the school observation. In January 2020, Papazyan observed Student in Richter's class during a math group activity and subsequent lunch transition.

Although Papazyan observed Student engaging in maladaptive behaviors, the evidence did not show, and Papazyan did not conclude, that those behaviors impeded Student's FAPE access. Papazyan saw Student nudging a peer and pushing a piece of

paper toward the teacher. Papazyan opined that Student engaged more with a preferred over a non-preferred activity and required verbal and physical prompting to perform work. Papazyan also opined that Student complied with all assessment aspects including prompts, verbally requesting breaks in response to Papazyan's suggestions, and cooperatively completed hours of testing without issue.

Student proved that Long Beach denied her a FAPE by not assessing her functional behaviors in the 2019-2020 school year through March 16, 2020.

EDUCATIONALLY RELATED MENTAL HEALTH

Parent withheld consent at both the March and June 2019 IEP team meetings for Student to receive an in-depth educationally related mental health services evaluation when Student suffered a mental health crisis impeding her education. Student did not present any evidence showing that she still required an educationally related mental health services assessment in the 2019-2020 school year. The October 2019 IEP team was concerned with Student's behaviors, not mental health issues, interfering with Student's education.

Student also did not prove that not receiving an educationally related mental health assessment in the 2019-2020 school year significantly impeded meaningful parental participation rights, deprived her educational benefits, or a FAPE. Student did not prove that Long Beach denied her a FAPE by not assessing her educationally related mental health in the 2019-2020 school year.

ISSUE 15B, AND 15C: DID LONG BEACH DENY STUDENT A FAPE FROM OCTOBER 2, 2017 THROUGH THE 2018 EXTENDED SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE PLACEMENT, AND ACADEMIC INSTRUCTION?

ISSUE 17B, AND 17C: DID LONG BEACH DENY STUDENT A FAPE FROM THE 2018-2019 SCHOOL YEAR THROUGH THE 2019 EXTENDED SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE PLACEMENT, AND ACADEMIC INSTRUCTION?

ISSUE 19B, AND 19C: DID LONG BEACH DENY STUDENT A FAPE FROM THE 2019-2020 SCHOOL YEAR THROUGH THE 2019 EXTENDED SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE PLACEMENT, AND ACADEMIC INSTRUCTION?

Student contends Long Beach did not offer Student appropriate placement and academic instruction in all three specified periods because its FAPE offer was the same each year. Long Beach contends it offered Student a FAPE in the least restrictive environment. Issues 15B, 17B, and 19B regarding placement, and Issues 15C, 17C, and 19C regarding academic instruction, will be analyzed together.

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. v. Longview School Dist. (Gregory K.)* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) 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. (*Ibid.*)

In determining the educational placement of a child with a disability a school district must ensure that:

1. the placement decision is 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, and takes into account the requirement that children be educated in the least restrictive environment;
2. placement is determined annually, is based on the child's IEP and is as close as possible to the child's home;
3. unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled;
4. in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
5. a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(34 C.F.R. § 300.116.)

"Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related

services” and that providing a continuum of alternative placements includes “the alternative placements listed in the definition of special education” and “supplementary services” to be provided in conjunction with regular class placement.” 34 C.F.R.

§ 300.115. (See *M.S. v. Los Angeles Unified School Dist.* (9th Cir. 2019) 913 F.3d 1119, 1121; *R.V. v. Simi Valley Sch. Dist.* (C.D. Cal. April 10, 2008, CV 05-8949-GHK (VBKx) 2008 WL 11335016, *9; *A.D. v. New York City Department of Education*, (S.D.N.Y., March 19, 2013, No. 12-CV-2673 (RA)), 2013 WL 1155570, *8 (*A.D.*) [Once the district determined the appropriate least restrictive environment where student could be educated, it was not obligated to consider and inquire into more options on the continuum].)

To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate:

1. that children with disabilities are educated with non-disabled peers; and
2. that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).)

To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors:

1. “the educational benefits of placement full-time in a regular class”;
2. “the non-academic benefits of such placement”;
3. “the effect [the student] had on the teacher and children in the regular class”; and
4. “the costs of mainstreaming [the student].”

(*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050].

Student did not show that Long Beach's offer of academic instruction in the moderate to severe special day class setting, on an alternative curriculum, was inappropriate in the 2017-2018, 2018-2019, 2019-2020 school years or the 2018, 2019, and 2020 extended school years. Before the 2019-2020 school year, Long Beach offered Student 100 percent of specialized academic instruction in the moderate to severe special day class with the opportunity to mainstream when she was ready. During the October 2019 IEP team meeting Long Beach offered 45 percent of her day in general education which included physical education, lunch, recess, passing periods, electives, and vocational education.

From 2017 to 2020, Long Beach also offered Student specialized academic instruction in the moderate to severe special day class setting with no more than 15 students and at least two adults in addition to the teacher. Teachers Mison, Ofoegbu, and Richter delivered the specialized academic instruction directly to Student with her moderate to severe classroom peers. The teachers and adult classroom aides provided prompts and assistance to Student on an as needed basis. Student could complete her work with prompts in the moderate to severe classroom except during her mental health crisis. Mison, Ofoegbu, and Richter all held credentials to teach students with all disabilities, including those with autism, in the moderate to severe special education classes. Student's moderate to severe special day classes during these three periods had students with different or mixed disabilities including autism.

Student's cognitive ability was in the 40's range, and Student functioned at around the first-grade level. Considering the *Rachel H.* factors, no one disputed that

Student's intellectual profile would render placement in the moderate to severe special day class with general education class mainstreaming inappropriate. Student benefitted from the non-academic benefits of mainstreaming while in her moderate to severe special day class. For example, during the 2019-2020 school year Student and a few of her peers from the moderate to severe special day class mainstreamed into a general education elective art class accompanied by an adult classroom aide. Student did well in the general education class. A more restrictive environment such as a non-public school would deprive Student of any mainstreaming opportunities. Because no one offered evidence of Student's effect, if any, on the general education elective class, or the mainstreaming costs, Student did not show that these two factors impacted the *Rachel H.* analysis.

While the IEP team discussed an OCDE program at the June and October 2019 IEP team meetings, Long Beach only suggested it as an accommodation to Parent. The OCDE program was similar to Student's moderate to severe special day class placement, except had four fewer students and was located at a different site. There was no evidence supporting that Student required the OCDE program to receive a FAPE.

Papazyan opined that a special day class with students of mixed disabilities including autism was appropriate for Student. Papazyan recommended a small, structured classroom setting of approximately 12 students which also addressed Student's social, emotional and behavioral needs. Papazyan's description of an appropriate placement and classroom recommendations for Student aligned with the structure and class size of the moderate to severe special day class placement Long Beach offered to Student at all relevant times.

Papazyan's classroom recommendations for Student included front of the class seating, multi-modal teaching methods such as a visual schedule to help with

transitions, and classroom positive reinforcements such as a token economy to reward and motivate desired behaviors. Student's IEP's included all those classroom accommodations in her moderate to severe special day classes from 2017-2020. Mison, Ofoegbu, and Richter used auditory and visual instruction modes including visual schedules, behavior strategies including token boards and desired activity rewards for positive reinforcement, and assistive technologies such as Chromebooks in their classes. However, when Papazyan observed Student in Richter's class in February 2020, she did not see a visual activity schedule, and concluded that one should be available in Richter's class. Student did not show, however, that the absence of a visual schedule in Richter's class impacted the appropriateness of the placement, or the academic instruction, resulting in the need to change her placement. Student did not prove that the least restrictive environment for her under the *Rachel H.* factors was anything other than a moderate to severe special day class.

Hollar and Papazyan also opined that Student exhibited autistic characteristics. Student argued that Student should have also qualified for special education under the category of autism and placed in a class with other autistic students. However, whether Student had autism or should have been found eligible for special education under autism was not an issue before OAH, and irrelevant. The relevant inquiry was whether Long Beach IEPs offered Student with an appropriate placement and related services, that allowed her to access her curriculum.

Although at hearing Papazyan opined that a mild to moderate special day class could be beneficial to Student, Papazyan did not offer any persuasive support for her opinion. Papazyan's sole basis for recommending a mild to moderate special day class placement was her conclusion that Student's cognitive ability could be higher than shown in standardized testing because Student sustained attention and completed

hours of standardized testing during her January 2020 assessment. Papazyan was unfamiliar with Long Beach's mild to moderate special day classes. Long Beach staff explained that a mild to moderate special day class was inappropriate for Student because students in that setting worked on grade level curriculum and were much higher functioning than Student. Because of Student's intellectual disability, Student did not work on grade level texts; she was on an alternative curriculum. Papazyan's opinion was uninformed and unpersuasive to support a change of Student's placement from a moderate to severe to a mild to moderate special day class. Student's moderate to severe special day class was the appropriate placement because it offered the alternative curriculum to meet her educational profile and had the proper peer role models for her speech and language needs.

Papazyan also opined at hearing that a non-public school could be beneficial to Student because a non-public school provided increased one-to-one academic instruction. The evidence did not support that Student needed one-to-one academic instruction to access her education. Student's teachers Mison, Ofoegbu, and Richter all credibly opined that the moderate to severe special day class was appropriate for Student at all relevant times. Their knowledge and experience with Student daily rendered their opinions more persuasive than Papazyan's. The evidence supported that Student completed class work, was happy, social, verbal and accessing her curriculum at Long Beach's moderate to severe special day class. Student benefitted from the Long Beach placement. Papazyan's recommendation of a non-public school, on the basis that Student would benefit from increased one-to-one assistance was not persuasive.

Both Hollar and Papazyan also opined that Student needed typical and verbal peer role models for her social and speech development. During the 2017-2018 school

year nine of the 13 students in Mison's class were verbal. During the 2018-2019 school year all nine students in Ofoegbu's class were verbal; and all 15 of the students in Richter's class were verbal. Richter opined that 12 out of the 15 students were good speech role models for Student, with only three having minimal verbal skills. A non-public school would not have any typical peers for Student, including the verbal and social models that both of Student's experts opined were crucial to her development. Papazyan's non-public school recommendation did not consider Student's ability and opportunities to mainstream, and was therefore unpersuasive.

Papazyan offered no credible opinions that a moderate to severe special day class placement was inappropriate for Student. Additionally, under the snapshot rule in *Adams, supra*, 195 F.3d at pg. 1149, information from Hollar's and Papazyan's assessments in 2020 were not persuasive in proving what the October 2, 2017, October 2, 2018, and October 1, 2019 IEP team knew or should have known at the time it made its placement offers to Student. Student did not prove that Long Beach denied her a FAPE by not offering an appropriate placement, or academic instruction during any relevant period.

ISSUE 15D: DID LONG BEACH DENY STUDENT A FAPE FROM OCTOBER 2, 2017 THROUGH THE 2018 EXTENDED SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE SPEECH AND LANGUAGE SERVICES?

ISSUE 17E: DID LONG BEACH DENY STUDENT A FAPE FROM THE 2018-2019 SCHOOL YEAR THROUGH THE 2019 EXTENDED SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE SPEECH AND LANGUAGE SERVICES?

ISSUE 19E: DID LONG BEACH DENY STUDENT A FAPE FROM THE 2019-2020 SCHOOL YEAR THROUGH THE 2020 EXTENDED SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE SPEECH AND LANGUAGE SERVICES?

Student contends Long Beach did not offer Student appropriate speech and language services. Long Beach contends it offered Student a FAPE, including appropriate speech and language services. Issues 15D, 17E, and 19E regarding speech and language services will be analyzed together.

A student is eligible for special education and related services under the category of speech and language impairment if he or she demonstrates difficulty understanding or using spoken language under a specified criteria and to such an extent that it adversely affects his or her educational performance, which cannot be corrected without special education. (Ed. Code, § 56333.) The criteria are:

- a. Articulation disorder: the child displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention;

- b. Abnormal voice: a child has an abnormal voice, which is characterized by persistent, defective voice quality, pitch, or loudness;
- c. Fluency Disorders: a child has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener; and
- d. Language Disorder: the pupil has an expressive or receptive language disorder, in pertinent part, when he or she scores at least 1.5 standard deviations below the mean, or below the seventh percentile, for his or her chronological age or developmental level, on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics.

(Ed. Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (b) (11).)

Long Beach failed to offer Student appropriate speech and language services during all relevant periods. The only speech and language services Long Beach offered to Student from October 2, 2017 through the regular 2017-2018 school year was six 25-minute group speech and language sessions per month, and four 20-minute group speech and language sessions during the 2017 extended school year. Despite Student's difficulties with expressive language and fluency, Long Beach did not offer any individual speech and language services.

Speech pathologist Nieves Yi worked with Student in her three-person group speech and language therapy sessions from 2015 through the 2017-2018 school year. Yi opined that Student stuttered when excited, and that Student's speech was more fluent during group sessions than in the classroom. Both Yi and Mison opined that Student did not demonstrate any pragmatic/social skills difficulties during the 2017-2018 school year. Student effectively communicated with adults and peers to get her

needs met. However, Student demonstrated very disparate speech abilities to Yi and Mison during this same period. Yi observed Student engaging in reciprocal conversation approximately eight to nine times and speaking to Yi in complete sentences such as "We were going camping, but the car broke down." However, Mison observed that Student only spoke in short one to two-word phrases in class. Long Beach should have offered Student individual speech and language services to develop and model for Student proper expressive language skills and help her generalize it to the classroom because it had information that Student was capable of speaking in eight to nine word sentences, but only used one to two words in the classroom. Yi also found that Student stuttered, and could tailor individual speech sessions to curtail Student's stuttering. Long Beach's failure to offer individual speech and language services to Student in October 2017 was unsupported and inappropriate.

Around September 2018, Long Beach's speech pathologist Knapp assessed Student's speech and language needs and concluded that Student was deficient in all areas of receptive, expressive, semantic and pragmatic language. Knapp also concluded that Student did not show any voice or speech production issues, was intelligible, and mildly stuttered. Knapp recommended reading, games, and conversations with adults to develop language and social skills. Student's deficient speech and language standardized test scores alone supported the need for individual speech and language sessions to increase Student's speech and language skills. At the very least, the September 2018 deficient speech and language standardized test scores supported maintaining the same level of group speech and language sessions to develop pragmatic language and social skills.

However, the October 2018 IEP team decreased Student's speech and language services by 40 percent. Long Beach decreased Student's 25 minutes of group speech

and language from six monthly sessions to four monthly 25 minutes sessions through the 2018-2019 regular school year. Long Beach did not offer any speech and language services during the 2019 extended school year. Knapp opined at hearing that the decrease in speech services in the October 2018 IEP offer was reasonable because Student did well in her group speech sessions and Ofoegbu reported that Student could communicate in Ofoegbu's class. Knapp's opinion was unpersuasive. While Ofoegbu reported that Student could communicate in class, Ofoegbu did not have details as to the level, length, or quality of those verbal communications to justify such a significant decrease in speech services. Knapp's September 2018 standardized assessment showed that Student still had significant communication deficits. Knapp even conceded at hearing that individual speech and language services could have focused on Student's individualized speech and language needs. The totality of evidence supported that Student required more, not less, speech and language services. Long Beach's October 2018 decrease in speech and language services offer to Student was unsupported and inappropriate.

In the October 2019 IEP team meeting, Long Beach offered Student five 25 minutes of direct, individual speech and language sessions, but did not offer any group speech and language sessions for the regular 2019-2020 school year. For the 2020 extended school year, Long Beach offered Student four 25 minute direct, group speech and language sessions without offering any individual speech and language sessions.

Although the October 2019 IEP team offered Student individual speech services, Long Beach did not offer her any group speech services despite recognizing Student still had extensive pragmatic skills issues and needed to generalize speech skills in the classroom setting. Richter opined that in the classroom Student only spoke well enough

to be understood. Knapp opined that by October 2019 Student showed speech production and intelligibility issues and difficulty with multi-step directions, skipping steps as she tried to race through task completion. Knapp opined that Student continued to have receptive, expressive, and social skills/pragmatic language needs.

Hollar who assessed Student's speech and language skills around February 2020 opined at hearing that Student's intelligibility resulted from an apraxia speech disorder which affected the ability of Student's brain to signal her muscles to generate proper speech production. Knapp disagreed with Hollar and opined that Student's intelligibility resulted instead from speaking too fast because Student's intelligibility increased when she slowed her speech. Further, Knapp opined that apraxia was characterized by slow speech and inconsistent speech sounds. Student spoke fast and had not displayed any inconsistent or nasal speech sounds since Knapp started working with Student in 2018. Student did not prove that she was afflicted with apraxia.

The evidence was undisputed that Student had difficulty with intelligibility. Whether her difficulty was caused by apraxia or speaking too fast, Student scored in the deficient range in all areas of receptive, expressive, social skills, and language in both Knapp's and Hollar's speech and language assessments. However, despite Student's consistent and extensive language deficits, Long Beach did not offer any individualized speech services to Student until October 2019. In October 2019, Long Beach did not offer Student any group speech services to address Student's social skills and pragmatic language deficits. Long Beach's October 2019 speech and language services offer to Student, without any group speech services, was unsupported and inappropriate. Student proved that Long Beach denied her a FAPE by not offering appropriate speech and language services during all relevant periods.

ISSUE 17D: DID LONG BEACH DENY STUDENT A FAPE FROM THE 2018-2019 SCHOOL YEAR THROUGH THE 2019 EXTENDED SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE TRANSITION SERVICES?

ISSUE 19D: DID LONG BEACH DENY STUDENT A FAPE FROM THE 2019-2020 SCHOOL YEAR THROUGH THE 2020 EXTENDED SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE TRANSITION SERVICES?

Student contends Long Beach did not offer Student appropriate transition services. Long Beach contends it offered Student appropriate transition services. Issues 17D, and 19D regarding transition services will be analyzed together.

“Transition services” are defined as a coordinated set of activities designed within a results-oriented process, focused on improving the academic and functional achievement of the individual to facilitate movement from school to post-school activities, including postsecondary education, vocational education, and integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation. Transition services are to be based upon individual needs, considering individual strengths, preferences, and interests. Transition services include instruction, related services, community experiences, development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. Transition services may be special education or related services. (Ed. Code, § 56345.1, subd. (a); 20 U.S.C. § 1401(34).)

Student did not show that the transition services Long Beach offered were inappropriate. In the 2018-2019 school year, Long Beach offered Student group

transition services, five times weekly, 90 minutes each session. In the 2019 extended school year, it offered Student five 90-minute sessions weekly for group transition services for a total of seven and a half hours each week. In the 2019-2020 school year, Long Beach offered Student group transition services five times weekly, 10 minutes each session; work experience education services twice weekly, 50 minutes each session; and group travel training twice monthly one hour each session. In the 2020 extended school year, it offered Student five 10-minute sessions weekly for group transition services.

Long Beach assessed Student's transition skills before she was 16 and included an Individualized Transition Plan in Student's October 2018 and October 2019 IEPs. Long Beach designed transition services to help Student achieve her post-secondary school employment, education/training, and independent living goals and needs.

Student's transition services also included academic goals such as functional math, counting, reading and writing. Long Beach also developed specific goals aimed at transition training, independent living, and employment for Student. Specific transition goals included organization, linked learning, and task completion. Specific independent living included toileting, and hygiene. Specific employment goals included employment skills, following directions, personal space/belongings, and proper seating and staying in own area. Long Beach also offered travel training to help Student navigate safely with her class and into the community. Student did not offer evidence supporting that the transition services Long Beach offered were inappropriate other than her attorney's argument. Attorney argument was not evidence. Student did not prove that Long Beach denied her a FAPE by not offering appropriate transition services during the 2018-2019 or 2019-2020 school years, or the 2019 or 2020 extended school years.

ISSUE 16A, 16B, AND 16C: DID LONG BEACH DENY STUDENT A FAPE FROM OCTOBER 2, 2017 THROUGH THE 2018 EXTENDED SCHOOL YEAR BY FAILING TO OFFER ANY OCCUPATIONAL THERAPY SERVICES, BEHAVIORAL SERVICES, AND SOCIAL EMOTIONAL SERVICES?

ISSUE 18A, 18B, AND 18C: DID LONG BEACH DENY STUDENT A FAPE FROM THE 2018-2019 SCHOOL YEAR THROUGH THE 2019 EXTENDED SCHOOL YEAR BY FAILING TO OFFER ANY OCCUPATIONAL THERAPY SERVICES, BEHAVIORAL SERVICES, AND SOCIAL EMOTIONAL SERVICES?

ISSUE 20A, 20B, AND 20C: DID LONG BEACH DENY STUDENT A FAPE FROM THE 2019-2020 SCHOOL YEAR THROUGH THE 2020 EXTENDED SCHOOL YEAR BY FAILING TO OFFER ANY OCCUPATIONAL THERAPY SERVICES, BEHAVIORAL SERVICES, AND SOCIAL EMOTIONAL SERVICES?

Student contends that she required occupational therapy, and behavioral and social emotional services to receive a FAPE. Long Beach contends Student did not need services other than those it offered to Student to receive a FAPE. Issues 16A, 18A, and 20A regarding occupational therapy services, Issues 16B, 18B, and 20B regarding behavioral services, and Issues 16C, 18C, and 20C regarding social emotional services will be analyzed together.

OCCUPATIONAL THERAPY SERVICES

Parent shared that she observed Student flapping her hands and rocking in her chair. However, none of Student's teachers observed these behaviors at school until the 2019-2020 school year. In the 2019-2020 school year, Student's teachers did not

observe hand flapping, but observed that Student rocked her chair. At the October 1, 2019 IEP team meeting, Long Beach offered a goal requiring Student to stay in an assigned area and/or seat for up to 20 minutes with all chair legs on the ground to address Student's chair rocking. Student did not prove that the hand flapping or chair rocking behaviors interfered with Student's education. Student could successfully manipulate classroom materials and navigate the school environment.

Papazyan found after her January 2020 psychoeducational assessment that Student had sensory motor needs. Papazyan concluded Student would benefit from weekly occupational therapy services. Papazyan's opinion on this issue was not persuasive because Papazyan was not an occupational therapist. Additionally, under the snapshot rule in *Adams, supra*, 195 F.3d at pg. 1149, information from Papazyan's assessment in 2020 was not persuasive in proving what the October 2, 2017, October 2, 2018, and October 1, 2019 IEP team knew or should have known at the time it made its offers to Student. Student did not prove that Long Beach denied her a FAPE by not offering occupational therapy services during any relevant period.

BEHAVIOR SERVICES

The totality of the evidence did not support that Student had maladaptive behaviors interfering with her FAPE access from October 2, 2017 to the 2018 extended school year, or the beginning of the 2018-2019 school year to the October 1, 2018 IEP team meeting. Ofoegbu opined at hearing that the box showing that behaviors impeded Student's learning was checked by mistake in the October 2017 and October 2018 IEP documents. Ofoegbu's opinion was persuasive because it was not contradicted by evidence. Student did not offer any evidence showing Student had maladaptive behaviors interfering with her education requiring behavior intervention

services from October 2, 2017 through the 2018 extended school year, or from the beginning of the 2018-2019 school year through the end of February 2019.

However, the evidence showed that Long Beach inappropriately failed to offer behavior services to Student from March 2019 to the 2019 extended school year, and in the 2019-2020 school year to March 16, 2020. As discussed in detail under Issues 7B, 7C, and 14D, beginning March 2019, Long Beach was aware that Student cried excessively, was noncompliant, minimally verbal, and unengaged in work and in class. Her maladaptive classroom behaviors interfered with her ability to complete classwork and access the curriculum. Richter opined these maladaptive behaviors continued to interfere with her learning in the 2019-2020 school year even with the behavioral strategies embedded, and Richter used, in her special day class. Long Beach never offered Student any behavior services and did not have a behavior support plan in place until the October 2019 IEP team meeting. Although Long Beach recognized at the October 2019 IEP team meeting that Student had behavioral needs enough to offer her a behavior support plan, Long Beach did not offer Student any behavior support services.

According to Richter, Student responded to behavior management strategies successfully and could access her education by the March 16, 2020 COVID-19 related school closures. Richter opined that Student transformed into being compliant, verbal, happy, and capable of being redirected to follow directions and completed classwork. Richter was persuasive because she had been Student's teacher since the beginning of the 2018-2019 school year and was familiar with Student's behaviors and educational needs and experienced in working with Student. However, Student's ability to access her curriculum by March 16, 2020 did not alter the fact that Long Beach did not offer

behavior services to Student when she demonstrated a need for those services at the October 1, 2019 IEP team meeting.

Student did not prove that Long Beach denied her a FAPE not offering any behavior services from October 2, 2017 through the 2018 extended school year, or from the beginning of the 2018-2019 school year through the end of February 2019. However, Student proved that Long Beach denied her a FAPE by not offering any behavior services from March 7, 2019 to the 2019 extended school year, and in the 2019-2020 school year through March 16, 2020.

SOCIAL EMOTIONAL SERVICES

Long Beach did not deny Student a FAPE by failing to offer social emotional services to Student during any relevant period. As discussed in detail under Issues 13B and 14E, Long Beach was aware in March 2019 that Student suffered a mental health crisis impeding her education. Long Beach concluded that Student's mental health supported a referral for educationally related mental health services, and Long Beach offered the referral. However, Parent withheld consent at both the March and June 2019 IEP team meetings for Student to receive educationally related mental health services because Student was registered to received mental health services from Harbor Regional Center.

At hearing, Wendt opined that Long Beach did not offer social emotional services such as school-based counseling because counseling alone was inappropriate for Student. Wendt explained that Student was extremely withdrawn and not connecting with anyone during her mental health crisis. Wendt opined that Student would not benefit from spending time verbalizing her feelings to a counselor. Student needed a higher level of care such as the educationally related mental health services which

offered the necessary combination of psychiatric care and medication evaluation before Student could access counseling or talk therapy. A clinician would determine the appropriate combination and timing of psychiatric, medication, and counseling if Parent consented to the educationally related mental health services. Wendt was persuasive because she evaluated Student in February/March 2019 to determine Student's mental health needs when Parent reported Student's mental health crisis. Further, her opinion was uncontradicted. Although Student required educationally related mental health services from March 2019 through at least the 2019 extended school year, Parent declined consent for Long Beach to provide those services.

Student did not prove that she was still impacted by mental health issues requiring related mental health services at any time in the 2019-2020 school year or the 2020 extended school year. The IEP team, including Parent, was concerned with Student's behaviors, not mental health issues, interfering with Student's education.

Papazyan's recommendation of individual psychological and psychotherapy services for Student when she evaluated Student in 2020 was unpersuasive for the same reasons discussed earlier in this Decision. (*Adams, supra*, 195 F.3d at pg. 1149.) Papazyan's recommendation was based only on her review of records and Parent's report of Student's March 2019 mental health crisis, which the evidence showed was no longer affecting her education in the 2019-2020 school year. Student did not prove that Long Beach denied her a FAPE by not offering social emotional services during any relevant period.

ISSUE 15A: DID LONG BEACH DENY STUDENT A FAPE FROM OCTOBER 2, 2017 THROUGH THE 2018 EXTENDED SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE GOALS?

ISSUE 17A: DID LONG BEACH DENY STUDENT A FAPE FROM THE 2018-2019 SCHOOL YEAR THROUGH THE 2019 EXTENDED SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE GOALS?

ISSUE 19A: DID LONG BEACH DENY STUDENT A FAPE FROM THE 2019-2020 SCHOOL YEAR THROUGH THE 2020 EXTENDED SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE GOALS?

Student contends Long Beach did not offer Student appropriate goals. Long Beach contends it offered Student appropriate goals and a FAPE. Issues 15A, 17A, and 19A regarding appropriate goals will be analyzed together.

In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel, and which sets forth the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present

levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (OSERS 1988) 213 IDELR 118.) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges v. Spartanburg County School Dist. Two* (D.S.C. Sept 2, 2011, No. 7:10-cv-01873-JMC) 2011 WL 3882850 (*Bridges*) [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].) A failure to offer an appropriate goal is a procedural violation of the IDEA. (*Park v. Anaheim Union High School Dist.*, *supra*, 464 F.3d at p. 1031).

OCTOBER 2, 2017 THROUGH THE 2018 EXTENDED SCHOOL

Long Beach offered Student goals in speech and language/expressive language fluency, fitness, personal information writing, writing sentences, money counting, and telling time at the October 2, 2017 IEP team meeting. Although not legally required, each goal had short-term objectives. The goals, except for the speech and language goal, were clear, measurable and addressed Student's needs. Each academic goal indicated Student's present performance levels in the area of need addressed, stated the goal, why the goal was needed, and who would implement it. Yi wrote Student's speech and language fluency goal, and Mison wrote the rest of Student's goals in the October 2, 2017 IEP. The goals Mison wrote were based on his observations, as her teacher in the 2016-2017 school year, of Student's needs and past goal performance.

Student argued that because she, as a 10th grader, was reading at a first grade level in 2020, Long Beach's failure to offer a reading goal in October 2017 was a FAPE denial because it did not address her reading needs, or chart her reading progress. Mison opined that Student's reading needs were properly addressed. He opined Student did not need a reading goal in October 2017. Student met the reading goal of the prior year of identifying 30 sight words. Student's reading needs were addressed within the reading that was incorporated in the moderate to severe special day class curriculum. Further, reading was also incorporated in Student's other goals. Student did not show that she required a separate reading goal to access her curriculum. Finally, Student was intellectually disabled and on an alternative curriculum, and Student did not show that reading at grade level was appropriate for her profile and necessary to a FAPE. (See *J.S. v. Clovis Unified School Dist.* (E.D. Cal. July 25, 2017, 1:16-cv-01319-LJO-BAM) 2017 WL 3149947, *14, *affd.* (9th Cir. 2019) 748 Fed.Appx. 146. ["when goals are tied to grade-level state standards without addressing the individual abilities of the student that are far below grade-level, those goals have been found not to provide a FAPE." citing, *Jefferson v. Cnty. Bd. of Educ.* (11th Cir. 2014) 581 Fed.Appx. 760 (unpub. opn.)])

Student argued that her personal writing goal was imprecise as it did not specify the need for correct spelling to meet the goal. Although the personal writing goal did not specify that "spelling" correctly was required, Long Beach incorporated proper spelling into the goal by requiring Student to "independently answer all questions by writing correctly the information needed with 80% accuracy in 8 out of 10 progress monitoring opportunities". Further, the writing sentences goal specifically addressed Student's spelling needs requiring Student to "write at least 3 complete sentences with correct spelling of words, punctuation and capitalization with 70% accuracy as measured by teacher and/or staff observation and student work samples". Under *Bridges, supra*,

2011 WL 3882850, Long Beach was not required to draft the goals in a manner preferred by Student/Parent.

The evidence did not support Student's argument that the baselines for the money counting and telling time goals were deficient. At hearing, Mison explained that in October 2017, Student could count using one-dollar and five-dollar bills. Student's goal of counting using 10-dollar and 20-dollar bills and counting a specific amount of money up to 50 dollars in mixed denominations was stated in the October 2017 IEP. Likewise, Mison explained that the baseline for telling time in the October 2017 goal specified that Student could tell time to the hour. Student's October 2017 IEP goal provided that she would tell time at 30-minute intervals. The money counting and telling time goals were measurable and appropriate.

Mison opined that Student met her behavior goal of keeping her hands to herself from the prior year. Student did not exhibit any maladaptive behaviors in October 2017 that required addressing with any goals. Parent expressed concerns about Student's attention and off task behaviors to the October 2017 IEP team. However, Mison did not observe any maladaptive behaviors in the classroom that impeded Student's educational access. For example, when Mison simply called Student's name on occasions where Student was not paying attention, Student would successfully refocus and attend. Student did not show that she needed a separate reading or behavior goal to address her needs. Other than the speech and language/expressive language fluency goal, Student did not show that any of the goals Long Beach offered to Student in October 2017 were immeasurable, or inappropriate.

The speech and language goal was inappropriate. The expressive language fluency goal Yi wrote was immeasurable because it combined two separate areas of need which should be separated. Fluency related to Student's rate, rhythm, and sound

of speech. Expressive language related to Student's ability to use vocabulary and create sentences to present her ideas and desire. By combining two areas of need Yi would be unable to accurately monitor Student's progress in either area. Each area of need should have its own baseline to accurately measure progress in each area. Long Beach did not rebut this at hearing, and Yi agreed the goal should be separated.

Hollar disagreed with Long Beach's offer of a fluency goal to Student. Hollar opined at hearing that Student's need was not in fluency but in the inability to produce sounds and words correctly because of her apraxia. Yi opined that Student needed a new fluency goal in 2017 even though she met her fluency goal from the prior year because Student was unable to generalize her fluency strategies in conversation outside of speech therapy. Yi reported that in October 2017 Student's disfluencies included sound prolongations, and repetitions.

Hollar also opined that Long Beach should have offered Student speech and language goals in sound production coordination and social/pragmatics. Hollar also concluded that Student had apraxia after evaluating Student in 2020. However, for the reasons discussed earlier, Hollar's opinions that Student had apraxia and the goals Student required in 2017 were not as persuasive as Yi's opinions because Yi worked with Student at that time. Yi's opinions were based on the deficits Student presented in October 2017. Student also never proved that she had apraxia. Further, Student did not present any evidence supporting that Student demonstrated deficits in other speech and language areas requiring Long Beach to offer Student other speech and language goals in October 2017.

Student proved that Long Beach committed a procedural violation by not providing measurable speech and language goals to Student at the October 2, 2017 IEP team meeting. Long Beach's procedural violation caused a deprivation of educational

benefits and impeded Student's access to a FAPE because it prevented the IEP team from accurately monitoring Student's speech and language progress. The violation also interfered with the IEP team's ability to create effective strategies and offer appropriate services to target Student's speech and language needs. For example, in the October 2, 2018 IEP team meeting, Long Beach reported that Student met 60 percent of the expressive language fluency goal. However, the 2018 IEP team was left without accurate information as to Student's actual progress not knowing whether Student's actual progress was in expressive language or in fluency. Without this information, the IEP team was unable to gauge whether individual or group speech sessions would be more effective in developing her speech and language skills. Student proved that Long Beach's procedural violation in not providing measurable speech and language goals resulted in a substantive FAPE denial.

Student proved that Long Beach denied her a FAPE by not offering measurable speech and language goals from October 2, 2017 through the 2018 extended school year. Student did not prove that Long Beach denied her a FAPE by not offering appropriate goals from October 2, 2017 through the 2018 extended school year, other than speech and language goals.

2018-2019 SCHOOL YEAR THROUGH THE 2019 EXTENDED SCHOOL YEAR

Long Beach offered Student goals in speech and language comprehension, speech and language fluency, personal information writing, writing sentences, money counting, telling time, organizational skills, school future, self-advocacy, task completion, hygiene, and toileting at the October 2, 2018 IEP team meeting. Knapp wrote Student's speech and language comprehension and fluency goals, and Ofoegbu wrote the rest of Student's goals in the October 8, 2017 IEP. The goals Knapp wrote

were based on her September 2018 speech and language assessment of Student. The goals Ofoegbu wrote were based on her observations as Student's teacher in the beginning of the 2018-2019 school year of Student's needs and past goal performance.

Student argued that the 2018 goals were inappropriate because they did not include short-term objectives to monitor Student's progress. However, Student did not show that a goal was required by statute to contain short term objectives. The absence of short-term objectives therefore did not amount to a procedural FAPE violation.

READING GOALS

Student argued that because she, a 10th grader, was only reading at a first-grade level in 2020, Long Beach's failure to offer a reading goal in previous years including in October 2017 was a FAPE denial because it did not address her reading needs, or chart her reading progress. The October 2018 IEP stated that, with a little stuttering, Student read and understood short texts in the first to third grade level. Student demonstrated her understanding by answering questions about the texts correctly. Ofoegbu opined that Student's reading needs were properly addressed and did not need a reading goal in October 2018. Ofoegbu explained that reading was incorporated in the moderate to severe special day class curriculum which included the Unique Learning Systems reading program that matched reading and instruction to each student's learning level. Ofoegbu opined that while reading text at higher than the first to third grade level frustrated Student, Student read and completed assignments and accessed her curriculum without issue until her mental health crisis in March 2019. Student did not show that she required a separate reading goal to access her curriculum. Finally, Student was intellectually disabled and on an alternative curriculum, and Student did not show that reading at grade level was appropriate or expected for her profile and necessary to a FAPE.

ACADEMIC GOALS

The academic goals were clear, measurable and addressed Student's needs. Each goal indicated Student's present performance level in the area of need addressed, stated the goal, why the goal was needed, and who would implement it. Student argued that Long Beach did not offer sufficiently ambitious academic goals in October 2018 because the personal information writing, writing sentences, money counting and telling time goal were the same as that in October 2017. Ofoegbu persuasively opined that these goals were the same because Student did not meet them the prior year and needed to continue working on them in the 2018-2019 school year. Ofoegbu adjusted the personal information writing goal from an 80 percent accuracy to 100 percent accuracy; and the writing sentences goal from 70 percent accuracy to 80 percent accuracy to reflect Student's abilities and progress. Ofoegbu did not adjust or increase the percentages of the money counting and telling time goals because increasing the percentages on these two goals would be unrealistic for Student to achieve in the next year.

Ofoegbu was persuasive because her opinions were based on her experience from working with Student daily from the beginning of the 2018-2019 school year until the October 2018 IEP team meeting when the goals were proposed. Student did not offer any evidence contradicting Ofoegbu's opinions with any specifics, other than with Papazyan and Hollar opining generally that they would have written the goals differently. Long Beach did not need to draft the goals in a manner that Student's experts find optimal. (*See, Bridges, supra*, 2011 WL 3882850.) Student did not show that the academic goals offered at the October 2018 IEP team meeting were inappropriate.

TRANSITION AND SELF-CARE GOALS

Long Beach did not offer appropriate transition and self-care goals at the October 2018 IEP team meeting. The organizational skills, school future, self-advocate, task completion, hygiene, and the two toileting goals did not include objective criteria to measure progress and were on their face vague and immeasurable. All the transition and self-care goals, except the self-advocacy goal, used the terms "little", "minimal", or "several" prompts to measure progress. "Little", "minimal", and "several" were not objectively quantifiable numbers from which to gauge Student's progress. For example, the task completion goal baseline stated that Student was able to complete tasks with "several" prompts without defining what "several" meant. This rendered the context of the goal vague and immeasurable because the goal required Student to complete a given task "after one to two prompts". One or two prompts could also be the "several" prompts in the baseline rendering the task completion goal immeasurable at best, and useless at worst, as that was Student's baseline. The organization goal, requiring Student to organize assignments using a binder with "little" prompts, was another example of an immeasurable goal. Without a number, a person could interpret little to mean one or two prompts, and another could interpret it to mean three, four, or more prompts.

Therefore, in October 2019 when Long Beach reported that Student achieved 10 percent of the organization goal, the IEP team did not know under which situations and how many prompts Student was able to use a binder for organization. The results Long Beach reported in October 2019 of Student's achievement on the other six transition and self-help goals were also vague and immeasurable for the same reasons. The results left the IEP team without information as to which situations and how many

prompts Student required in her progress toward each of the organizational skills, school future, self-advocate, task completion, hygiene, and the two toileting goals.

SPEECH AND LANGUAGE GOALS

The language comprehension and fluency speech and language goals Long Beach offered to Student were measurable. The comprehension goal stated that Student would follow directions that increased in length and complexity with concepts of color, shape, quantity, location and order with 80 percent accuracy over three consecutive speech and language therapy sessions. The fluency goal stated that Student would demonstrate a minimum of three fluency strategies given one verbal or visual prompt over 80 percent accuracy over three consecutive speech and language sessions.

The two speech and language goals Long Beach offered to Student were measurable and appropriate. Student argued that more detail for measuring the goal was necessary but did not offer any evidence to support her argument beyond attorney argument. Attorney argument was not evidence. Further, Hollar agreed that the language comprehension goal was measurable and appropriate. Hollar again disputed Student's need for a fluency goal on the basis that Student's need was sound production coordination because of her apraxia, not fluency. Knapp's opinion that Student had fluency deficiencies were more persuasive than Hollar's because Knapp assessed Student in 2018 and determined Student's rate and rhythm adversely affected her communication in 2018.

Student proved that Long Beach did not offer speech and language goals to address all of Student's speech and language needs. Long Beach did not offer any expressive language, semantics, or pragmatic/social skills goals to Student despite

Knapp's conclusion after assessing Student that Student was deficient in all areas of receptive, expressive, semantic and pragmatic language. Hollar opined that Long Beach should have offered Student additional goals to address her other speech and language deficits. Knapp opined that the language comprehension and fluency goals were sufficient because they targeted foundational skills that developed all areas of Student's speech and language needs. Knapp also opined that she prioritized Student's comprehension deficits over other language deficits because Student scored much lower in comprehension than she did in other areas in her speech and language assessment. Knapp's explanation was unpersuasive.

Hollar's opinion that Student required more goals to address her other speech and language deficits was persuasive because Hollar's opinion was also consistent with information Long Beach had from Knapp's standardized assessment. Long Beach was not required to offer goals to address every deficit. However, Long Beach's failure to offer goals in the four significant deficit areas, *specifically* expressive language, semantics, or pragmatic and social skills, rendered Long Beach's contention that it adequately addressed Student's speech and language needs unpersuasive.

Additional speech and language goals would not have overwhelmed or compromised Student's educational performance. Student had a reasonable chance of working and progressing on all areas of speech and language. Student did well, was capable of reading and completing assignments in her moderate to severe special day class, but had significant speech and language including social skills/pragmatic difficulties. Based on available information in October 2018, Long Beach should have offered Student speech and language goals in at least the four areas of need while maintaining the same level of group speech and language services it offered Student in the prior year to work on those goals. Instead, Long Beach decreased Student's speech

and language services by 40 percent and offered only two speech and language goals to address her significant needs. Long Beach failed to develop appropriate speech and language goals to address Student's significant needs.

Student proved that Long Beach committed a procedural violation by not offering measurable transition and self-help goals; and not offering goals to address all of Student's speech and language needs at the October 2, 2018 IEP team meeting. Long Beach's procedural violation caused a deprivation of educational benefits and impeded Student's access to a FAPE because it prevented the IEP team from accurately monitoring Student's transition and self-help capabilities, and prevented Student's speech and language development and progress.

Student did not prove that Long Beach denied her a FAPE by not offering appropriate academic goals, or that the two speech and language goals it offered were inappropriate. However, Student proved that Long Beach's procedural violation in not providing measurable organizational skills, school future, self-advocate, task completion, hygiene, and the two toileting goals; and in not offering speech and language goals to address all areas of need, including expressive, semantics, and pragmatics/social skills, resulted in a substantive FAPE denial.

2019-2020 SCHOOL YEAR THROUGH THE 2020 EXTENDED SCHOOL

At the October 1, 2019 IEP team meeting, Long Beach offered Student goals in:

- expressive language, receptive language, and speech production;
- sight word reading, vocabulary, writing, reading fluency/comprehension, and mixed domain leveled math;
- task completion, clean up routine/organization, and linked learning;
- toileting/hygiene;

- participation in physical education;
- employment skills; and
- following directions, personal space/belongings, and stay in area/sit properly.

Knapp wrote Student's speech and language expressive, receptive, and speech production goals, and Richter wrote the rest of Student's goals in the October 1, 2019 IEP. The goals Knapp wrote were based on her speech and language sessions with Student since the 2018-2019 school year and the beginning of the 2018-2019 school year. The goals Richter wrote were based on her observations of Student's needs and past goal performance as Student's teacher in the 2018-2019 school year and the beginning of the 2018-2019 school year to the October 1, 2019 IEP team meeting. Although not required, all the goals contained short-term objectives.

Student argued that Long Beach did not offer sufficiently ambitious academic goals in October 2019 because Student did not progress and was still reading and writing at a first-grade level when Papazyan evaluated her in 2020. Student's academic function at the first-grade level was appropriate for Student's profile. Student's mental health challenges in March 2019 affected her progress toward her October 2018 goals. Richter proposed new academic, transition, self-help, and vocation goals at the October 1, 2019 IEP team meeting, which Richter adjusted to address Student's needs. Richter's proposed goals were clear, measurable and addressed Student's needs. Each goal indicated Student's present performance level in the area of need addressed, stated the goal, why the goal was needed, and who would implement it. Student did not prove that any of the goals, except for the speech and language goals, offered at the October 2019 IEP team meeting were inappropriate.

At hearing, Hollar proposed examples of how she preferred to draft speech and language goals, which were irrelevant because Long Beach was not required to draft the

goals in a manner that Student's expert deemed optimal to offer Student appropriate goals. (*See, Bridges, supra*, 2011 WL 3882850.)

Nonetheless, the speech and language goals Long Beach offered to Student were inappropriate because the baselines were vague and immeasurable. The expressive language goal baseline stated that Student produced complete sentences during speech therapy activities 40 percent of the time, but did not describe the complexity of sentence Student was able to produce. The receptive language baseline stated that Student followed three-step directions with 50 percent accuracy, but did not describe the conditions under which she could do so. This baseline also contradicted the present performance levels section of the October 2019 IEP which stated that Student needed to follow directions with more than one step. Therefore, the baseline created confusion as to the complexity level or prompts under which Student was able to follow a single versus a multiple step direction. The speech production baseline stated that Student spoke with a soft voice and imprecise articulation but did not describe the conditions and frequency of occurrence. Hollar's opinion that these goals were too vague was persuasive because on their face these three speech and language baseline goals were immeasurable, without any details the IEP team needed to gauge Student's abilities, and to accurately chart her progress.

Long Beach also did not offer Student speech and language goals to address all areas of Student's significant needs. Hollar opined that Long Beach should have offered goals in semantics and social/pragmatics. At the October 1, 2019 IEP, Long Beach did not offer Student social skills/pragmatics goals despite knowing that Student had significant needs in those areas since Knapp's 2018 speech and language assessment. By October 2019, Student was no longer afflicted with a mental health challenges such that additional speech and language goals would have overwhelmed or compromised

Student's educational performance. Student still had a reasonable chance of working and progressing on all areas of speech and language needs. Student still had significant speech and language difficulties in 2019 which required appropriate and additional goals.

Knapp opined that Student did not display any sound errors requiring a sound production coordination goal. Knapp's opinion was persuasive because it was presented to the October 2019 IEP team and based on Student's presentation from at least one year of working with Student. Regarding Hollar's opinion that Long Beach should have offered a sound production coordination goal, Hollar did not assess Student until early 2020 or present her opinions to an IEP team before April 28, 2020. Long Beach had no information in October 2019 supporting that Student had sound production coordination issues based on Long Beach staff observation, and Student did not establish that Long Beach should have known this information before Hollar's 2020 assessment, and IEP presentation. (*Adams, supra*, 195 F.3d at p. 1149.)

Long Beach committed a procedural violation by not offering measurable speech and language goals and not offering goals to address all of Student's speech and language needs at the October 1, 2019 IEP team meeting. Long Beach's procedural violation caused a deprivation of educational benefit and impeded Student's access to a FAPE because it prevented the IEP team from accurately monitoring Student's progress and prevented Student's development in areas of significant need in speech and language.

Student proved that Long Beach's failure to offer measurable expressive language, receptive language, and speech production goals; and failure to offer semantics and pragmatics/social skills speech and language goals resulted in a

substantive FAPE denial. However, Student did not prove that Long Beach denied her a FAPE by not offering appropriate academic, transition, self-help, or vocational goals.

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 1a: Long Beach did not deny Student a FAPE by failing to convene an IEP team meeting to review Student's lack of progress from October 2, 2017 through the 2018 extended school year. Long Beach prevailed on Issue 1a.

Issue 1b: Long Beach did not deny Student a FAPE by failing to convene an IEP team meeting to review Student's lack of progress in the 2018-2019 school year. Long Beach prevailed on Issue 1b.

Issue 1c: Long Beach did not deny Student a FAPE by failing to convene an IEP team meeting to review Student's lack of progress in the 2019-2020 school year. Long Beach prevailed on Issue 1c.

Issue 2: Long Beach did not deny Student a FAPE during the 2018-2019 school year by failing to timely conduct a triennial evaluation. Long Beach prevailed on Issue 2.

Issue 3a: Long Beach did not deny Student a FAPE during the March 2019, June 2019, and October 2019 IEP team meetings by failing to provide prior written notice letters regarding its refusal to offer educationally related mental health services. Long Beach prevailed on Issue 3a.

Issue 3b: Long Beach did not deny Student a FAPE during the March 2019, June 2019, and October 2019 IEP team meetings by failing to provide prior written notice letters regarding its refusal to offer one-to-one aide support. Long Beach prevailed on Issue 3b.

Issue 4a: Long Beach did not deny Student a FAPE by failing to provide prior written notice letters regarding proposed changes to Student's June 2019 IEP. Long Beach prevailed on Issue 4a.

Issue 4b: Long Beach did not deny Student a FAPE by failing to provide prior written notice letters regarding proposed changes to Student's October 2019 IEP. Long Beach prevailed on Issue 4b.

Issue 5: Long Beach did not deny Student a FAPE at the October 2017, October 2018, March 2019, June 2019, and October 2019 IEP team meetings by failing to include all required IEP team members including a knowledgeable administrator who had authority to make decisions about Student's IEPs. Long Beach prevailed on Issue 5.

Issue 6a: Long Beach did not deny Student a FAPE by failing to consider Parent's concerns at the October 2017 IEP team meetings. Long Beach prevailed on Issue 6a.

Issue 6b: Long Beach did not deny Student a FAPE by failing to consider Parent's concerns at the October 2018 IEP team meeting. Long Beach prevailed on Issue 6b.

Issue 6c: Long Beach did not deny Student a FAPE by failing to consider Parent's concerns at the March 2019 IEP team meeting. Long Beach prevailed on Issue 6c.

Issue 6d: Long Beach did not deny Student a FAPE by failing to consider Parent's concerns at the June 2019 IEP team meeting. Long Beach prevailed on Issue 6d.

Issue 6e: Long Beach did not deny Student a FAPE by failing to consider Parent's concerns at the October 2019 IEP team meeting. Long Beach prevailed on Issue 6e.

Issue 7a: Long Beach did not deny Student a FAPE by failing to consider appropriate behavior interventions at the October 2018 IEP team meeting. Long Beach prevailed on Issue 7a.

Issue 7b: Long Beach denied Student a FAPE by failing to consider appropriate behavior interventions at the March 2019 IEP team meeting. Student prevailed on Issue 7b.

Issue 7c: Long Beach denied Student a FAPE by failing to consider appropriate behavior interventions at the June 2019 IEP team meeting. Student prevailed on Issue 7c.

Issue 8a: Long Beach did not deny Student a FAPE by predetermining the IEP offer at the October 2018 IEP team meeting. Long Beach prevailed on Issue 8a.

Issue 8b: Long Beach did not deny Student a FAPE by predetermining the IEP offer at the March 2019 IEP team meeting. Long Beach prevailed on Issue 8b.

Issue 8c: Long Beach did not deny Student a FAPE by predetermining the IEP offer at the June 2019 IEP team meeting. Long Beach prevailed on Issue 8c.

Issue 8d: Long Beach did not deny Student a FAPE by predetermining the IEP offer at the October 2019 IEP team meeting. Long Beach prevailed on Issue 8d.

Issue 9a: Long Beach did not deny Student a FAPE by failing to make a clear IEP offer at the October 2018 IEP team meeting. Long Beach prevailed on Issue 9a.

Issue 9b: Long Beach did not deny Student a FAPE by failing to make a clear IEP offer at the March 2019 IEP team meeting. Long Beach prevailed on Issue 9b.

Issue 9c: Long Beach did not deny Student a FAPE by failing to make a clear IEP offer at the June 2019 IEP team meeting. Long Beach prevailed on Issue 9c.

Issue 9d: Long Beach did not deny Student a FAPE by failing to make a clear IEP offer at the October 2019 IEP team meeting. Long Beach prevailed on Issue 9d.

Issue 10: Long Beach did not deny Student a FAPE by failing to timely convene an IEP team meeting to consider independent educational evaluations pursuant to Parent's February 18, 2020 request. Long Beach prevailed on Issue 10.

Issue 11: Long Beach denied Student a FAPE by failing to implement the consented to IEP services after March 13, 2020. Student prevailed on Issue 11.

Issue 12: Long Beach did not deny Student a FAPE by failing to convene an IEP team meeting to discuss implementation of services during school closures in March 2020. Long Beach prevailed on Issue 12.

Issue 13a: Long Beach denied Student a FAPE in the 2018-2019 school year by failing to assess Student in functional behavior. Student prevailed on Issue 13a.

Issue 13b: Long Beach did not deny Student a FAPE in the 2018-2019 school year by failing to assess Student in educationally related mental health. Long Beach prevailed on Issue 13b.

Issue 14a: Long Beach denied Student a FAPE in the 2019-2020 school year by failing to assess Student in occupational therapy. Student prevailed on Issue 14a.

Issue 14b: Long Beach denied Student a FAPE in the 2019-2020 school year by failing to assess Student in assistive technology. Student prevailed on Issue 14b.

Issue 14c: Long Beach did not deny Student a FAPE in the 2019-2020 school year by failing to assess Student in transition. Long Beach prevailed on Issue 14c.

Issue 14d: Long Beach denied Student a FAPE in the 2019-2020 school year by failing to assess Student in functional behavior. Student prevailed on Issue 14d.

Issue 14e: Long Beach did not deny Student a FAPE in the 2019-2020 school year by failing to assess Student in educationally related mental health. Long Beach prevailed on Issue 14e.

Issue 15a: Long Beach denied Student a FAPE from October 2, 2017 through the 2018 extended school year by failing to offer appropriate goals. Student prevailed on Issue 15.

Issue 15b: Long Beach did not deny Student a FAPE from October 2, 2017 through the 2018 extended school year by failing to offer appropriate placement. Long Beach prevailed on Issue 15b.

Issue 15c: Long Beach did not deny Student a FAPE from October 2, 2017 through the 2018 extended school year by failing to offer appropriate academic instruction. Long Beach prevailed on Issue 15c.

Issue 15d: Long Beach denied Student a FAPE from October 2, 2017 through the 2018 extended school year by failing to offer appropriate speech and language services. Student prevailed on Issue 15d.

Issue 16a: Long Beach did not deny Student a FAPE from October 2, 2017 through the 2018 extended school year by failing to offer any occupational therapy services. Long Beach prevailed on Issue 16a.

Issue 16b: Long Beach did not deny Student a FAPE from October 2, 2017 through the 2018 extended school year by failing to offer any behavioral services. Long Beach prevailed on Issue 16b.

Issue 16c: Long Beach did not deny Student a FAPE from October 2, 2017 through the 2018 extended school year by failing to offer any social emotional services. Long Beach prevailed on Issue 16c.

Issue 17a: Long Beach denied Student a FAPE from the 2018-2019 school year through the 2019 extended school year by failing to offer appropriate goals. Student prevailed on Issue 17a.

Issue 17b: Long Beach did not deny Student a FAPE from the 2018-2019 school year through the 2019 extended school year by failing to offer appropriate placement. Long Beach prevailed on Issue 17b.

Issue 17c: Long Beach did not deny Student a FAPE from the 2018-2019 school year through the 2019 extended school year by failing to offer appropriate academic instruction. Long Beach prevailed on Issue 17c.

Issue 17d: Long Beach did not deny Student a FAPE from the 2018-2019 school year through the 2019 extended school year by failing to offer appropriate transition services. Long Beach prevailed on Issue 17d.

Issue 17e: Long Beach denied Student a FAPE from the 2018-2019 school year through the 2019 extended school year by failing to offer appropriate speech and language services. Student prevailed on Issue 17e.

Issue 18a: Long Beach did not deny Student a FAPE from the 2018-2019 school year through the 2019 extended school year by failing to offer any occupational therapy services. Long Beach prevailed on Issue 18a.

Issue 18b: Long Beach denied Student a FAPE from the 2018-2019 school year through the 2019 extended school year by failing to offer any behavioral services. Student prevailed on Issue 18b.

Issue 18c: Long Beach did not deny Student a FAPE from the 2018-2019 school year through the 2019 extended school year by failing to offer social emotional services. Long Beach prevailed on Issue 18c.

Issue 19a: Long Beach denied Student a FAPE from the 2019-2020 school year through the 2020 extended school year by failing to offer appropriate goals. Student prevailed on Issue 19a.

Issue 19b: Long Beach did not deny Student a FAPE from the 2019-2020 school year through the 2020 extended school year by failing to offer appropriate placement. Long Beach prevailed on Issue 19b.

Issue 19c: Long Beach did not deny Student a FAPE from the 2019-2020 school year through the 2020 extended school year by failing to offer appropriate academic instruction. Long Beach prevailed on Issue 19c.

Issue 19d: Long Beach did not deny Student a FAPE from the 2019-2020 school year through the 2020 extended school year by failing to offer appropriate transition services. Long Beach prevailed on Issue 19d.

Issue 19e: Long Beach denied Student a FAPE from the 2019-2020 school year through the 2020 extended school year by failing to offer appropriate speech and language services. Student prevailed on Issue 19e.

Issue 20a: Long Beach did not deny Student a FAPE from the 2019-2020 school year through the 2020 extended school year by failing to offer any occupational therapy services. Long Beach prevailed on Issue 20a.

Issue 20b: Long Beach denied Student a FAPE from the 2019-2020 school year through the 2019 extended school year by failing to offer any behavioral services. Student prevailed on Issue 20b.

Issue 20c: Long Beach did not deny Student a FAPE from the 2019-2020 school year through the 2020 extended school year by failing to offer any social emotional services. Long Beach prevailed on Issue 20c.

REMEDIES

Student requests compensatory education for Long Beach's FAPE denials, and training for Long Beach's staff regarding the IEP process and other special education procedures. Student also requests that Long Beach convene an IEP team meeting to consider the results of Hollar's and Papazyan's independent evaluations, paying for both of their attendance, and to discuss the COVID-19's impact on Student's IEP. Student also requests placement in a non-public school, a one-to-one aide, psychological services, an augmentative assistive communication device, parent training in

communication strategies including use of assistive technology device. Student requests evaluations by qualified Long Beach personnel or independent assessors in occupation therapy, functional behavior, augmentative assistive communication device, educationally related mental health, and transition. Long Beach contends Student did not meet her burden on any issue, and should not be entitled to any remedy.

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

Compensatory education is an equitable remedy that depends upon a fact-specific and individualized assessment of a student's current needs. (*Puyallup, supra*, 31 F.3d at p. 1496; *Reid v. District of Columbia* (D.C.Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place". (*Reid, supra*, 401 F.3d at p. 524; *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.* (9th Cir. 2011) 631 F.3d 1117, 1125.). However, hour-for-hour relief for a denial of FAPE is not required by law. (*Puyallup, supra*, 31 F.3d at p. 1497.) "[E]quitable considerations are relevant in fashioning relief." (*Burlington, supra*, 471 U.S. at p. 374.)

Long Beach denied Student FAPE under Issues 7b, 7c, 11, 13a, 14a, 14b, 14d, 15a, 15d, 17a, 17e, 18b, 19a, 19e, and 20b. Hollar recommended that Student receive one individual and two group speech and language intervention sessions per week, 45-

minutes each session, to work on Student's significant social skills/pragmatic language deficits. She reasonably opined that initially Student's sessions should be individual so that the speech and language pathologist could teach Student to tone, gestures, and indirect language to communicate. Student would then transition to group sessions to practice what she learned in the individual sessions. Hollar also recommended Lindamood-Bell's intensive visualizing and verbalizing program of three to four hours per day for eight to ten weeks as compensatory education for general language skills development.

Hollar persuasively opined that the intensity of her proposed remedies was appropriate to also ameliorate Student's deficits resulting from all of Long Beach's FAPE denials. Hollar opined Student required the intensity of Lindamood-Bell's intensive visualizing and verbalizing program to supplement the classroom strategies. Richter was trained in the same Lindamood-Bell strategies and incorporated them within the curriculum of Student's moderate to severe special day class. Because Richter also opined that Student responded well to the classroom Lindamood-Bell strategies, it was reasonable and appropriate to award both of Hollar's recommended remedies to compensate Student for all of Long Beach's FAPE denials.

Student is entitled to remedies from Long Beach for Issues 15a, 15d, 17a, 17e, 19a and 19e for failures to offer appropriate goals and speech and language services; Issues 7b and 7c for failures to consider behavior interventions; Issue 11 for failure to implement the IEP; Issues 13a and 14d for failures to assess behavior; Issue 14a for failure to assess in occupational therapy; Issue 14b for failure to assess in assistive technology; and Issues 18b and 20b for failures to offer behavior services. Based upon Hollar's opinions and credible recommendations, Student is entitled to 45 hours, based upon 45-minutes, three times a week for 20 weeks, of after-school speech therapy

services from a certified non-public agency of Parents' choosing. Student is also entitled to equitable remedies of Lindamood-Bell's intensive visualizing and verbalizing program of three to four hours per day for up to ten weeks. For Long Beach's failure to assess Student in behavior, occupational therapy, and assistive technology, Student is also entitled to a remedy of assessments in functional behavior, occupational therapy, and assistive technology. Long Beach shall initiate functional behavior, occupational therapy, and assistive technology assessments of Student within 10 school days of Student's return to on-site instruction by providing Parent with an assessment plan.

Student did not show the moderate to severe special day class placement was inappropriate to justify a change of placement award, or that Student should be awarded a non-public school placement as compensatory education. The evidence did not support compensatory awards of a one-to-one aide, psychological services, an augmentative assistive device, parent training, and Long Beach staff training, were appropriate.

ORDER

1. Long Beach shall fund 45 hours of after-school speech therapy services for Student by a certified non-public agency of Parents' choosing. The duration and frequency of service shall be determined by the provider. The services shall include both individual and group therapy as determined by the provider.
2. Long Beach shall contract with the non-public agency selected by Parent within 45 days of Parents notifying Long Beach, in writing, of the agency to provide the speech therapy services.
3. Within 30 days of this Decision, Long Beach shall fund Lindamood-Bell's intensive visualizing and verbalizing program of four hours per day for up to a total of ten weeks. Long Beach shall also fund assessments required by Lindamood-Bell in

relation to Student's enrollment in the intensive visualizing and verbalizing program.

4. Within 10 school days of Student's return to on-site instruction, Long Beach shall initiate a functional behavior, an occupational therapy, and an assistive technology assessment of Student by providing Parent with an assessment plan.
5. Any compensatory service time awarded by this Decision must be used by June 30, 2022. All unused hours remaining on July 1, 2022 shall be forfeited.
6. All other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

/s/

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings