

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020010423
CASE NO. 2020060184

PARENT ON BEHALF OF STUDENT,

v.

NORRIS SCHOOL DISTRICT.

DECISION

SEPTEMBER 2, 2020

On January 14, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on Student's behalf naming Norris School District. On May 7, 2020, OAH granted Student leave to file a First Amended Complaint, which reset all timelines. On June 4, 2020, Norris School District filed a due process hearing request with OAH, naming Student. On June 8, 2020, OAH consolidated the two cases. On June 26, 2020, OAH granted a continuance of the due process hearing for

good cause. Administrative Law Judge Adrienne L. Krikorian heard this matter by videoconference on July 14, 15, 16, 17, 20, 22, and 23, 2020.

Attorney Goriune Dudukgian represented Student. Paralegal and educational advocate Beverly Foster and Parents attended the hearing on Student's behalf. Attorneys Stephanie Gutcher and Melissa Allen represented Norris School District. Administrator of Student Services Russellyn Sullivan attended on Norris' behalf.

At the parties' request, OAH continued the matter to August 17, 2020, for written closing briefs. The record was closed, and the matter was submitted on August 17, 2020.

ISSUES

Student's Issues are numbered 1, 2, 3, 4 and 6. Norris' Issue is number 5. Free appropriate public education is referred to as FAPE. Individualized education program is referred to as IEP.

1. Did Norris School District deny Student a FAPE by materially failing to implement Student's November 27, 2018 and March 6, 2019 IEPs?
2. Did Norris School District deny Student a FAPE from November 28, 2018, by failing to conduct an appropriate functional behavioral assessment?
3. Did Norris School District deny Student a FAPE from November 28, 2018, by failing to offer IEPs that included:
4. Appropriate annual goals in the areas of academics, social skills, pragmatics, executive function, and behavior;
5. Adequate behavioral services;
6. A behavior intervention plan; and

7. Appropriate occupational therapy services?
8. Did Norris School District deny Student a FAPE by failing to make a clear written offer of FAPE in the November 21, 2019 IEP?
9. Did Norris School District offer Student a FAPE in Student's January 22, 2020 IEP, such that Norris School District may implement the January 22, 2020 IEP over Parents' objections?
10. Did Norris School District deny Student a FAPE during the 2020 COVID-19 school closure, through May 7, 2020, by failing to provide Student any appropriate special education or related services, including appropriately tailored alternative service delivery options?

JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The 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).)

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 had the burden of proof on Issues 1 through 4 and 6 as the filing party on those issues. Norris had the burden of proof on Issue 5, shared by Student to the extent Issue 3 included claims of denial of FAPE for the January 22, 2020 IEP.

Student was seven years old and ready to transition to second grade at the time of hearing. Student resided with Parents within Norris' geographic boundaries at all relevant times. Student was eligible for special education under the categories of autism, and speech and language in the areas of receptive and expressive language.

Student entered Norris' kindergarten program in August 2018. He had no formal school experience before he started kindergarten. Upon enrollment, Mother requested that Norris assess Student for eligibility for special education, based upon a suspected disability of autism. Norris assessed Student during the fall of 2018.

Student frequently avoided academic work, eloped from the classroom, and spent parts of the school day in the principal's or nurse's office, where he played with a tablet computer, from the start of school in August 2018, until the initial November 27, 2018 IEP team meeting. Student refused instructions in the classroom by adults and engaged in work refusal behaviors that interfered with his access to the educational program. During the first semester of kindergarten, Parents occasionally picked Student up from school, at Norris' request, before the kindergarten school day ended, because of Student's behaviors and work refusal.

ISSUE 1: DID NORRIS SCHOOL DISTRICT DENY STUDENT A FAPE BY MATERIALLY FAILING TO IMPLEMENT STUDENT'S NOVEMBER 27, 2018 AND MARCH 6, 2019 IEPs?

Student contends Norris denied Student a FAPE by failing to implement Student's November 27, 2018 and March 6, 2019 IEPs. Norris contends it materially implemented Student's November 27, 2018 IEP by making a good faith effort to provide IEP services, using a variety of tools and techniques to address Student's refusal behaviors. Norris also contends it attempted to modify Student's IEP in March 2019 to address Student's behaviors, but Parents refused to consent to the changes.

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.) Where a student alleges the denial of a FAPE based on the failure to implement an IEP, in order to prevail, the student must prove that any failure to implement the IEP was "material," which means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 822 (*Van*

Duyn).) No statutory requirement of perfect adherence to the IEP exists, nor does any reason rooted in the statutory text exist to view minor implementation failures as denials of a FAPE. (*Id.* at p. 821.) "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." (*Van Duyn*, 502 F.3d at p. 815.)

Student's Issue 1 is limited to Student's claim that Norris failed to implement his IEP through March 17, 2020. The time period from March 18, 2020, through May 7, 2020, is discussed under Issue 6.

NOVEMBER 27, 2018 IEP AS AMENDED

Student's initial IEP team met on November 27, 2018, three months after Student started kindergarten. Parents actively participated in the meeting. The IEP team considered a psychoeducational assessment report by school psychologist Stacy Limpias, and a speech and language assessment report by speech therapist Andrea Zielsdorf. The IEP team found Student eligible for special education under the categories of autism, and speech and language in the areas of receptive and expressive language.

The IEP team discussed placement in general education and special day class environments. The IEP team explained that a special day class would have a smaller class size and more adult support for Student, given his behavior of work refusal and elopement from class. Parents wanted to see if Student could benefit from general education before putting him in a more restrictive environment. The IEP team also discussed shortening Student's school day temporarily, with an incremental return to the full day as he adjusted to school. Mother expressed concern about a shortened school day.

The IEP team offered Student placement in a general education kindergarten for the full kindergarten school day, for the regular school year, until Student's next annual IEP in November 2019. The IEP provided for 6,300 out of 6,420 monthly minutes in the general education classroom. The IEP team offered Student 160 minutes a month of one-to-one specialized academic instruction in the general education classroom, and 120 minutes a month of speech and language services in a separate classroom. The IEP included five communication goals and one social emotional goal. The IEP team offered 13 accommodations and modifications for classroom instruction, including warnings before transitions, choices of tasks, preferential seating next to peers, frequent breaks, and single directions given in a variety of ways. Parents consented to the November 27, 2018 IEP.

On November 28, 2018, Father signed a Ladder of Success contract with Norris. The contract provided for a modified school day until January 22, 2019, when Student would return to a full day, ending at 1:35 p.m. Norris used Ladder of Success contracts for any child, including general education students, in kindergarten who needed time to adjust to the school environment. The Ladder of Success contract temporarily shortened the number of minutes per day in the general education classroom but did not change the number of minutes of specialized academic instruction and speech therapy in Student's IEP.

Norris amended the November 27, 2018 IEP on December 12, 2018, which combined this Decision refers to as the November 27, 2018 IEP. The amendment added 240 minutes of daily specialized academic instruction and 60 minutes monthly of speech and language services for the 2019 extended school year. The November 27, 2018 IEP remained Student's operative IEP until May 7, 2020.

Student's schedule in kindergarten with the Ladder of Success contract resulted in less than a full school day of general academic instruction and social interaction, depriving him of educational benefit. Although the contract provided that Student would return to a full time schedule by January 22, 2019, Student's school schedule did not change back to a full school day before the end of the 2018-2019 regular school year. Student therefore did not receive the benefit of having access to a full school day of instruction at any time after November 27, 2018, through the end of the 2018-2019 school year.

Norris contends it discussed extending the Ladder of Success contract with Mother and her advocate at a March 22 2019 IEP team meeting. Mother advised Norris she would consider extending the contract, but never agreed in writing to change the date for Student's return to full time. Most important, Parents did not consent in writing at any IEP team meeting to amend Student's November 27, 2018 IEP to change the number of minutes at school through the end of the 2018-2019 school year. Norris' argument that Parents consented to less IEP services was therefore not persuasive.

Norris also did not deliver the full number of minutes of specialized academic instruction or any one-to-one speech therapy called for in Student's November 27, 2018 IEP, at any time after Parents signed the IEP, through March 17, 2020, because of Student's frequent elopement and work refusal. When Student started first grade, he generally attended for the full school day. However, as he did in kindergarten, Student continued to refuse to cooperate with speech therapist Zielsdorf. Student did not meaningfully benefit from speech therapy services in kindergarten or first grade.

Student also resisted specialized academic instruction from his resource teachers, although he received some instruction. Student often eloped to the office, missing

classroom instruction as a result. Student's behaviors interfered with his ability to access his education and he did not make meaningful progress toward his IEP goals, through March 17, 2020.

Student proved Norris did not implement the November 27, 2018 IEP as written. However, under *Van Duyn, supra*, at 502 F.3d p. 822, the analysis of whether that resulted in a denial of FAPE requires consideration of whether the failure to implement the IEP was material. For a material failure to exist, Student had the burden of showing that there was more than a minor discrepancy between the services provided Student and those required by the IEP. (*Id.* at p. 815.)

Student proved Norris failed to materially implement the IEP. Norris was obligated to continue implementing the November 2018 IEP, for as long as it remained Student's operative IEP. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) Student's IEP called for a full school day of general education academic instruction, less 260 minutes of related services. Student received only a fraction of speech therapy, missed approximately 52 hours of general education instruction in kindergarten, and received only some of his specialized academic instruction during the relevant time period. Student received little educational benefit from the November 27, 2018 IEP through March 17, 2020. Norris' failure to implement the IEP by not providing the full amount of hours of instruction and speech therapy services was a material failure to implement under *Van Duyn*, and resulted in a denial of FAPE. (*Van Duyn, supra*, 502 F.3d at p. p815.)

MARCH 6, 2019 IEP

In early January 2019, Parents contacted school administrators and voiced concern over Student's sensory needs and his behaviors at school. Norris referred

Student for an occupational therapy assessment on January 8, 2019. The IEP team met on March 6, 2019 to discuss the occupational therapy assessment. Because Parents' educational advocate could not attend the meeting, Norris closed the meeting with Parents' permission. The IEP meeting resumed on March 22, 2019. The IEP team considered the occupational therapy assessment. The occupational therapy assessment is discussed under Issue 3.

The March 22, 2019 IEP team also discussed Student's behaviors, their impact on his classroom experience, and Student's refusal to participate in speech therapy services, even when a classroom behavioral aide attempted to help Student. The IEP team discussed Student's progress toward his goals, and the impact his behaviors had on his progress. Student's advocate and Parents actively participated in a discussion regarding whether Student would benefit from a functional behavioral assessment and an assistive technology assessment, the need for a one-to-one aide trained in Applied Behavioral Analysis, and changing placement to a special day class.

Parent declined to consider changing Student's placement to a special day class until Norris completed the testing Parent requested, including a functional behavioral assessment. Parent signed the IEP dated March 6, 2019 IEP for attendance only.

Student's contention that Norris denied Student a FAPE by failing to implement the March 6, 2019 IEP was unsupported by the evidence. Parents did not consent to implement the March 6, 2019 IEP. Norris could not implement the March 2019 IEP, and was obligated to continue implementing the November 27, 2018 IEP, as long as it remained Student's operative IEP. Therefore, Norris did not deny Student a FAPE by failing to implement the March 6, 2019 IEP.

ISSUE 2: DID NORRIS SCHOOL DISTRICT DENY STUDENT A FAPE FROM NOVEMBER 28, 2018, BY FAILING TO CONDUCT AN APPROPRIATE FUNCTIONAL BEHAVIORAL ASSESSMENT?

Student contends Norris denied Student a FAPE by failing to conduct an appropriate functional behavioral assessment. Student claims Norris delayed assessment to determine if Student's behavior problems decreased as he acclimated to kindergarten. Student also contends Norris' October 2019 functional behavioral assessment was procedurally deficient. Norris contends conducting a functional behavioral assessment before Norris' October 2019 assessment was premature because Student needed time to acclimate to the school environment. Norris also contends the assessment met all procedural requirements and resulted in a report the IEP team considered in connection with its November 2019 and January 2020 IEP offers for special education and related services.

To determine the contents of an IEP, a student eligible for special education under the IDEA must be assessed in all areas related to his or her suspected disability. No single procedure may be used as the sole criterion for determining whether the student has a disability or whether the student's educational program is appropriate. (20 U.S.C. § 1414 (a)(2), (3); Ed. Code § 56320, subd. (e), (f).)

For purposes of evaluating a child for special education eligibility, the assessment must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive

and behavioral factors, in addition to physical or developmental factors. The determination of what tests are required is made based on information known at the time. (*Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158.)

The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) No single measure shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

Individuals who are both “knowledgeable of the student’s disability” and “competent to perform the assessment, as determined by the school district, county office, or special education local plan area” must conduct assessments of students’ suspected disabilities. (Ed. Code §§ 56320, subd. (g); 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) A school district is also required to ensure the evaluation is sufficiently comprehensive to identify all of the child’s needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

FAILURE TO ASSESS UNTIL OCTOBER 2019

A disability is “suspected,” and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may

have a particular disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1120-21.) That notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*Id.* at p. 13 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, and *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202].)

Parents requested a functional behavioral assessment in December 2018. Norris responded with a prior written notice declining to assess and advising Parents that Norris wanted to give Student time to acclimate to kindergarten. Parents continued to express concern about Student's behaviors through the 2018-2019 school year, requesting one-to-one aide support and more attention to Student's behaviors.

Psychologist Dr. Betty Jo Freeman testified at hearing. Dr. Freeman conducted an independent educational evaluation of Student in October 2019, including testing, parent and teacher interviews, and she observed Student at school. She documented her findings in a report dated October 7, 2019. Dr. Freeman observed Student again on November 13, 2019, and presented her report to the IEP team on that day. She also participated in a January 22, 2020 IEP team meeting by telephone.

Dr. Freeman's education and credentials included a PhD in 1968-69, and extensive clinical training and experience. She published numerous articles and presented trainings to groups including school districts on the subject of behaviors and autism. Her specialty was working with autistic children. She held the position of Emerita Professor at UCLA after 2004. She testified and consulted in numerous legal matters involving children with special needs. Dr. Freeman's testimony was credible

based on her credentials, and her knowledge of Student through assessments and IEP team meeting discussions.

Dr. Freeman concluded that, characteristic of a child with autism, Student did not know how to learn from the time he entered kindergarten. She opined Norris should have evaluated Student's refusal and elopement behaviors shortly after Student started kindergarten, based on his behaviors of hiding behind chairs, requiring attention all the time, aggression towards the teacher and elopement. A proper functional behavioral assessment at that time would have shown areas of difficulty.

Independent assessor Jeffrey Hayden, BCBA-D, testified at hearing and concurred with Dr. Freeman's conclusions regarding the need for a functional behavioral assessment. Dr. Hayden was a Board Certified Behavior Analyst-Doctoral, with a PhD in education with emphases in special education, disability, and risk. He was knowledgeable in the area of behavior based upon his education and work experience. Dr. Hayden reviewed Student's educational records in January 2020 as the first part of an independent educational functional behavior assessment, which was interrupted by the COVID-19 school closure in March 2020. He had not completed the assessment by observing Student at school or collecting data on Student's behaviors. Dr. Hayden's testimony was credible to the extent relevant based upon his academic credentials, his experience in the field of Applied Behavioral Analysis, his familiarity with functional behavioral analyses, and his review of Student's educational records.

Speech therapist Shawn Manvell, and occupational therapist Dr. Kelly Auld-Wright, whose credentials are discussed under Issue 3(a) and 3(d), respectively, agreed with Dr. Freeman and Dr. Hayden's conclusions. Each of Student's independent assessors were confident the results of a functional behavioral assessment, as part of

Student's initial assessments, was warranted and would have led to development of a behavior intervention plan and IEP team consideration of a one-to-one aide trained in Applied Behavioral Analysis in kindergarten.

NORRIS' OCTOBER 2019 ASSESSMENT

In late May 2019, Norris agreed to conduct a functional behavioral assessment. School psychologist Limpas conducted the assessment in October 2019, after Student started first grade. She also conducted a special circumstances instructional aide assessment at that time. Limpas held a master's degree in school psychology and a pupil personnel services credential. She was a certified licensed educational psychologist, with training in multiple areas including assessments and behavior interventions and supports. She worked for Norris as a school psychologist since 2009. She was familiar with Student based on interactions with him in kindergarten and first grade. Limpas' credentials, in combination with her familiarity with Student, qualified her to conduct Student's behavior assessments.

Limpas documented the assessment results in a written report dated October 19, 2019. Limpas testified at hearing. Limpas' testimony was credible based on Limpas' credentials and experience in the area of school psychology, her familiarity with and assessments of Student, attendance at Student's IEP meetings, and her interactions with Student at school.

Limpas reviewed Student's educational records, including the psychoeducational assessment and related interviews of Student in fall 2018. She interviewed Student's past and current classroom teachers, Student's first grade resource support teacher Sandra McEwen, Student's extended school year special education teacher Brandi Church, Student, and Parents. Limpas thoroughly summarized those interviews in her

report. Student could not participate in an interview because of his refusal to cooperate by answering questions.

Limpas also observed Student at school on several occasions as part of her assessment. The first observation lasted an entire school day. Ten subsequent observations lasted one hour each day, and were conducted from 1:00 p.m. to 2:00 p.m., just before the end of the school day. Limpas chose that time frame because Student's teacher reported his target behaviors increased after lunch. She summarized Student's IEP service minutes, and noted that Student participated in the extended school year day class. She noted additional assessments requested by Parents, including a special circumstance instructional assistant assessment, assistive technology, augmentative alternative communication, and independent evaluations in speech and language, psychoeducational and occupational therapy.

Limpas found Student had average school attendance. Student had 16 log entries due to behavior incidents from fall 2018 through September 10, 2019. Some entries referred to refusal and protest behaviors. Behaviors included eloping, which were sometimes the result of a request made of Student. Other behaviors included Student hitting or kicking a teacher or adult who requested that Student perform a non-preferred task. The report noted previous interventions and their effectiveness. Student had some success in extended school year, where his eloping behaviors decreased from multiple times a day, to once or twice towards the end of extended school year. Limpas' data was consistent with testimony from extended school year special education teacher Brandi Church, who had successfully used multiple and various interventions during extended school year to reduce Student's task avoidance behaviors, resulting in improved behaviors at the end of extended school year.

Limpas described Student's target behavior as "refusal." Limpas summarized antecedent and consequences of Student's refusal behavior. Limpas defined the behavior as each time a request was given directly to Student, Student shouted "no" or "I'm too busy" or "I can't" or "go away." At times, Student ignored the request and refused to comply, and occasionally went to a preferred behavior like playing with trains. After too many requests were made, Student would then elope from the classroom. Student refused tasks approximately nine times a day on average, between 1:00 p.m. and 2:00 p.m. On one day, Limpas observed no refusals because it was a free day where the teacher made no academic demands of the classroom.

Limpas described the desired replacement behavior as complying with a request given to the class as a whole, or individually to Student, and following the direction the first time it was given, or after the first prompt. Student was compliant with instructions during the 1:00 p.m. to 2:00 p.m. time frame on average one tenth of the time. Limpas also described the functional equivalent replacement behavior as Student requesting an appropriate alternative, from options that were teacher approved. Student would then ask for help, or negotiate and partially comply. The functional equivalent replacement behavior was intended to offer Student an alternative to the refusal behavior, to allow Student to continue to avoid non-preferred tasks and access a desired activity or item.

Limpas developed a report after collecting data, and recommended the IEP team adopt a behavior intervention plan with behavior goals. She recommended three goals for the IEP team to consider, including reducing target behavior, engaging in desired replacement behavior, and participating in modified activities that allow Student to engage differently, partially, and or negotiate partial compliance.

On November 22, 2019, Norris held an IEP team meeting to review its functional behavioral assessment with Parents. Parents disagreed with the functional behavioral assessment, and requested an independent educational evaluation by Dr. Hayden. Norris agreed to Parents' request and contracted with Dr. Hayden to conduct an independent functional behavior assessment.

Dr. Hayden reviewed Limpas' functional behavioral assessment. He was critical of most aspects of the report. For example, Dr. Hayden criticized the one-hour observations conducted by Limpas, questioning the choice of times she observed. He also criticized the description of the desired replacement behavior as deficient and vague. Dr. Hayden opined the report should have included the details of data collected or an analysis of the data beyond the general narrative. Dr. Hayden criticized the proposed goals in Limpas' report as not appropriate. He opined the goals did not address the primary function of the behavior. Dr. Hayden was critical of the third proposed goal because it sought partial compliance, and was not sufficiently specific or workable

Dr. Hayden opined that Norris' functional behavioral assessment was not sufficiently detailed to address all of Student's unique behavioral needs. The purpose of a functional behavioral assessment was to inform the IEP team and those providers who will work with a student of sufficient detailed data to enable the team to develop an appropriate behavior intervention plan that could be implemented, and data collected during implementation.

In *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), the Ninth Circuit noted that actions of a school district cannot be judged exclusively in

hindsight. An IEP must take into account what was and was not objectively reasonable at the time the IEP was drafted.

Adams is applicable here as it relates to Dr. Hayden's opinions of the functional behavioral assessment. Dr. Hayden's opinions were informative to the extent they addressed his opinion of shortcomings of the assessment report. However, Dr. Hayden's opinions were not persuasive. Dr. Hayden had never met or observed Student or collected data on Student's observed behaviors. Dr. Hayden never attended an IEP meeting, had not yet discussed his opinions about Norris' functional behavioral assessment with Limpas or any member of the IEP team, and had not yet completed Student's independent evaluation. Therefore, Dr. Hayden's opinions did not carry enough weight to prove that Norris' functional behavioral assessment was so procedurally deficient that it resulted in Norris denying Student a FAPE.

In summary, Norris procedurally violated the IDEA by failing to assess Student in the area of behavior while he was in kindergarten. Norris had enough information about Student's behaviors and their impact on his access to his education from before the initial IEP meeting to prompt Norris to initiate a functional behavioral assessment for Student well before the end of the 2018-2019 school year. Norris denied Student a FAPE by significantly depriving Parents of the opportunity to meaningfully participate in the development of Student's educational program, and by depriving Student of educational benefit.

Student did not prove that Norris denied Student a FAPE by failing to conduct an appropriate functional behavioral assessment in October 2019. Limpas' report was procedurally compliant and contained sufficient information for an IEP team to develop

a behavior intervention plan, determine how it would be implemented, and draft appropriate goals for Student.

ISSUES 3(A) THROUGH 3(D): DID NORRIS SCHOOL DISTRICT DENY STUDENT A FAPE FROM NOVEMBER 28, 2018, BY FAILING TO OFFER IEPs THAT INCLUDED APPROPRIATE ANNUAL GOALS IN THE AREAS OF ACADEMICS, SOCIAL SKILLS, PRAGMATICS, EXECUTIVE FUNCTION, AND BEHAVIOR; ADEQUATE BEHAVIORAL SERVICES; A BEHAVIOR INTERVENTION PLAN; AND APPROPRIATE OCCUPATIONAL THERAPY SERVICES?

The following discussion of Issues 3(a) through 3(d) focuses on the appropriateness of Student's goals and services in the November 27, 2018 IEP until January 22, 2020. The appropriateness of the January 22, 2020 IEP offer of placement, goals and services, and Student's claims and defenses associated with that IEP, are discussed under Issue 5 of this Decision. The discussion under Issue 5 concludes Student did not meet his burden of proof on Issues 3(a), 3(b), 3(c) and 3(d) with respect to the January 22, 2020 IEP.

ISSUE 3(A) – ANNUAL GOALS FROM NOVEMBER 18, 2018 UNTIL JANUARY 22, 2020

Student contends the six annual IEP goals in Student's November 27, 2018 IEP were insufficient to address his needs at school for him to gain educational benefit. Student contends Norris did not offer any additional appropriate goals in the area of occupational therapy, pragmatics, executive functioning, academics and behavior, up to

the time the original complaint was filed. Norris contends the goals drafted at the initial IEP meeting in November 2018 were appropriate, incorporated Student's needs in pragmatics, academics, behavior and executive functioning, and were sufficient to address Student's needs as they were known to the IEP team at the time.

Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.) In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000] (*Endrew F.*))

The IEP for each child with a disability must include a statement of measurable annual goals. The statement of goals must include benchmarks or short-term objectives related to meeting the child's needs that result from the child's disability. The goals must be designed to enable the child to be involved in and progress in the general curriculum, and to meet each of the child's other educational needs that result from the child's disability. (34 CFR §300.347(a)(2).) The IEP for each child with a disability must include a statement of how the child's progress toward the child's annual goals will be measured.

The IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are

being achieved, and a statement of how the student's progress toward the goals will be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D. Cal. 2017, No. CV16-04356-BRO) 2017 WL 2864945; see also Ed. Code, § 56345; 20 U.S.C. § 1414(d)(1)(A)(i).) An examination of the goals in an IEP is central to the determination of whether a student received a FAPE. IEP goals and goal achieving methods are considered as of the time the plan was implemented. The examination of those goals asks whether those methods were "reasonably calculated" to confer a meaningful benefit. (*Adams, supra*, 195 F.3d at p. 1149.)

The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) 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 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. 2011, No. 7:10-cv-01873-JMC) 57 IDELR 128.). The IEP must contain a description of how the child's progress toward meeting the annual goals described will be measured and when periodic reports on the progress the child is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided. (20 U.S.C.A. § 1414(d)(1)(A)(iii).)

NOVEMBER 27, 2018 IEP

Student's initial IEP had six annual goals. Goals 1 through 5 were in communication and the IEP team developed those goals based on Norris' initial speech and language assessment. Goal 6 was a social emotional goal based on school psychologist Limpas' psychoeducational assessment and Student's behaviors observed during the three months before the initial IEP team meeting.

Student's initial psychoeducational assessment established that Student's skills in reading comprehension, math comprehension, and written expression were low. Student performed below Norris' standards in math, and far below in English Language Arts. The initial psychoeducation report recommended support in the academic areas of deficit. However, the IEP team did not provide any specific goals in academics, focusing instead on Student's communication and social skills.

Administrator Sullivan opined at hearing that Goals 3 and 5, in communication, were inclusive of Student's needs in pragmatics. The IEP team designed each of those goals to help student express himself and understand others, as recommended by Zielsdorf's initial speech and language report. Sullivan also opined each of the goals was intended to address Student's behaviors in accessing his academics. However, none of the goals specifically addressed academic needs noted in the initial psychoeducational assessment.

Speech and language pathologists Shawn Manvell and Samantha Tan of Achievement Center for Therapy conducted an independent educational evaluation in speech and language for Student in October 2019. Their report, dated October 8, 2019, reflected their assessment results. Manvell testified at hearing, but did not attend any

IEP meetings for Student. Tan attended Student's IEP team meeting on November 13, 2019, but did not testify at hearing.

Manvell held a master's degree in speech pathology and was licensed as a speech pathologist in 2000. She worked in private practice with students with IEPs. She has assessed over 100 children during her career, and performed approximately 25-30 independent speech evaluations. Manvell privately provided communication disorder therapy, pediatric feeding and augmentative alternative communication services.

Tan and Manvell interviewed Parent, who attended the assessment with Student. Manvell reviewed Student's November 2018 IEP, and Norris' initial speech and language assessment. The assessors unsuccessfully attempted to administer standardized tests to Student. Student was not cooperative, engaged in striking, tantrums, crying and refused to continue. The assessors could not acquire baseline and ceiling data on Student. Manvell opined that, based upon her experience, the independent assessment nevertheless provided valid and reliable results.

Manvell concluded Student had a moderate to severe pragmatic delay, delayed vocabulary, delayed morphology or the structure of use of language, and delayed receptive and expressive language. Manvell opined Student's "prognosis" was excellent. Manvell acknowledged at hearing that the independent assessment results were consistent with Norris' speech and language assessment results. Manvell did not propose any goals in her independent assessment report.

Manvell's report noted that the "current communication goals through his current IEP" were "appropriate to assist in remediation of current speech and language skills." Tan attended Student's November 13, 2019 IEP team meeting. Tan reported to

the IEP team that she and Manvell thought the IEP goals from the November 2018 IEP were "good goals" for Student to work on.

At hearing, Manvell opined that Student's initial five IEP communication goals were "appropriate and fair". However, she also inconsistently criticized two of the five communication goals, and the social emotional goal, Goal 6. The inconsistency impacted the credibility of her testimony. Manvell opined that Goals 1 and 5 required a level of functioning too high for Student. Manvell opined Goal 6 was inappropriate because Student did not have the skill set for expressive language, or receptive skills, to meet the goal. Manvell was critical that the November 2018 IEP did not include any goals in the area of pragmatics, which was a known deficit for Student when he started kindergarten. She also opined Student required at least four pragmatic goals to lay a foundation of skills leading to adding a peer buddy.

Manvell's testimony at hearing was confusing and contradictory. However, to the extent Manvell's criticisms of Goals 1, 5 and 6 were consistent with testimony from Dr. Freeman and independent assessor occupational therapist Dr. Kelly Auld-Wright, both of whom attended IEP team meetings for Student, Manvell's criticisms received some weight.

Norris argued it did not offer separate academic goals in November 2018 because Student did not have preschool experience and needed to learn to "be a student and stay in class". Norris also argued that Student's needs required the team to focus on Student's behavior before he could access his academics. Norris' argument was not persuasive, and failed to show that Student did not require academic goals at that time.

Dr. Freeman opined, based on cognitive testing, that Student had the cognitive ability to handle grade level curriculum with proper modifications in place. Student's autism diagnosis impacted his ability to learn, in part because of behavioral deficits. Student also had deficits in executive function relating to self-organization and behavioral regulation. Dr. Freeman opined Student demonstrated deficits in following two-step instructions when he started working with the curriculum. Student's language processing deficits and behaviors were impeding him from learning. Student had a major deficit in coping skills and managing his own behaviors. Student required social goals and communication goals to manage his language processing deficits, including in pragmatics.

Dr. Freeman was critical of Goal 6, which Sullivan opined included executive function aspects. Goal 6 was not measurable because it had no baseline. The goal provided that, through the use of reinforcers, Student would increase his on-task behavior when denied a preferred activity. He would be able to verbalize his feelings, accept feedback, and resume the task at hand without engaging in negative behaviors, such as refusing to participate, in four out of five trials in two week increments. The goal included three incremental objectives. Without a baseline, it was not possible to measure Student's progress for this goal.

Dr. Freeman opined Student's IEP goals should have been drafted around his behavior, which they were not. Student needed to learn to enter the classroom, sit down and engage in activities. He needed a positive goal to use his replacement behavior. He required a goal addressing early stages of executive functioning, and learning to comply with a teacher's commands. The goals in the November 2018 IEP addressed methods of decreasing his inappropriate behaviors rather than teaching him positive behaviors, rendering them inappropriate for Student.

Student proved that Norris denied him a FAPE in the November 27, 2018 IEP, by failing to offer Student appropriate goals in academics, communication and behavior specifically addressing Student's pragmatic and semantic needs, his refusal behavior, or, as recommended by Dr. Freeman, any goals in executive functioning to address self-organization and behavioral regulation. Goal 6 was an incomplete and immeasurable social emotional goal.

MARCH 6, 2019 IEP; JUNE 14, 2020 IEP; AUGUST 20, 2019 IEPS

The IEP team met on March 6, 2019 and March 22, 2019, to discuss Student's present levels of performance and Norris' occupational therapy assessment. The IEP team did not find Student eligible for occupational therapy and did not offer new goals in any area of need.

Dr. Auld-Wright conducted an independent evaluation of Student in the area of occupational therapy in October 2019. Her assessment included a review of Student's records, including his November 27, 2018 IEP and Norris' occupational therapy assessment report. She documented her findings in a written report. Dr. Auld-Wright had a doctorate in occupational therapy, and was licensed and registered in California. She worked for a large school district in Southern California for six years as a clinical advisory therapist. Dr. Auld-Wright assessed close to 1000 students, attended IEP team meetings, and participated in the development of occupational therapy goals. She conducted approximately 20-30 independent evaluations in her private practice since 2019. Dr. Auld-Wright participated in Student's November 21, 2019 IEP meeting. Dr. Auld-Wright's testimony was credible based upon her credentials and understanding of Student's needs based on her assessment observations in the classroom, parent and teacher interviews, and records review.

Dr. Auld-Wright opined that Student had sensory and fine motor deficits that required goals. Her opinions regarding Student's needs for occupational therapy services is discussed under Issue 3(d). Dr. Auld-Wright was critical of Norris' March 2019 occupational therapy assessment. In her opinion, the conclusions reached by Norris' assessor were focused on Student's behaviors, in part because Student was resistant to assessment tasks. The conclusions were therefore based upon Student's preferred activities. Dr. Auld-Wright disagreed with Norris' assessor's conclusion that Student's fine and visual motor skills were functional for school participation. Norris' conclusions did not acknowledge visual motor or sensory issues, which Dr. Auld-Wright observed evidence of in Student's records.

Dr. Auld-Wright credibly opined Student demonstrated historic needs in occupational therapy that required goals based on the data in Norris' occupational therapy assessment from spring 2019. Sensory needs are common in young children with autism. Student could not hold a pencil, which Dr. Auld-Wright opined was not a behavioral issue. Student demonstrated deficits in tactile perception, and difficulty with praxis, or the ability to plan, organize and carry out a sequence of unfamiliar actions. Those deficits impacted handwriting and imitating motions.

Dr. Auld-Wright's testimony credibly established that the deficits she observed in Student existed when he was in kindergarten, based upon her review of Student's records and her own assessment. Occupational therapy goals would have benefited Student if he had been found eligible for occupational therapy services in March 2019.

Norris denied Student a FAPE by failing to offer occupational therapy goals until January 22, 2020. Dr. Auld-Wright recommended eleven sample IEP goals in her report to address Student needs in sensory reactivity to tactile, movement and auditory

information. Dr. Auld-Wright recommended goals to address vestibular integration to maintain position and coordination of head, eyes, trunk and limbs. She recommended goals to address Student's needs in graphomotor and fine motor skills, affecting handwriting. She also recommended goals to address Student's body awareness and tactile responses, and conceptualizing and following through with a plan. Under *Adams, supra*, 195 F.3d at p. 1149, Dr. Auld-Wright's recommendations for goals were credible and relevant. Dr. Auld-Wright determined from her assessment and review of records that the deficits in fine and gross motor skills that she observed in Student existed in kindergarten. Norris should have recognized those needs from and after Student's initial IEP team meeting on November 27, 2018, and certainly by the time of the March 22, 2019 IEP team meeting.

Student's IEP team met in June 2019 and August 2019 to discuss Parents' requests for assessments and progress after the extended school year. The IEP team made no changes to Student's November 27, 2018 IEP at either meeting.

Student proved Norris denied Student a FAPE by failing to offer appropriate goals from November 27, 2018, until the January 22, 2020 IEP offer. Student proved that the IEP team had acquired sufficient information about Student at and after Student's initial IEP team meeting, to consider and develop additional goals in academics, social skills, pragmatics, executive function, occupational therapy and behavior after the November 27, 2018 IEP.

ISSUES 3(B) AND 3(C) - BEHAVIORAL SERVICES AND BEHAVIOR
INTERVENTION PLAN FROM NOVEMBER 27, 2018, UNTIL JANUARY 22,
2019

Student contends Norris denied Student a FAPE by failing to offer appropriate behavior services or a behavior intervention plan to address Student's known behaviors at or after the November 27, 2018 IEP team meeting. Norris contends it did not deny FAPE because it employed numerous interventions regarding Student's behaviors through the first semester of first grade. Student met his burden of proof.

Special education resource teacher McEwen held a bachelor's degree in child development, a multiple subject and learning handicap credential, and a resource specialist program credential. McEwen taught since 1966, and was employed as a special education teacher by Norris since 1999. Her credentials, experience, and knowledge of Student rendered her testimony persuasive and credible. McEwen was Student's resource support program teacher in first grade. McEwen performed initial academic assessments for Student as part of the initial psychoeducational assessment, and served as his resource teacher in first grade. McEwen also observed Student in various settings in kindergarten before he was eligible for special education.

Brandi Church was a credentialed special education teacher with a master's degree in special education. Her work experience included teaching at a learning center as a resource support teacher in a mixed special day and resource setting. Church was employed by Norris as a special education teacher for over five years. Church observed Student as part of a kindergarten classroom observation, and later taught Student in extended school year 2019.

Both special education teachers credibly testified at hearing based on their credentials and their knowledge of Student. Both teachers credibly opined that Student's elopement and work refusal were behaviors that substantially interfered with Student's access to his educational program. Church opined Student required additional adult support in the extended school year classroom. Student's behaviors subsided when Student was permitted to engage in preferred activities or received preferred rewards, such as "Toy Story cards."

Norris engaged school psychologist and board certified behavior analyst Josh Stuart to assess Student in the area of educationally related mental health services in January 2020. Student's IEP team had not yet reviewed Mr. Stuart's March 25, 2020 assessment report before the COVID-19 closure. Stuart worked in education for over 20 years. He was also a credentialed teacher and worked in school administration. Stuart provided credible opinions relating to Student's behaviors based upon his credentials and experience, and his observations of Student during his assessment. Although his report had not yet been reviewed by the IEP team, Stuart credibly testified at hearing, concurring with Limpas and Dr. Freeman, that Student required daily and explicit instruction and systematic teaching using Applied Behavioral Analysis from an appropriately trained aide to acquire appropriate behavior skills.

Dr. Freeman credibly opined, based on Student's records and her own observations, Norris was inappropriately managing Student's behaviors by allowing him to do what he wanted to avoid a "meltdown." Freeman opined that Norris' approach to determine how to address Student's needs using trial and error was not appropriate for Student.

Student made no meaningful progress toward his IEP goals largely because of his behavior. He did not access his speech and language services because of his refusal behaviors. He did not benefit from specialized academic instruction or instruction from the general education teacher because of his refusal behaviors. Student proved that Norris denied him a FAPE from November 27, 2018, until January 22, 2020, by failing to offer an appropriate behavior intervention plan and behavioral services consistent with a behavior plan.

ISSUE 3(D) - OCCUPATIONAL THERAPY SERVICES FROM NOVEMBER 27, 2018, UNTIL JANUARY 22, 2020

Student proved that Norris denied Student a FAPE by failing to offer any occupational therapy services after March 22, 2019, through the January 22, 2020 IEP. Dr. Auld-Wright credibly testified that Student's sensory needs were evident in kindergarten and that he would have benefited from occupational therapy services if the IEP team had offered them in March 2019. The IEP team acknowledged at the November 2019 IEP team meetings that Student needed occupational therapy services to access his educational program. Norris did not formally offer Student any occupational therapy services until the January 22, 2020 IEP offer, despite evidence that it had knowledge of Student's needs in occupational therapy at least as early as March 2019. Norris' failure to offer any occupational therapy services during that time denied Student a FAPE.

In summary, Student prevailed on Issues 3(a), (b), (c), and (d), regarding IEPs from November 27, 2018, until the January 22, 2020 IEP offer, by proving Norris failed to offer appropriate measurable goals in all areas of need, a behavioral intervention plan and associated behavioral services, and occupational therapy services.

ISSUE 4: DID NORRIS SCHOOL DISTRICT DENY STUDENT A FAPE BY FAILING TO MAKE A CLEAR WRITTEN OFFER OF FAPE IN THE NOVEMBER 21, 2019 IEP?

Student contends the November 21, 2019 IEP was not clearly written as to the number of minutes and manner of delivery of related services, resulting in a denial of FAPE. Norris acknowledged at hearing those elements of the IEP were not clear. Norris contends, however, it did not deny FAPE because Parents declined to consent to any offer that changed Student's placement until an independent educational evaluation in behavior was completed.

The IDEA requires that an educational program be individually designed and reasonably calculated to provide meaningful educational benefit to a child with a disability. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1310.) The purpose of a written offer is to alert parents of the need to consider seriously whether a school district's proposed placement is appropriate under the IDEA. It helps parents determine whether to oppose or accept the placement with supplemental services. (*Union v. Smith* (9th Cir. 1994) 15 F.3d 1519, *cert. denied* (1994) 513 U.S. 965 (*Union*).) The IDEA explicitly requires written prior notice to parents when an educational agency proposes or refuses, to initiate or change the educational placement of a child with a disability or the provision of a FAPE. (*Id.* at p. 1526; see also 20 U.S.C. § 1415(b)(3).)

The requirement of a formal written offer creates a clear record that will eliminate troublesome factual disputes about what additional educational assistance the school district offered to supplement a placement. Failure to make a clear written offer of placement and services is a procedural violation of the IDEA. (*Union, supra.*, 15 F.3d at

p. 1527). See also, title 20 United States Code § 1414(d)(1)(A)(i), title 34 Code of Federal Regulations. § 300.320(a), and Education Code § 56345, subd. (a).

A procedural violation results in a denial of FAPE if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*), *superseded by statute on other grounds, as stated in R.B. v. Napa Valley Unified School Dist.* (9th Cir.2007) 496 F.3d 932, 939.)

The IEP is to be read as a whole. 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 did not meet his burden of proof on Issue 4. Although Norris procedurally violated the IDEA by failing to make a clear written offer in November 2019, the failure to make a clear written offer did not impede Parents' participation in decision making, or deprive Student educational benefit.

Student's IEP team met for several hours on November 13 and 21, 2019. Parents attended the meetings with their educational advocate and actively participated in the meeting. The IEP team, including independent evaluators, discussed the various independent evaluations, developed goals and discussed related services. The IEP team recommended placement in a special day class. Although Parents liked the proposed special day classroom program after their observation, Parents informed the IEP team they would not agree to any change of placement or program until an independent

functional behavioral assessment was completed and the IEP team considered the results.

During hearing, Sullivan admitted the IEP document presented to Parents on November 22, 2019 had ambiguities that required clarification. Specifically, those ambiguities included the number of minutes Student would receive in related services, and where and how those services would be delivered. Sullivan acknowledged that, based upon questions from Parents and their advocate at the November 2019 IEP team meeting, the IEP was not sufficiently clear. She therefore scheduled another IEP team meeting in January 2020 after the holiday break, to clarify Norris' IEP offer and answer Parents' questions.

Norris' November 21, 2019 IEP offer was not clearly written, resulting in a procedural violation under *Union, supra.*, 15 F.3d at p. 1527. However, the evidence established that Parents actively participated in the meeting with their advocate, and had ample opportunity to ask questions and make comments. Based upon their questions at the meeting, Parents understood the elements of the offer at the meeting. While the number of minutes of occupational therapy services or the exact location of the service remained unclear, Parents generally understood what service Norris was offering. The IEP team agreed another meeting was needed to clarify some of their questions.

Nevertheless, Parents remained unwilling in November 2019 to sign their agreement to any proposed IEP offers, until Dr. Hayden completed his independent functional behavioral assessment, and until after Parents received all the information from that evaluation and the IEP team considered Dr. Hayden's report. Student did not prove that Norris' lack of a clear offer of the amount and location of occupational

therapy services resulted in depriving Student of educational benefit, impacted his access to a FAPE or significantly deprived Parents of the opportunity to participate in the development of the November 2019 IEP.

ISSUE 5: DID NORRIS SCHOOL DISTRICT OFFER STUDENT A FAPE IN STUDENT'S JANUARY 22, 2020 IEP, SUCH THAT NORRIS SCHOOL DISTRICT MAY IMPLEMENT THE JANUARY 22, 2020 IEP OVER PARENTS' OBJECTIONS?

Norris contends it procedurally and substantively complied with the IDEA in preparation for, and when it made its FAPE offer at, Student's January 22, 2020 IEP team meeting. It contends the FAPE offer met the standards in *Endrew F., supra*, 137 S.Ct. at p. 1000, because the offer was reasonably calculated to enable Student to make measurable progress in light of Student's circumstances. Student contends the January 22, 2020 IEP did not offer FAPE, particularly in the areas of goals, behavior and occupational therapy.

Norris had the burden of proof on its claim that the January 22, 2020 IEP offered FAPE. Student had the burden of proof on his claim that the January 22, 2020 IEP did not offer FAPE based on the claims raised in Issues 2, and 3(a) through 3(d), as to specific elements of the IEP.

The legal analysis of a school district's compliance with the IDEA consists of two parts. First, the tribunal must determine whether the district has complied with the procedures outlined in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was

designed to meet the child's unique needs and reasonably calculated to enable the child to receive educational benefit. (*Rowley, supra, 458 U.S. at pp. 206-207.*)

Here, the January 22, 2020 IEP team meeting was a continuation of the November 13 and 21, 2019 IEP team meetings, and the IEP offer was a clarified version of the November 21, 2019 IEP offer. As such, when considering the appropriateness of the January 22, 2020 IEP offer, what happened at the November 2019 and January 2020 IEP team meetings that led to the IEP offer on January 22, 2020 is relevant.

PROCEDURAL REQUIREMENTS

RECENT EVALUATIONS WERE PROCEDURALLY COMPLIANT

Norris based its January 22, 2020 IEP offer on multiple assessments, including independent evaluations in psychoeducation by Dr. Freeman, occupational therapy by Dr. Auld-Wright, speech and language by Manvell and Tan, and Limpias' October 2019 functional behavioral assessment and special circumstances instruction assistance assessment. Norris' assessments were properly conducted by qualified professionals, and documented in written reports. All assessment reports were presented and thoroughly discussed at the November 2019 and January 2020 IEP team meetings. Parents, their advocate and independent assessors participated at the November 2019 and January 2020 IEP team meetings in a meaningful way. Norris' assessors participated in either the November and or January IEP meetings, and offered their opinions. The IEP team considered, discussed, had the opportunity to disagree with, and or incorporate recommendations from all assessors. Norris complied with this procedural requirement.

NOTICE, PARENTAL PARTICIPATION AND IEP MEETING WERE
PROCEDURALLY COMPLIANT

The IDEA explicitly requires formal written notice to parents when an educational agency proposes, or refuses, to initiate or change the educational placement of a disabled child. (See 20 U.S.C. Sec. 1415(b)(3); *Union, supra.*, 15 F.3d at p. 1527.) Unless excused in writing, the IEP team must consist of parents or their representative, a regular and special education teacher, a qualified representative of the school district, and an individual who can interpret instructional implications of assessment results. The IEP team may also include individuals who have the knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).) 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(b) & (c); Ed. Code, §§ 56304, 56341.)

Norris gave proper notice to Parents of the November 13 and 21, 2019, and January 22, 2020 IEP meetings. Parents received a written copy of their Procedural Rights at all three meetings. Parents and their educational advocate attended all three meetings. All required persons attended the meetings. Parents and their advocate actively participated at those meetings by asking questions, expressing concerns and requesting information and follow up from Norris' IEP team members. Dr. Freeman, Dr. Auld-Wright, and speech pathologist Tan attended, presented their reports, and participated in sessions of the November meetings. Dr. Freeman participated in the January meeting by telephone. Norris staff at both meetings included Student's general education teacher Kristell Olsen, special education resource teacher McEwen, psychologist Limpas, speech therapist Zielsdorf, occupational therapist Stacey Grisham, and administrative representatives Sullivan and school principal Hudson.

Consequently, Norris ensured that all necessary participants, including Parents, attended each IEP team meeting. Norris proved the IEP team meetings that led to the January 22, 2020 IEP offer met procedural requirements for notice, participation and attendance. (Ed. Code, § 56505, subd. (j).)

IEP GOALS WERE PROCEDURALLY COMPLIANT AND APPROPRIATE

The November 21, 2019 IEP, as clarified by the January 21, 2020 IEP offer, contained 17 annual goals. The goals were based upon present levels of performance reported by Norris' staff and independent assessors at the November 2019 IEP team meetings. The IEP team members and guests present on November 21, 2019 discussed and developed each of the proposed annual goals, with active input from Parents and their educational advocate. The January 2020 IEP team clarified and updated Student's present levels of performance.

Student contended in his closing argument that the January 22, 2020 IEP offer did not include measurable annual goals in pragmatic language and social skills. Student did not meet his burden of proof. The IEP included five communication goals incorporating pragmatic language and social skills, to be supervised by the speech pathologist. The IEP included six academic goals in reading and math to be supervised by the resource and classroom teachers. The IEP included six social emotional goals to be supervised by the school psychologist, Student's special education and general education teachers, and an occupational therapist. Each goal was measurable. Each goal included a reason for the goal, a baseline, and periodic objectives that went through the end of the 2019-2020 school year. The goals incorporated some of the recommendations and comments from Dr. Freeman, Manvell and Tan, Dr. Auld-Wright,

and from Lempias' functional behavior and special circumstances instructional assistance assessments.

Tan attended the November 13, 2019 afternoon session of the IEP team meeting by telephone, and presented the independent speech and language assessment report. However, Tan was not present when the IEP team developed proposed annual goals for the coming school year at the November 21, 2019 IEP team meeting. At hearing, Manvell opined the January 22, 2020 IEP offer of communication goals was insufficient. Student required pragmatic goals and more semantic goals. She also criticized the goals as too high functioning based upon her observations of Student in October 2019. Manvell's opinions regarding the goals offered in the January 2020 IEP did not carry great weight, in part because neither Manvell nor Tan attended the IEP team meeting on November 21, 2020, when the goals were developed, or shared their opinions on the new goals with the January 22, 2020 IEP team. (*Adams, supra*, 195 F.3d at p. 1149.)

The January 22, 2020 IEP goals were appropriate for Student. Student offered no persuasive evidence that those seventeen goals were procedurally non-compliant, or that they did not address known needs for Student to help him achieve academic benefit. Student did not establish that, without specifically entitled goals in pragmatics and more semantic goals, he could not make meaningful progress.

Given Student's known unique needs, particularly his need to develop skills to access his educational program, the seventeen goals as written were sufficient for Student in the second grade. Student did not prove in Issue 3(a) the goals as presented in the January 22, 2020 IEP resulted in a denial of FAPE or that Norris denied Student a FAPE by failing to offer appropriate goals in academics.

SUBSTANTIVE REQUIREMENTS

PLACEMENT IN A SPECIAL EDUCATION CLASSROOM WAS THE LEAST RESTRICTIVE ENVIRONMENT FOR STUDENT

In determining the educational placement of a child with a disability, a school district must ensure that the placement decision is made by a group of persons including the parents and other persons knowledgeable about the child. The IEP team must consider the meaning of the evaluation data and the placement options, and consider educating the child in the least restrictive environment. (34 C.F.R. § 300.116.) Placement is determined annually and is based on the child's IEP. It must be as close as possible to the child's home and at the school that he or she would attend if non-disabled unless the IEP team determines otherwise. (*Id.*) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or the quality of services that he or she needs. (*Id.*)

A child with a disability should not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. A "specific educational placement" is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs. (Cal. Code Regs., tit. 5, § 3042, subd. (a).)

To conclude whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit balanced four factors in *Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*). The analysis in *Rachel H.* looks at the educational benefits of placement full-time in a regular class. It also looks at the nonacademic benefits of such placement, and

the effect a student had on the teacher and children in the regular class. The fourth factor considers the costs of mainstreaming a student. (*Id.*)

If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1050 (*Daniel R.R.*)). The continuum of program options includes, but is not limited to regular education; resource specialist programs; designated instruction and services; and special classes. (Ed. Code, § 56361.)

The Norris IEP team members opined, at the IEP team meetings and at hearing, that Student's placement should be in a special day class, which would have been at a different campus than Student's home school. The January 22, 2020 IEP offered Student placement in a mild moderate special day class, with specialized academic instruction for 4,542 minutes per year. The IEP specified Student would spend 32 percent of the school day in general education.

When a parent seeks placement of an IEP student in general education, whether that placement meets the requirements for the least restrictive environment first depends on analysis of the four factors of *Rachel H.*, *supra*, 14 F.3d at p. 1404. Here, Norris proved that application of relevant facts to those factors supported a finding that the general education setting was not appropriate for Student.

Applying the first *Rachel H.* factor, Student's academic scores were within the below average area in academic testing. McEwen and Dr. Freeman credibly and confidently opined Student was cognitively capable of learning the general education curriculum. He could write his name, count to 30 and write numbers up to 30.

However, first grade work was difficult for Student because his behavior interfered with his learning. McEwen delivered specialized academic instruction to Student in the general education classroom in the mornings. McEwen observed that Olsen modified instructions and changed expectations for Student, modified settings to encourage him to engage in academic tasks, and limited the number of steps he took to achieve completion of the project. Student could not work 30 minutes on task like his general education peers. Depending on Student's receptiveness, seventy percent of Student's instruction was delivered in a corner, at a desk, under a table, under a counter or at another student's table when the other student was sitting with the rest of the class during floor time.

McEwen credibly opined Student did not appear to grasp anything the classroom teacher was teaching and he did not participate. Student acquired minimal if any educational benefit from the general education classroom. Student would benefit from a class with higher student/adult ratio, which included more checks and balances of his progress. Second grade would be even more challenging. Student needed, and did better in a smaller setting with one-to-one instruction with frequent breaks.

Church credibly opined, based upon her knowledge of Student, that the general education classroom was not an appropriate placement for Student. Student was bright and capable of accomplishing tasks with modifications. Church opined while it might be possible for Student to make some progress in general education, Student would not receive the same intensity of interventions as in special education. In contrast to special education teachers in a special day class, the general education teachers do not have the time to implement strategies, and they do not have the training to put the strategies together to make sure they are done with fidelity. Student needed a higher ratio of adults to students, which was not possible in a general education setting.

Regarding the second *Rachel H.* factor, McEwen observed that Student was more social in first grade in Olsen's general education classroom than in kindergarten. Student's classmates invited him to join in activities. Before October 2019, Student's behaviors disrupted the classroom approximately 15 to 20 percent of the school day. After extended school year and Student's initial adjustment to first grade, McEwen opined Student's disruptive behavior only disrupted the classroom five percent of the time and the behavior decreased as the school year progressed. Extended school year teacher Church noted similar characteristics by Student in the classroom in 2019 extended school year. Student's elopement from class and refusal behaviors gradually improved during the four-week summer program and Student became more socially successful. Based upon his behaviors, Church credibly opined at hearing that Student would receive more benefit from a special day class with less students than the larger classroom population of a general education classroom.

Considering the third and fourth *Rachel H.* factors, Student's behaviors had an impact on the classroom teacher and more indirectly on the other children. From the time Student entered kindergarten, the teacher and adult classroom staff engaged in attempts to help Student from eloping, encouraging him to participate in educational activities, sometimes away from the other children. The general education teachers took steps to modify the manner in which they delivered instruction to Student, which took them away from other students. Other than a few incidents where Student reacted negatively to directives by trying to hit or kick an adult staff member, no one offered any credible evidence that Student's behaviors had a significant negative impact on the other children. Neither party offered evidence relating to the fourth *Rachel H.* factor relating to cost.

Under *Rachel H.*, the evidence was persuasive that a general education classroom was not an appropriate placement for Student. The next step in the analysis is to determine whether Student could have been supported with services in the general education classroom sufficient to provide him with the least restrictive environment under *Daniel R.R.* 874 F.2d at p. 1050. The IEP team considered multiple options on the continuum of placement. Norris team members advised Parents that the special day class Norris offered was at William Bimat Elementary School, which was not Student's home school.

In the context of least restrictive environment, Dr. Auld-Wright, Freeman, and Manvell recommended up to six hours, four times a week, of related services in occupational therapy, behavior intervention, and speech therapy. Although their reports suggested the bulk of that time would be provided in one-to-one instruction outside of the classroom, when asked at hearing, they opined that the services might be provided in the general education classroom some of the time, with intensive adult support. Dr. Freeman opined that teaching Student in his environment, as opposed to pulling him out of the classroom, was important. Both Dr. Freeman and Dr. Hayden also opined Student needed a full time one-to-one behavior aide for the entire school day, including while receiving services and during his general education participation.

Limpas recommended, based upon her functional behavioral assessment and special circumstances instructional assistance assessment, that Student required a full time aide with a behavior intervention plan. Limpas opined, however, she would only recommend that service in a special day class. Student resisted direct adult assistance in the classroom and did not work well when adults attempted to directly work with Student. Limpas credibly opined a special day class with one-to-one adult support was less restrictive than in a general education classroom. Student could spend more time

in the smaller classroom, with more indirect adult supervision, and more opportunities to engage socially with the limited number of students in the classroom. On the other hand, the recommendations by Dr. Freeman, Dr. Auld-Wright, and Manvell would have required Norris to pull Student out of the classroom several hours a day, causing Student to miss a substantial part of classroom time. Limpas' opinions were persuasive.

Parents liked the special day program at Bimat Elementary. However, Parents wanted "the best" for Student, and therefore were not willing to agree to a change of placement without Dr. Hayden's final report. Under *Rowley, supra*, 458 U.S. at pp. 201-204, as clarified by *Endrew F. supra*, 137 S.Ct. at p. 1000, Norris was not required to provide Student with "the best" program. Instead, it was required to offer Student an educational program tailored to Student's unique needs to enable him to make meaningful progress in light of Student's circumstances. Norris did so in the January 22, 2020 IEP.

Student argued in favor of a general education classroom. Student contended that Norris never tried giving Student a behavior plan, a one-to-one aide trained in Applied Behavioral Analysis, and an appropriate level of speech and occupational therapy services to see if Student could access his education in a general education placement. Student also argued that Student did not often disturb the children in the general education classroom. The arguments were not persuasive when considered in the context of *Rachel H.*, the amount of support Student would have required in the general education classroom, and all of the evidence indicating Student would benefit from a smaller classroom with increased adult supervision until he acquired the skills to access his education without consistent refusal behaviors.

Here, Norris proved that its offer of placement in a special day class with 32 percent of the day in general education, accompanied by a full time one-to-one aide, was an appropriate placement for Student in the least restrictive environment. Norris' placement offer was based upon and supported by a considerable amount of data collected from numerous professionals, multiple assessments, observations of Student, and a year of Norris attempting, unsuccessfully and with numerous trial interventions, to educate Student in the general education setting.

NORRIS' OFFER OF RELATED SERVICES WAS APPROPRIATE

Norris' January 22, 2020 IEP offer included numerous related services, based on the IEP team's consideration of the independent educational evaluations and its own assessments conducted in fall 2019. The offer of services was appropriate.

SPEECH THERAPY

The IEP offer included individual speech and language therapy, delivered in a separate classroom, for 120 minutes a month by a speech therapist. Tan participated in the discussion about communication services including sharing the recommendations from the independent speech and language evaluation. Tan informed the IEP team that, although she and Manvell liked the five speech goals in the November 27, 2018 IEP, 120 minutes a month of speech services would not be effective in working on those goals. She recommended to the IEP team that Student would benefit from three 30-minute sessions weekly of speech services, individually and in group sessions. She also recommended a behavior plan for Student. Zielsdorf reported to the January 2020 IEP team that she had difficulty working with Student over the past year because of his resistance, explaining the 120 minutes a month initially offered in November 2018 was a starting point until Student was less resistant. The IEP team thoroughly discussed

Student's present levels of performance in speech, with related behavioral issues, at the January 2020 IEP team meeting.

Norris proved its offer of 120 minutes a month of individual speech therapy services in a separate classroom as part of a special education classroom placement was appropriate. Norris considered Manvell and Tan's recommendations in conjunction with the other independent assessors' recommendations. The IEP team members had a robust discussion which included Parents and their educational advocate. Norris made its offer of 120 minutes monthly of individual pull out speech therapy based on all the information before it, including active participation by speech therapist Zielsdorf, who was familiar with Student since he enrolled in Norris. The speech therapy offer in conjunction with communication goals was appropriate.

OCCUPATIONAL THERAPY

Norris also proved its offer of 120 monthly minutes of occupational therapy services, and 20 minutes a month of consult was an appropriate amount. Although the offer was unclear as to location, that lack of clarity did not result in a material procedural violation.

Norris did not have occupational therapists on staff, and relied on the Kern County Special Education Local Plan Area to provide the service. The IEP offer specified that services would be provided in the "service provider's location," which was not clear on its face. However, at the IEP team meeting, occupational therapist Stephanie Grisham explained to Mother and her advocate how Grisham would deliver occupational therapy to Student as a push-in service to the special education classroom at Bimat Elementary. Grisham also explained how she used related service minutes. She gave examples of activities and strategies she used. She explained her support in the area of

sensory integration. She offered to review notes from 2019 extended school year to become more familiar with Student at that time. Although the IEP document left the location of services unclear, the IEP team thoroughly discussed the offer in detail with significant parental participation including numerous questions by Mother and her advocate. The procedural violation of not making clear the location of services was not a material procedural violation and did not deprive Parents of meaningful participation in the development of the IEP offer.

Next, Norris' offer of occupational therapy services was reasonably calculated to enable Student to make appropriate progress in light of Student's circumstances. Dr. Auld-Wright recommended occupational therapy twice weekly for 60 minutes a session, delivered individually in a clinic or therapy room. Dr. Auld-Wright also recommended 30 minutes a month of occupational therapy collaboration. Dr. Auld-Wright opined that Goal 11, which addressed self-regulation, required a group setting and could be done as part of the monthly collaboration. The IEP team considered Dr. Auld-Wright's recommendations when developing its offer of services.

However, Norris did not have a setting comparable to what Dr. Auld-Wright recommended. The amount of pull-out services recommended by Dr. Auld-Wright, when considered in the context of all the other services and supports in the IEP, was excessive and restrictive for Student at the time of the offer. Norris' offer was appropriate. Student did not prove in Issue 3(d) that Student could not make meaningful progress with the amount of occupational therapy services Norris offered in conjunction with the proposed occupational therapy goals.

BEHAVIOR SUPPORT

Norris proved its offer of a full time one-to-one special circumstances adult aide was appropriate in the context of the entire IEP offer. If a child's behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i) and (d)(4); Ed. Code § 56521.1(b).) The IEP included 7,220 minutes a month of intensive individualized services in the special education classroom, during unstructured times, such as recess and lunch, and during district-provided curb to curb transportation.

Norris' offer of a full time one-to-one adult aide was consistent with the recommendations by Limpas, Stuart, Dr. Freeman, and Dr. Hayden, and was appropriate. Student argued that Norris offered no evidence that the one-to-one aide would be trained in Applied Behavioral Analysis. Student's argument was not persuasive. Student cited to no authority that requires a school district to specify in an IEP the qualifications of staff assigned to work with students.

Limpas developed a behavior intervention plan consisting of 10 pages, in conjunction with her functional behavioral assessment. The behavior intervention plan, dated November 13, 2019, addressed Student's refusal behaviors, the impact of the behaviors, and noted a serious need for a behavior intervention plan. The behavior intervention plan focused on Student's refusals during the 1:00 to 2:00 p.m. period at school. The plan included predictors for the behavior. Supports included specific praise, and recommended additional systems. The school psychologist and teacher would supervise the monitoring and implementation of the behavior plan. The plan was

consistent with Limpias' functional behavioral assessment, which the IEP team discussed at the November and January IEP meetings.

Dr. Hayden, Limpias, Dr. Freeman, Dr. Auld-Wright and Manvell all credibly opined that a successful application of Applied Behavioral Analysis to manage Student's behaviors required a plan that the provider would follow, and keep data on the elements of the plan. The January 22, 2020 IEP team referred to the behavior intervention plan and noted that, if Student had a behavioral aide, the behavior support plan could be implemented as part of that service. Student did not persuasively argue that, without reference to an "Applied Behavioral Analysis trained aide" in the IEP, the IEP failed to offer FAPE.

Norris proved the January 22, 2020 IEP offered Student appropriate services and supports, in conjunction with behavior goals, in the area of behavior. Dr. Hayden criticized the proposed behavior intervention plan for the same reasons as his criticism of Limpias' functional behavioral assessment. However, under *Adams, supra*, 195 F.3d at p. 1149, Dr. Hayden's criticisms did not carry sufficient weight to find that the behavior intervention plan from November 13, 2019 was so insufficient as to deny Student a FAPE. Because this decision finds that the functional behavioral assessment was appropriate, Student's argument that the behavior plan was not appropriate because of an inappropriate assessment was not persuasive. Student did not prove in Issues 3(b) and 3(c) that the January 22, 2020 IEP materially failed to offer FAPE in the area of behavior.

Parents signed the January 22, 2020 IEP for attendance only. They informed the IEP team they would take the document home to review, and advised the IEP team they

would further discuss the IEP offer with representatives of Norris during a “resolution meeting.” Parents did not consent to the IEP as of June 4, 2020.

In summary, Norris met its burden on Issue 5. The January 22, 2020 IEP offer, developed at the November 13 and 22, 2019 and January 22, 2020 IEP team meetings, offered Student a FAPE in the least restrictive environment. Student did not meet his burden under Issues 3(a) through 3(d) that Norris failed in the January 22, 2020 IEP to offer appropriate goals, appropriate related services in the areas of communication, one-to-one aide support and a behavior plan, or occupational therapy goals and services.

ISSUE 6: DID NORRIS SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2020 COVID-19 SCHOOL CLOSURE THROUGH MAY 7, 2020, BY FAILING TO PROVIDE STUDENT ANY APPROPRIATE SPECIAL EDUCATION OR RELATED SERVICES, INCLUDING APPROPRIATELY TAILORED ALTERNATIVE SERVICE DELIVERY OPTIONS?

Student contends Norris failed to implement Student’s November 27, 2018 IEP by failing to provide appropriately tailored special education or related services to Student from March 18, 2020, until May 7, 2020. Norris contends it complied with state and federal mandates and provided Student’s education using appropriate alternative supports and services given the school closure and inability to deliver those services in person.

This is an issue arising out of the universal 2020 COVID-19 pandemic, during which California’s governor Gavin Newsom, in concert with the federal government and local governments, ordered a statewide shutdown of businesses and schools. The

United States Department of Education initially issued guidance on the issue of the school shutdowns in March 2020. Governor Newsom 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, referred to as the CDE, to develop guidance that included “ensuring students with disabilities” receive a FAPE consistent with their IEP, and local educational agencies meet other procedural requirements under the IDEA.

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.” (*Ibid.*)

In subsequent guidance, 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 pp. 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.)

The CDE issued similar 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.) 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. (*Id.*)

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. (*Id.*)

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.)

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).

NORRIS FAILED TO MATERIALLY IMPLEMENT STUDENT’S IEP

The relevant inquiry is whether Norris materially failed to implement Student’s November 27, 2020 IEP from March 18 through May 7, 2020, because of the COVID-19 school closure. (*N.D v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1117, citing *Van Duyn, supra*, 502 F.3d at p. 822).) In *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.) The COVID-19 situation is analogous. This analysis turns on whether Norris complied with Student’s IEP, considering COVID-19 guidance issued by the state and federal governments, and, if so, did the compliance satisfy the IDEA sufficient to avoid a finding of a material failure to implement the IEP.

NORRIS ATTEMPTED TO PROVIDE STUDENT WITH ACADEMIC INSTRUCTION AND SPEECH THERAPY SERVICES

Student contends Norris had an obligation to provide appropriate alternate educational services during the school closure. Norris contends that to fulfill the IEP in its entirety was not possible under the circumstances. The two positions do not conflict in Student’s case. Although it was not possible to implement Student’s IEP as written, Norris was obligated to offer a temporary placement and program that “closely approximated” Student’s last educational placement. (See *Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.)

Norris established at hearing that it attempted to deliver distance learning instruction and services to Student to the extent feasible during the COVID-19 school closures. Norris sent a prior written notice to all parents dated March 23, 2020. The notice informed parents that the school district was closing effective March 18, 2020 due to COVID-19. Norris informed all parents it would provide distance learning to general education students. Norris informed all parents of special education students that if the child received IEP services such as speech or occupational therapy, the services providers would be providing resources and or practice exercises for the child to work on at home. Norris invited parents of special education students to email students’ teachers or service providers with questions. The notice included parents’

rights and procedural safeguards. Student's Parents received those general notices. Norris' schools remained physically closed to all students through May 7, 2020, when Student amended his complaint.

Norris provided Student, through Parents, with a general Distance Learning Plan packet by March 24, 2020. Mother confirmed receipt of the packet. Mother reported to McEwen on March 24, 2020 that Student was having difficulty with technology and online instruction. Student was resistant to, and did not want to participate in, online resources offered by general education teacher Olsen. In response to Mother's concerns, McEwen offered to provide weekly online direct instruction to Student through Zoom, and assistance for Parents if needed. Mother declined the offer.

McEwen continued to check in with Mother regularly. General education teacher Olsen made weekly online distance learning resources available to her students. Neither McEwen nor Olsen delivered any in-person instruction to Student.

On March 30, 2020, after Mother again reported to McEwen that Student was struggling with the individual packet developed for Student, McEwen provided Student a supplemental work packet. Zielsdorf provided Student with a Speech Distance Learning Plan on April 2, 2020, including numerous worksheets and other tools. Father worked daily during the school week with Student on the materials provided by McEwen. Although Father read the instructions provided by Zielsdorf, he did not understand them. Zielsdorf did not provide any training to Father other than written instructions in the materials. As a result, Father did not use the speech therapy materials provided by Zielsdorf. Father relied on Mother to communicate with Norris during the school closure and did not know how to reach Zielsdorf. Zielsdorf maintained contact

with Mother by email, inviting Parents to contact Zielsdorf if they had any questions or concerns.

Olsen sent home additional general education resources including worksheets for Student after spring break. McEwen also offered an additional binder of resources for Student, which McEwen dropped off to Parents' home on April 17, 2020. Mother responded by email reporting that Student engaged in and enjoyed the additional resources. On April 17, 20, and 28, 2020, Sullivan emailed Mother notifying her that Olsen reached out to Student's IEP team to see what other supports might be available for Student. Zielsdorf recommended to Parents a variety of online "I Can Do" iPad tablet computer applications. Mother requested the additional educational applications with an iPad tablet computer, as suggested by Zielsdorf. Sullivan delivered the iPad to Parents for Student's use.

Student's teachers and providers checked in with Mother weekly and continued to provide additional resources for Student to use at home. Mother reported to Norris that Student was enjoying the new materials, and that Parents had purchased additional materials for Student. Mother confirmed in an email on May 5, 2020, that Student would participate in extended school year. Church delivered a learning packet prepared by Zielsdorf to Parents for extended school year.

Father opined at hearing that Student made progress during the school closure through the end of the school year using materials from Norris and materials Parents purchased independently. Student was willing to work with Father for the majority of the home-instructional time with Father's assistance. Student was learning sign language and taught those skills to Father. Student read books to Father, which was a new skill for Student.

NORRIS DID NOT MATERIALLY IMPLEMENT STUDENT'S IEP SERVICES

Although Student made some academic progress, Norris did not materially implement Student's November 27 2018 IEP during the 28 school days between March 23, 2020, when Norris started distance learning for all students, and May 7, 2020. Student proved that Norris materially violated the IDEA by failing to implement Student's November 27, 2018 IEP due to the COVID-19 school closure. While unavoidable circumstances prevented Norris from fully implementing Student's November 2018 IEP at school, nevertheless the IDEA includes no exceptions to implementation for physical school closures caused by pandemics or governmental directives to close schools. Norris remained responsible under the IDEA for materially implementing IEP's despite the school closure, even if by alternate methods of delivery. (*N.D v. Hawaii Dept. of Education, supra*, at p. 1117).)

Between March 18 and May 7, 2020, Norris provided Student with no direct instruction. McEwen did not deliver to Student any virtual instruction as an alternative to one-to-one specialized academic instruction from McEwen, in part because of Student's aversion to virtual learning. Owen also did not offer or provide any direct instruction. Zielsdorf also did not offer or provide Student direct virtual speech therapy as an alternative. For example, Norris could have collaborated with Parents to find ways to provide direct instruction to Student, with McEwen and or Zielsdorf participating virtually with Father's assistance, even if Student resisted direct participation using a computer. No one from Norris discussed those types of options with Parents before May 7, 2020, or the possibility of offering Father training to help him deliver the speech therapy materials to Student, with Zielsdorf's virtual assistance.

Norris was obligated to ensure that it provided Student with the special education and related services identified in Student's IEP developed under IDEA to the extent possible, even if direct delivery of those services and supports was delayed or required modification by government directives. Because it did not do so, Norris denied Student a FAPE from March 23, 2020 until May 7, 2020. (*Van Duyn, supra*, 502 F.3d at p. 822.)

Student also proved that, during the relevant time, Norris committed procedural violations that significantly impeded Parent's opportunity to participate in the decision-making process in Student's alternate educational program. (*Rowley, supra*, 458 U.S. at p. 205; 20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *Target Range, supra*, 960 F.2d at p. 1484.) Norris was obligated to provide Parents with prior written notice if it proposed to change Student's placement or provision of FAPE. (20 U.S.C. § 1415(b)(3). Norris should have sent Parents prior written notice explaining how Norris proposed to change or modify Student's IEP as an alternate mode of delivery of instruction during the school closure. Although Olsen reached out to Norris members of Student's IEP team for additional guidance and materials, Norris did not send a prior written notice to Parents, specifically relating to Student, before May 7, 2020. Norris should have done so particularly after Parents reported that Student was resisting virtual learning, and that he did not benefit from the speech therapy materials Norris provided.

Norris also should have held an IEP meeting, virtually if not in person. The CDE noted in its April 9, 2020 *New Guidance*, at Point 1, "there may be instances when amending the IEP to reflect the change to distance learning might be necessary and or appropriate." (*CDE Special Education Guidance, Point 1* (April 9, 2020.); 20 USC § 1414 (d)(4)(A); 20 USC § 1414 (d)(3)(D); 34 C.F.R. § 300.324.) Here, scheduling an IEP team meeting was appropriate to allow the entire IEP team to consider with Parents alternate

methods of delivery of Student's services, particularly because Parents were struggling to deliver all of the instructional materials provided by Norris to Student. Norris' failure to hold an IEP team meeting, in combination with its failure to send specific prior written notice to Parents, significantly impeded Parents' opportunity to participate in the decision-making process regarding Student's alternate educational program during the school closures. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *Target Range, supra*, 960 F.2d at p. 1484.)

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

Issue 1: Norris denied Student a FAPE by materially failing to implement Student's November 27, 2018 IEP. Norris did not deny Student a FAPE by failing to implement Student's March 6, 2019 IEP. Student prevailed on Issue 1 as to the November 27, 2018 IEP for the period between November 27, 2018 and May 7, 2020. Norris prevailed on Issue 1 as to the March 6, 2019 IEP.

Issue 2: Norris denied Student a FAPE by failing to assess Student in the area of functional behavior before October 2019. Norris did not deny Student a FAPE from November 27, 2018, by failing to conduct an appropriate functional behavioral assessment in October 2019. Student partially prevailed on Issue 2 and Norris partially prevailed on Issue 2.

Issue 3(a): Norris denied Student a FAPE from November 27, 2018, until the January 22, 2020 IEP, by failing to offer IEPs that included appropriate annual goals in

the areas of academics, social skills, pragmatics, executive function, and behavior. Norris did not deny Student a FAPE in the January 22, 2020 IEP, by failing to offer an IEP that included appropriate annual goals in the areas of social skills, pragmatics, executive function, behavior and academics. Student partially prevailed on Issue 3(a). Norris also partially prevailed on Issue 3(a).

Issues 3(b) and (c): Norris denied Student a FAPE from November 27, 2018, until the January 22, 2020 IEP, by failing to offer IEPs that included adequate behavioral services and a behavior intervention plan. Student prevailed on Issues 3(b) and 3(c) from November 27, 2018, until January 22, 2020. Norris prevailed on Issues 3(b) and (c) as to the January 22, 2020 IEP.

Issue 3(d): Norris denied Student a FAPE from November 27, 2018, until the January 22, 2020 IEP, by failing to offer Student IEPs that included appropriate occupational therapy services. Student prevailed on Issue 3(d) for the period from March 22, 2018, until January 22, 2020. Norris prevailed on Issue 3(d) as to the January 22, 2020 IEP.

Issue 4: Norris did not deny Student a FAPE by failing to make a clear written offer of FAPE in the November 21, 2019 IEP. Norris prevailed on Issue 4.

Issue 5: Norris offered Student a FAPE in Student's January 22, 2020 IEP, such that Norris may implement the January 22, 2020 IEP over Parents' objections. Norris prevailed on Issue 5.

Issue 6: Norris denied Student a FAPE during the 2020 COVID-19 school closure on March 18, 2020, through May 7, 2020, by failing to provide Student appropriate special education or related services, including appropriately tailored alternative service

delivery options, and by significantly impeding Parents ability to materially participate in alternative delivery options for Student's IEP services. Student prevailed on Issue 6.

REMEDIES

Student prevailed on Issues 1 and 6 through May 7, 2020, and partially prevailed on Issues 2, and 3(a), (b), (c), and (d) through January 22, 2020. Student is entitled to remedies for those denials of FAPE. Norris prevailed on Issue 5 which entitles it to implement Student's January 22, 2020 IEP without parental consent.

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft appropriate relief for a party. An award of compensatory education need not provide a day-for-day compensation. (*Id.* at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.)

An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524, citing *Student W. v. Puyallup School Dist.*, *supra*, 31 F.3d at p. 1497.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524. The CDE noted in its March 20, 2020 Guidance for COVID-19, that for purposes of considering compensatory services once a local educational agency resumes regular

session, educational need may be measured by assessing whether the child continued to make progress toward IEP goals, or experienced regression during the school closure. (*CDE Guidance* (March 20, 2020), *supra*, at Point 3.)

For purposes of calculating remedies, the ALJ relied on the school calendars for the 2018-2019 and 2019-2020 regular school years. The 2018-2019 school year consisted of 24 weeks from November 27, 2018, until May 30, 2019. The 2019-2020 school year, through May 7, 2020, consisted of approximately 35 school weeks.

REMEDIES FOR ISSUES 1 AND 6 FOR FAILURE TO IMPLEMENT IEP, AND ISSUE 3(A) REGARDING SPEECH GOALS

Regarding Issues 1, 3(a) relating to goals in speech and language, and Issue 6, Student proved that Norris did not implement Student's November 27, 2018 IEP with fidelity at any time after the IEP was developed until May 7, 2020, or offer appropriate goals in social skills and pragmatics until January 22, 2020.

First, Student missed IEP speech services consisting of 40 minutes weekly of specialized academic instruction and 30 minutes weekly of speech therapy for approximately 59 regular school weeks. He did not meet or make progress toward his goals, or have appropriate IEP speech goals in pragmatics and social skills. Student did not receive direct speech and language services, from November 27, 2018, through May 7, 2020. The November 2018 IEP provided for 120 minutes a month, or thirty minutes a week, of individual speech therapy services. Zielsdorf reported at several of Student's IEP team meetings, between November 2018 and January 2020, that she had difficulty delivering services to Student because of his refusal behaviors. Goals in the areas of social skills or pragmatics would have been delivered as part of his speech therapy services if they had been offered.

Norris' November 27, 2018 and January 22, 2020 IEP offers of 120 minutes a month of speech therapy was a reasonable amount of services given Student's needs. Therefore, Student is entitled to a total of 40 hours of compensatory speech therapy services. This remedy is based upon 30 minutes of missed direct services a week for 59 school weeks plus 10 additional hours for the lack of appropriate goals in social skills and pragmatics. The 40 hours of speech therapy services shall be provided by a certified non-public agency of Parents' choosing.

As an additional remedy for Norris' FAPE denial for failure to implement Student's IEP in Issues 1 and 6, Student is entitled to compensatory academic instruction for the period of November, 27, 2018 through May 7, 2020. Student requested 51.66 hours of academic instruction for this FAPE denial. Student also requested, without explanation, an additional two hours per week for 52 weeks from November 28, 2018 through March 17, 2020.

This remedy is based on two aspects of the IEP. First, based upon sign-in-sign-out sheets, Student missed approximately 52 hours of school time between January 22, 2019, and May 24, 2019, because Norris did not return him to a full school day as required by the November 27, 2018 IEP. Student attended school on most school days before March 18, 2020, notwithstanding the shortened days in kindergarten, but he did not benefit fully from his specialized academic instruction minutes. Resource teacher McEwen's testimony credibly established that during the approximately 59 weeks, Student did receive some instruction from his resource support teachers, including McEwen. However, Student did not fully benefit from the service for the 28 days of the COVID-19 closure, although he made some academic progress.

In total, for November 27, 2018 until May 7, 2020, Student's operative IEP provided for 2,360 minutes of specialized academic instruction by a resource teacher based upon 59 weeks at 40 minutes a week. Student did not establish through credible evidence how much of the approximately 2,360 minutes of specialized academic instruction Student missed before May 7, 2020. However, the evidence established that Student accessed the academic materials provided by McEwen and Owen during the COVID-19 closure, with Parent's help. Student also made some academic progress during the 2018-2019 and 2019-2020 school years, which justifies reducing compensatory academic hours by a small amount.

The time period January 22, 2019, through May 24, 2019, consisted of 83 shortened school days. Student estimated approximately 52 hours of missed instruction during that time period, which was not unreasonable based upon what should have been approximately a five and one half hour school day. Therefore, as an equitable remedy for Issues 1 and 6 relating to academic instruction, Student is entitled to 52 hours of tutoring for missed school hours from January 22, 2019 through May 22, 2019, and 25 hours of tutoring based upon 65 percent of the total 2,360 minutes for specialized academic instruction, for a total of 77 hours of tutoring to be provided by a certified non-public agency of Parents' choosing.

In addition, for Issue 6, Norris shall convene an IEP meeting, virtually or in person, whichever is safe and feasible. The IEP team shall develop an appropriate alternative temporary distance learning plan for Student consistent with the intent of Student's January 22, 2020 IEP, and updated present levels of performance, until Student can return to the school campus for in-person instruction. Any agreements shall be

documented as an amendment to Student's January 22, 2020 IEP. The January 22, 2020 IEP, as it may be amended, shall constitute Student's "stay put" under title 20 United States Code section 1415(j), title 34 Code of Federal Regulations section 300.518(a), and Education Code section 56505 subd. (d), until Parents consent to a new amendment or annual IEP, or as otherwise ordered by OAH or other tribunal.

REMEDIES FOR ISSUES 2, 3(A), 3(B) AND 3(C) - BEHAVIOR

In connection with Issues 2, and 3(a), (b) and (c), Norris denied Student a FAPE by failing to assess him in the area of behavior until October 2019, and failing to offer Student any specific behavioral intervention or appropriate goals related to behavior until the January 22, 2020 IEP.

Student is entitled to a compensatory award as a remedy for Issues 2, and 3(b) and 3(c), up to the January 22, 2020 IEP. A reasonable number of one-to-one compensatory behavior intervention hours for the 44 school weeks between November 27, 2018, and January 22, 2020, is 44 hours plus an additional five hours based upon the lack of behavior goals. Parents shall also receive five hours of training, for a total of 54 hours of compensatory services. This remedy was calculated based upon approximately one hour a week for 44 regular school weeks with consideration of some additional time for the lack of goals, and parental training.

In addition, based upon testimony from Sullivan that Norris did not have a board certified behavior analyst on staff, Norris shall fund 10 hours of consultation by a board certified behavioral analyst with Student's classroom teacher and service providers. The services shall be provided by a certified non-public agency of Parents' choosing.

REMEDY FOR ISSUE 3(D)

Norris also denied Student a FAPE by failing to offer occupational therapy services or goals for 27 weeks from March 22, 2018, until January 22, 2020. The two hours a week outside the classroom recommended by Dr. Auld-Wright was excessive for compensatory relief when considered in conjunction with Student's age, his level of functioning, and the services Student would be receiving at school. Norris' January 22, 2020 IEP offered 120 minutes a month of individual occupational therapy, or 30 minutes a week, which was reasonable for Student's school day. A reasonable number of compensatory hours for lack of goals and services is 19 hours of after-school occupational therapy services by a certified non-public agency of Parents' choosing.

REMEDY FOR ISSUE 5

Regarding Issue 5, Norris may implement the January 22, 2020 IEP without parental consent if Parents want Student to attend Norris for a public education.

ORDER

1. Norris shall fund 40 hours of after-school speech therapy services for Student by a certified non-public agency of Parents' choosing.
2. Norris shall fund 77 hours of academic tutoring for Student by a certified non-public agency of Parents' choosing.
3. Norris shall fund 49 hours of after-school one-to-one behavior services for Student, and five hours of Parent training in Applied Behavioral Analysis, by a certified non-public agency of Parents' choosing.
4. Norris shall fund 10 hours of consultation with Student's classroom teacher and service providers, by a board certified behavioral analyst through a certified non-

public agency of Parents' choosing. The time and frequency of service shall be determined by the provider and Norris staff.

5. Norris shall fund 19 hours of after-school occupational therapy for Student by a certified non-public agency of Parents' choosing.
6. Norris shall contract with the non-public agency(s) selected by Parents within 45 days of Parents notifying Norris of the agency. The compensatory remedy hours ordered by this Decision shall be available for Student's use through June 30, 2022. Any unused hours remaining on July 1, 2022, shall be forfeited.
7. Norris shall convene an IEP meeting virtually or in person, whichever is safe and feasible, within 15 business days of the date of this decision. The IEP team shall develop an appropriate temporary alternate distance learning plan for Student until Student can return to school for onsite instruction, consistent with the intent of Student's January 22, 2020 IEP. Any agreements reached shall be implemented as an amendment to Student's January 22, 2020 IEP.
8. Norris may implement Student's January 22, 2020 IEP, without parental consent if Parents want Student to attend Norris for a public education. The January 22, 2020 IEP, as it may be amended, shall constitute Student's "stay put" under title 20 United States Code section 1415(j), title 34 Code of Federal Regulations section 300.518(a), and Education Code section 56505 subd. (d), until Parents consent to a new amendment or annual IEP, or as otherwise ordered by OAH or other tribunal.
9. All other requested relief requested by each party is 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/

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings