

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021010659

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.

DECISION

AUGUST 27, 2021

On January 22, 2021, the Office of Administrative Hearings, called OAH, received a due process hearing request, called a complaint, from Parents on behalf of Student, naming San Dieguito Union High School District. The matter was continued for good cause on March 1, 2021. Administrative Law Judge Rommel P. Cruz heard this matter by video conference in California on June 8, 9, 10, 14, 16, 21, 22, and 23, 2021.

Attorney Cindy Lane represented Student. Parents attended all hearing days on Student's behalf. This Decision will refer to each parent as Parent A and Parent B.

Attorneys Sarah Sutherland and Amanda Johnston represented San Dieguito Union. Director of Student Services Tiffany Hazelwood attended all hearing days on San Dieguito Union's behalf.

At the parties' request the matter was continued to July 30, 2021, for written closing briefs. The record was closed, and the matter was submitted on July 30, 2021.

ISSUES

Did San Dieguito Union deny Student a free appropriate public education, called a FAPE, during the 2018-2019 school year, from January 24, 2019, by:

- a. Failing to implement Student's speech and language services as set forth and consented to in Student's January 24, 2019 individualized education program, called an IEP, and addendum IEPs;
- b. Failing to provide a clear and concise offer of a FAPE in Student's January 24, 2019 IEP, and addendum IEPs dated April 3 and June 5, 2019;
- c. Failing to develop a behavior intervention plan based on current data and revise it as conditions warranted and/or behaviors changed; and
- d. Failing to offer appropriate supports and services designed to meet Student's needs in the areas of:
 - i. Academics,
 - ii. Behavior,
 - iii. Mental health, and
 - iv. Pragmatic language?

Did San Dieguito deny Student a FAPE during the 2019-2020 school year, including the extended school year, by:

- e. Failing to implement Student's speech and language services as set forth and consented to in Student's January 24, 2019 IEP and addendum IEPs;
- f. Failing to provide a clear and concise offer of a FAPE in Student's September 18, 2019 addendum IEP;
- g. Changing Student's speech and language services without Parent's knowledge or consent, outside of the IEP team meeting process, following the October 30, 2019 IEP team meeting;
- h. Failing to develop a behavior intervention plan based on current data; revise it as conditions warranted and/or behaviors changed; and implement it with fidelity after the June 5, 2019 IEP team meeting;
- i. Failing to offer appropriate supports and services designed to meet Student's needs in the areas of:
 - i. Academics,
 - ii. Behavior,
 - iii. Mental health,
 - iv. Pragmatic language;
- j. Failing to offer an appropriate placement to meet Student's academic, behavioral, and mental health needs from October 30, 2019; and
- k. Failing to timely produce educational records in response to Parents' March 20, 2020 written request?

JURISDICTION

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

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

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

Student was 14 years old and in ninth grade at the time of hearing. She resided within San Dieguito Union's geographic boundaries at all relevant times and was eligible for special education under the categories of autism and other health impairment.

ISSUES 1(A) AND 2(A): DID SAN DIEGUITO UNION FAIL TO IMPLEMENT SPEECH AND LANGUAGE SERVICES AS SET FORTH AND CONSENTED TO IN THE JANUARY 24, 2019 IEP, AND ADDENDUM IEPs?

Student contends San Dieguito Union failed to provide Student with speech and language services as required in the January 24, 2019 IEP and addendum IEPs. Student claims that San Dieguito Union failed to provide her with speech and language services for seven weeks during the 2018-2019 school year and only provided five sessions of speech and language services during the 2019-2020 school year. San Dieguito Union contends that it did not materially fail to implement the speech and language services it intended to offer Student through her IEP, and as the IEP team and Parents understood the frequency and duration of the services to be.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an 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 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

To provide a student a FAPE, a school district must deliver special education and related services "in conformity with" the student's IEP. (20 U.S.C. § 1401(9)(D).) A school district that fails to implement an IEP exactly does not violate the IDEA "unless it is shown to have materially failed to implement the child's IEP." (*Van Duyn v. Baker School Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 815 (*Van Duyn*), citing 20 U.S.C. §§ 1414(d)(3)(F), 1415(b)(3)).) A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. (*Id.* at p. 822.) There is no statutory requirement of perfect adherence to the IEP and there is no reason rooted in statutory text to view minor implementation failures as a denial of FAPE. (*Id.* at p. 821.) The materiality standard does not require that the child suffer demonstrable educational harm to prevail, but the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided. (*Id.* at p. 822.)

BACKGROUND

Student was an intelligent, highly gifted artist who received special education and related services in elementary school based on her eligibility under the category of autism. She was bullied and singled out for being in special education in elementary school. As a result, Student developed a strong aversion to special education. She did not want to be perceived by her peers as different, and the thought of being in special education made her very anxious.

Student attended Oak Crest Middle School for her seventh grade, 2018-2019 school year. Parents exited Student from special education before the start of seventh grade to spare Student from reliving the trauma of elementary school. However, Student struggled in her general education academic classes. Her teachers observed that Student was withdrawn and displayed poor social interactions. Student did not always follow adult directions or class rules.

Student could not keep up with her academic classes. She was easily distracted and poorly organized. Student put little effort in class, and often had her head down on her desk. She did not take notes, drew constantly, and did not complete assignments. As a consequence, Student received failing grades in math, science, and history and did poorly in physical education.

On October 8, 2018, San Dieguito Union held a student support team meeting for Student. At the meeting, San Dieguito Union provided Parents a written plan to assess Student for special education and related services. Parents provided written consent to the assessment plan on November 6, 2018.

San Dieguito Union's multidisciplinary assessment team included school psychologist Jane Caples, speech-language pathologist Kristin Gluhak, an educational specialist, and an occupational therapist. The assessors' reported their findings, conclusions, and recommendations in a written report dated January 14, 2019. The assessment team concluded Student was eligible for special education under the categories of autism, speech and language impaired, and other health impairment due to Student's attention and executive functioning deficits.

Gluhak was a licensed and credentialed speech-language pathologist with a master's degree in communicate disorders. Gluhak assessed Student's receptive and expressive language, vocabulary, and social skills. Gluhak found Student's receptive, expressive and vocabulary skills to fall in the above-average range. However, Student displayed deficits in the ability to infer another person's perspective, emotions, and intention; to use nonverbal social language and to problem solve social situations to negotiate conflicts between peers; and to understand social situations; and, provide an appropriate supportive response. During testing, Student reported to Gluhak that Student viewed herself as socially awkward but told Gluhak she did not want to work on it. Gluhak found Student eligible for special education under the category of speech and language impaired and recommended Student receive therapy to address Student's social language deficits.

IMPLEMENTATION OF SPEECH AND LANGUAGE SERVICES

The IEP team convened on January 24, 2019, to review the January 14, 2019 multidisciplinary assessments and to determine Student's eligibility for special education. The IEP team determined Student eligible for special education under the categories of autism and other health impairment.

Regarding communication, the January 24, 2019 IEP noted that Student's social skills and pragmatic language skills were areas of need. Student understood figurative language and sarcasm, but struggled significantly with making inferences, interpreting social language, social problem solving, and socially interacting. Student's difficulty with understanding the perspectives of others and her rigid thinking negatively impacted her social interactions and her ability to understand how others could support her.

The January 24, 2019 IEP offered two social skills goals and group speech and language services. The IEP's written offer of speech and language services read, "30 min x 30 Totaling: 900 min served". The IEP indicated that speech and language services would occur outside of the regular classroom, to start on January 22, 2019, and end on January 22, 2020.

Parent A testified that she was unclear as to what specifically was offered in the IEP as to the speech and language services. However, Gluhak persuasively testified that it was clearly explained to Parents at the January 24, 2019 IEP team meeting, and subsequent IEP team meetings in April and June 2019, that the IEP's offer of speech and language services was 30 minutes once a week.

Gluhak's testimony was corroborated by her service attendance logs. The logs noted the dates that each speech and language session was offered to Student. The logs also noted which sessions Student attended, and which sessions did not occur due to Student's absence or refusal to attend. The logs indicated Gluhak offered one speech and language service each week with the exception of two weeks where Gluhak offered an extra session to make up for Student's refusal to attend. The logs showed that that Gluhak provided 30 minutes of speech and language service to Student for each session Student attended.

Parents provided partial written consent to the January 24, 2019 IEP on January 31, 2019. Parents did not agree for Student to lose an elective class to add an academic support class, and did not want Student pulled from her general education classes to attend related services. To accommodate Parents requests, Student's classes were arranged to provide her with independent physical education studies to occur after

school since middle school students were only allowed one elective class. This class arrangement allowed Student to remain in her elective art class, while also allowing for an academic support class to be added to her schedule.

Gluhak consistently provided Student 30 minutes of weekly speech and language services in the months of February and March 2019, and the first week of April 2019 pursuant to the January 24, 2019 IEP. However, Student became increasingly more anxious throughout the Spring of 2019. Her class participation in her academic classes declined. She was disengaged and often off task in her academic classes. Her school attendance declined. Following the spring break, Student's attendance to speech and language services declined due to Student's absences and refusal to attend.

On April 3, 2019, the IEP team reconvened to review Student's progress and to discuss additional accommodations to support Student. San Dieguito Union offered a written plan to assess Student's functional behavior. Parents provided written consent to the assessment plan on April 3, 2019.

At the April 3, 2019 IEP team meeting, the January 24, 2019 IEP was amended to offer additional accommodations and counseling services to address Student's anxiety. In addition, the special education and related services section of the FAPE offer included an additional speech and language service of consisting of "30 min x 30 totaling: 900 min served Weekly" to begin on February 2, 2020. The January 24, 2019 IEP's initial written offer of speech and language services consented to by Parent on January 31, 2019, remained unchanged. On April 3, 2019, Parent provided written consent to the IEP amendments dated April 3, 2019.

At the hearing, Gluhak opined 900 minutes a week of speech and language services, amounting to half of Student's weekly class time, was excessive and unrealistic, and would have required Student to be pulled out of her general education classes, which Student did not want, and which Parents strongly opposed. Therefore, Gluhak persuasively testified that the 900 minutes a week of speech and language services was a clerical error that San Dieguito Union never intended to offer Student, nor did Parents expect it would be provided to Student. Gluhak convincingly testified that San Dieguito Union informed Parents that only 30 minutes of speech and language services per week would be offered to Student during the relevant period.

In April 2019, Student missed two speech and language services sessions due to Student's absence and her refusal to attend. In May, Student attend two of the five sessions offered to her. She was absent twice and refused to attend one session.

The IEP team reconvened on June 5, 2019, to review the functional behavior assessment and to develop a behavior intervention plan. The January 24, 2019 IEP was amended on June 5, 2019, to offer Student individual counseling and parent counseling, and a behavior intervention plan dated June 5, 2019. The IEP contained the same two offers of speech and language services as written in the April 3, 2019 IEP addendum. On June 5, 2019, Parents provided written consent to the June 5, 2019 IEP amendments.

Student attended one session of speech and language service in the first week of June 2019, and was absent for her last session on June 10, 2019. San Dieguito Union's last day of instruction for the 2018-2019 school year was June 14, 2019.

The IEP team reconvened on September 18, 2019, to follow up on Student's progress. At the September 18, 2019 IEP team meeting, the only amendment offered to the IEP was the addition of an accommodation that placed a check-list in Student's

binder to help her understand what was expected of her in class. No changes were made to the speech and language services as written. On September 18, 2019, Parents consented to the September 18, 2019 IEP amendment.

The IEP team reconvened on October 30, 2019, December 9, 2019, and January 13, 2020. An IEP team meeting was held on January 23, 2020, for Student's annual IEP. Parents did not consent to the IEP amendments offered at the October 30, 2019, December 9, 2019, and January 13, 2020 IEP team meetings. Parents provided limited consent to the January 23, 2020 IEP, and noted their objection to the IEP's offer of placement at the Seaside Prep program.

Gluhak continued to offer Student 30 minutes a week of speech and language services during the 2019-2020 school year, until Parents unilaterally placed Student at the Winston School, a non-public school. Student's first day at the Winston School was February 18, 2020. She attended the Winston School throughout the remainder of the 2019-2020 school year and extended school year.

Student only attended five sessions of speech and language services for the 2019-2020 school year at Oak Crest. In September 2019, Student attended three sessions of speech and language services, and missed one session due to her absence. In October 2019, Student was offered six sessions, but only attended two, refused to attend two, and was absent for the other two. Student refused to attend speech and language therapy services in November 2019. In the three school weeks in December 2019, she refused to attend one session and was absent for the other two. On January 9, 2020, Student refused to attend a session offered to her. From January 10, 2020, to her first day at the Winston School on February 18, 2020, Student was absent on the days she was offered speech and language services.

The evidence does not support Student's claim that San Dieguito Union failed to implement the speech and language services offered and consented to in Student's January 24, 2019 IEP, and through the IEP addendums consented to by Parents. Although the January 24, 2019 IEP failed to specify the frequency of the 30 minutes of speech and language services, the offer of speech and language services was clearly explained to Parents at the January 24, 2019 IEP team meeting, and at subsequent IEP team meetings in April and June 2019, that the service would occur each week. Gluhak was available and was prepared to deliver to Student 30 minutes of speech and language services each week during the 2018-2019 school year and through the 2019-2020 school year, until Student left San Dieguito Union to attend the Winston School.

Student argues that San Dieguito Union's failure to deliver speech and language services to Student due to Student's absences and refusal to attend the service was a material failure on the part of San Dieguito Union to implement her IEP. That argument is not persuasive. The IDEA requires school districts to provide an eligible child access to special education and related services that the child requires to receive a FAPE. (*Rowley, supra*, 458 U.S. at p. 201.) However, that obligation does not extend to requiring school districts to guarantee that a child accept and access the special education and related services offered to the child by the school district. Here, San Dieguito Union consistently provided Student access to speech and language services during the relevant period. San Dieguito Union held IEP team meetings to address Student's absences and refusals, and offered counseling and a behavior intervention plan to increase her level of participation. Therefore, San Dieguito Union did not materially fail to implement Student's IEP when Student was absent or refused to attend speech and language services.

San Dieguito Union's inability to deliver speech and language services to Student due to her absences and refusals to attend was not a material failure on the part of San Dieguito Union to implement Student's IEP. Accordingly, Student did not meet her burden of proving that San Dieguito Union denied her a FAPE by failing to implement speech and language services called for in the January 24, 2019 IEP and addendum IEPs.

ISSUES 1(B) AND 2(B): DID THE JANUARY 24, 2019 IEP, AND ADDENDUM IEPs DATED APRIL 3, JUNE 5, AND SEPTEMBER 18, 2019 FAIL TO PROVIDE A CLEAR AND CONCISE OFFER OF A FAPE?

Student contends the January 24, 2019 IEP and the addendums to that IEP dated April 3, June 5, and September 18, 2019, were fatally flawed by inconsistencies, contradictions, and omissions related to goals, specialized academic instruction, speech and language services, a behavior intervention plan, and placement, resulting in confusion in the offers of FAPE. San Dieguito Union contends its offers of speech and language services were adequately specific and clear to allow Parents to meaningfully participate in the IEP process.

Student's complaint raised the issue as to the clarity of the January 24, 2019 IEP's and its addendums' IEP offers of FAPE. Though the complaint does not specifically describe which aspects of the IEP and addendums were unclear, Student presented evidence at hearing regarding the inconsistencies, contradictions, and omissions in the written offers of FAPE in the January 24, 2019 IEP and its addendums dated April 3, June 5, and September 18, 2019. San Dieguito Union did not challenge the sufficiency of the due process hearing request on the issue of whether Student was denied a FAPE due to San Dieguito Union's failure to offer a clear written offer of FAPE. Accordingly,

this Decision will consider Student's arguments and evidence regarding the clarity of the offers of FAPE in the January 24, 2019 IEP and its addendums dated April 3, June 5, and September 18, 2019.

The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) It is the "modus operandi" of the IDEA, "a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." (*School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996].)

An IEP is a written document for each child with a disability that includes a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).) The IEP must also include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).)

Additionally, the IEP must contain statements of how the child's goals will be measured and the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3), (4).) Furthermore, the IEP must contain the projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) The IEP shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.)

In *Union School Dist. v. Smith* (1994) 15 F.3d 1519, *cert. den.* (1994), 513 U.S. 965 (*Union*), the Ninth Circuit held that a district is required by the IDEA to make a clear, written IEP offer that parents can understand. 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. (*Id.* at p. 1526). *Union* emphasized the need for rigorous compliance with this requirement, finding that the requirement of a formal, written offer creates a clear record which helps to eliminate subsequent factual disputes regarding when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. (*Ibid*, see also 20 U.S.C. § 1415 (b)(1)(C).) 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 U.S.C. § 1414(d)(1)(A)(i), 34 C.F.R. § 300.320(a), and Ed. Code § 56345, subd. (a).

However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parent's 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).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).)

The evidence established that the offers of FAPE as written in the January 24, 2019 IEP and its addendums dated April 3, June 5, and September 18, 2019, were procedurally noncompliant, but did not deny Student a FAPE. The IEP team members who attended the January 24, April 3, June 5, and September 18, 2019 IEP team meetings included both Parents, Gluhak, Caples, and program supervisor and administrator Monica Davey.

ANNUAL GOALS

The January 24, 2019 IEP's written offer of FAPE included three annual goals; one in the area of executive functioning and task completion, and two in the area of social skills. Student's claim that the January 24, 2019 IEP was procedurally flawed for failing to note Student's present levels of social emotional and behavioral functioning and her areas of need in the designated sections of the IEP is not supported by the evidence. Though the January 24, 2019 IEP did not state Student's present levels of social emotional and behavioral functioning in the designated section of the IEP, the IEP included sufficient information to provide Student's present levels in those areas. The IEP noted that Student struggled significantly with making inferences and interpreting social language. The IEP also noted that Student's social problem solving, and social

interaction skills were limited, and that Student viewed herself as socially awkward. The IEP further noted Student had difficulty with flexibility and adaptability, which impacted her interactions with others. Student offered no evidence of what aspects of her social emotional and behavioral functioning the IEP failed to note that rendered the IEP procedurally flawed. Therefore, the evidence did not establish that the January 24, 2019 IEP was procedurally flawed for failing to note Student's social emotional and behavior functioning in the designated section of the IEP.

Similarly, the January 24, 2019 IEP provided sufficient information of Student's areas of need. The IEP did not note in the designated section of the IEP the areas of need to be addressed for Student to receive an educational benefit. However, Student's areas of need were stated in other parts of the IEP. The IEP indicated that attention, executive functioning, and social and pragmatic language skills were areas of deficits. Student's complaint does not challenge the clarity of the January 24, 2019 IEP's annual goals and objectives, nor does Student argue in closing that the goals and objectives were unclear as written. The evidence demonstrated the January 24, 2019 IEPs annual goals were sufficiently clear.

The April 3, 2019 IEP addendum offered an additional annual goal to improve Student's ability to regulate her emotions and use coping skills, which Student contends was unclear. The goal called for Student to independently use self-regulation skills as demonstrated through the use of inner coaching, sensory support, or breaks, to aid Student in regulating and coping with feelings of significant anxiety. To meet the goal, Student was expected to successfully use self-regulation skills independently in four out of five opportunities with one reminder. The goal would be measured by documentation and observations.

The emotional regulation/coping skills goal did not have a baseline of Student's present abilities to independently regulate her emotions or to successfully cope with her feelings. The June 5, 2019 IEP addendum, which renamed the goal as noncompliance, did not include a baseline to the goal, and the September 18, 2019 IEP addendum, as offered into evidence, did not contain the annual goals section of the IEP. However, Student's complaint does not allege that the January 24, 2019 IEP and its addendums failed to offer measurable annual goals, only that the IEP failed to provide a clear and concise offer of a FAPE. The evidence did not establish that the April 3, June 5, and September 18, 2019 IEP addendums' emotional regulation/coping skills/noncompliance goal was so unclear to constitute a procedural violation. The goal as written was clear as to what skills Student was expected to acquire and how Student would demonstrate acquisition of those skills. Furthermore, Student offered no evidence as to how the absence of the baseline significantly impeded Parents' ability to meaningfully monitor and enforce the IEP, or how the absence of a baseline deprived Student of an educational benefit.

SPECIALIZED ACADEMIC INSTRUCTION

The January 24, 2019 IEP and the addendums from April to September 2019, were procedurally flawed by failing to indicate the duration of the specialized academic instruction. The January 24, 2019 IEP and addendums offered 270 minutes weekly of specialized academic instruction to address Student's executive functioning needs. The IEP stated that the instruction would take place in an academic support class. On January 29, 2019, Parent emailed San Dieguito Union to clarify whether the January 24, 2019 IEP offered a general education academic support class or a special education academic support class. Davey replied on January 30, 2019, and clarified that the academic support class offered in Student's IEP was the special education academic

support class. Davey explained that the special education academic support class was offered instead of the general education support class because the special education version was taught by an education specialist. Davey testified at the hearing that an education specialist was a credentialed special education teacher, qualified to address Student's disability related educational needs.

The IEP noted that the specialized academic instruction was to start on January 24, 2019. However, the IEP did not indicate an end date for the instruction. The end date for 270 minutes a week of specialized instruction was not added to Student's IEP until October 30, 2019, when San Dieguito Union offered to end the 270 minutes a week of specialized academic instruction on October 30, 2019, to be replaced by 920 minutes a week of special academic instruction at the Seaside Prep program.

However, the absence of an end date as to specialized academic instruction did not deny Student a FAPE. The 270 weekly minutes of specialized academic instruction was clearly linked to academic support class. Therefore, the IEP was sufficiently clear to inform Parents and Student that Student would be expected to receive the 270 minutes weekly specialized academic instruction so long as she had an academic support class on her schedule. Student offered no evidence that the absence of the end date for specialized academic instruction significantly impeded Parents' ability to monitor compliance with, or enforce Student's IEP. (See, *J.L.N. v. Grossmont Union High School District* (S.D. Cal., Sept. 30, 2019, Case No.: 17-cv-2097-L-MDD) 2019 WL 4849172, *7.) Further, Student did not present any evidence as to how the absence of an end date for specialized academic instruction deprived her of an educational benefit. Therefore, San Dieguito Union did not deny Student a FAPE by failing to include the end date for the 270 minutes of specialized academic instruction in the January 24, 2019 IEP and addendum IEPs dated April 3, June 5, and September 18, 2019.

SPEECH AND LANGUAGE SERVICES

The evidence established that the January 24, 2019 IEP and the addendums dated April 3, June 3, and September 8, 2019, failed to provide Student with a clear written offer of speech and language services. The IEP and its addendums were plagued with inaccurate and inconsistent written offers of speech and language services. The January 24, 2019 IEP offered group speech and language services 30 minutes, 30 times totaling 900 minutes, to begin January 22, 2019 to January 22, 2020. The IEP failed to specify the frequency of the 30 minute sessions.

The additional speech and language service written into the IEP for "30 min x 30 Totaling: 900 min served Weekly", to begin on February 2, 2020, made the IEP more confusing. Further, the end date of the initial 30 minutes of speech and language services, which Gluhak testified would occur weekly, was changed from January 22, 2020, to February 1, 2020. The lack of specificity in writing as to the frequency of speech and language services were procedural violations of the IDEA's mandate for a clear written IEP offer. (*Union, supra*, 15 F.3d at p. 1526; 20 U.S.C. § 1414(d)(1)(A)(i).)

Despite the confusing offers of speech and language services in the January 24, 2019 IEP and its addendums through September 8, 2019, the evidence did not establish that the errors significantly impeded Parents' ability to meaningfully participate in the decision-making process regarding Student's IEP, impede Parents' ability to monitor the implementation of, or enforce, the IEP, nor deprive Student of an educational benefit or impeded her right to a FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *Target Range, supra*, 960 F.2d at p. 1484.) Parent A testified at hearing that she was unsure of what speech and language services Student was expected to receive through the IEP. Parent A's testimony was unpersuasive. Gluhak persuasively testified that

Parents were fully involved in the development of Student's January 24, 2019 IEP and its addendums, and informed that Student would be offered only 30 minutes each week of speech and language services. Parents had almost daily communications with Student's teachers, service providers and school administrators. Yet, Parents never expressed confusion or concern at any IEP team meetings, or through any other communications with San Dieguito Union, regarding the speech and language services, or any other aspect of the offer of FAPE during the 2018-2019 school year through September 18, 2019, following their written consent to the January 24, 2019 IEP on January 31, 2019. Therefore, the lack of a specific frequency of speech and language services in the written IEP offer did not impede Parents from considering seriously whether to accept or oppose the speech and language services offered in the January 24, 2019 IEP. (*Union, supra*, 15 F.3d at p. 1526.)

In addition, as discussed in Issues 1(a) and 2(a), the 900 minutes a week of speech and language services written into the April 3, 2019, and June 5, 2019 IEP addendums were clearly clerical errors known by the entire IEP team, including Parents, to be erroneous. Parents did not expect that Student would receive 900 minutes a week of speech and language therapy services to begin in February 2020, and were informed at the IEP team meetings that the 30 sessions of 30 minutes totaling 900 minutes of speech and language services would be provided once a week.

Furthermore, Student offered no evidence that Student required more speech and language services beyond the 30 minutes each week San Dieguito Union offered. Therefore, the evidence demonstrated Parents understood the frequency and duration of the speech and language services San Dieguito Union was expected to offer Student

and Student was not deprived of an education benefit or her right to a FAPE based on the lack of specificity as to the frequency of the IEP's written offer of speech and language services.

The lack of a clear written offer of speech and language services did not impede Parents' ability to meaningfully participate in the development and enforcement of Student's IEP, nor did the evidence demonstrate that the January 24, 2019 IEP and its addendums through September 18, 2019, deprived Student of an educational benefit or right to a FAPE. Parents understood that Student did not require 900 minutes of weekly speech and language services to receive a FAPE. Therefore, San Dieguito Union did not deny Student a FAPE in its written offers of speech and languages services in the January 24, 2019 IEP, and its addendums dated April 3, June 5, and September 18, 2019. (See, *E.B. v. Baldwin Park Unified School District*, (C.D. Cal. Aug. 10, 2020, Case No. CV-17-56-MWF (JCx)), 2020 WL 5875149, *12.)

BEHAVIOR INTERVENTION PLAN

Student claims that a June 5, 2019 IEP addendum included two behavior intervention plans which confused Parents. The evidence did not support that claim. A behavior intervention plan dated June 5, 2019 was added to the IEP on June 5, 2019. A previous behavior intervention plan dated February 22, 2018 was also attached to the IEP. The June 5, 2019 behavior intervention plan was developed by the IEP team and Parents. The two plans were clearly identified by dates. None of San Dieguito Union's teachers and staff testified that they were unclear as to which plan they were expected to implement. Parents never expressed confusion about which plan was in effect at Oak Crest from June 5, 2019, through the date Student left San Dieguito Union to attend the Winston School. Therefore, the IEP addendums dated June 5 and September 18, 2019

were sufficiently clear as to which behavior intervention plan would be implemented, and the attachment of the prior behavior intervention plan dated February 22, 2018, to the IEP, was not a procedural violation. San Dieguito Union did not deny Student a FAPE by attaching both the June 5, 2019, and February 22, 2019 behavior intervention plans to Student's IEP.

PLACEMENT

Student contends the January 24, 2019 IEP and addendums dated April 3, and June 5, 2019, were fatally flawed due to its identification of "PDL program Park Dale Lane" as the educational setting for Student's IEP. Park Dale Lane was the elementary school Student attended the prior school year.

Though the January 24, 2019 IEP erroneously noted Park Dale Lane as the educational setting, the IEP team discussed, and Parents understood Student's placement would be at Oak Crest. Parent A testified that despite the error, Parents understood the IEP would be implemented at Oak Crest. Parents were not confused as to where the Student's special education and related services would be delivered. Student also failed to offer any persuasive evidence that any lack of clarity in Student's IEP significantly impeded Parents' ability to meaningfully participate in the IEP process, or deprived Student educational benefit or access to a FAPE. Accordingly, Student failed to meet her burden of proving San Dieguito Union denied her a FAPE by failing to provide a clear and concise offer of a FAPE in the January 24, 2019 IEP and addendum IEPs dated April 3, June 5, and September 18, 2019.

ISSUES 1(C) AND 2(D): DID SAN DIEGUITO UNION FAIL TO DEVELOP A BEHAVIOR INTERVENTION PLAN BASED ON CURRENT DATA, FAIL TO REVISE IT AS CONDITIONS WARRANTED AND/OR BEHAVIORS CHANGED, AND FAIL IMPLEMENT IT WITH FIDELITY DURING THE 2019-2020 SCHOOL YEAR AND EXTENDED SCHOOL YEAR?

Student contends San Dieguito Union developed the June 5, 2019 behavior intervention plan based on inaccurate and outdated data. Student argues that San Dieguito Union cut-and-pasted an outdated behavior intervention plan dated February 22, 2018 into the proposed June 5, 2019 plan, and therefore San Dieguito Union's IEP team did not appropriately address Student's behavioral needs during the 2018-2019 and 2019-2020 school years. Student further contends that San Dieguito Union failed to revise the June 5, 2019 behavior intervention plan to respond to Student's worsening behaviors during the 2019-2020 school year. Student finally argues that San Dieguito Union failed to implement the behavior intervention plan with fidelity.

San Dieguito Union contends it relied on current data in developing Student's June 5, 2019 behavior intervention plan. San Dieguito Union further contends that it implemented the plan with fidelity and that a change in placement in lieu of revising the behavior intervention plan was an appropriate response to Student's problem behaviors.

Whenever a child's behavior impedes his 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); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) The IEP team must consider the use of positive behavioral interventions and supports, and other strategies, but the

implementing regulations of the IDEA do not require the team to use any particular method, strategy, or technique. (71 Fed. Reg. 46,683 (Aug. 14, 2006).)

An IEP is a written document for each child with a disability that includes a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).) If the IEP team finds that a behavior intervention plan is appropriate for a child with a disability whose behaviors impede the child's learning, then the child's IEP must include a behavior intervention plan. (*Questions and Answers on Discipline Procedures (Office of Special Education and Rehabilitative Services*, June 1, 2009), Q. E-2 (OSERS Q & A).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) It must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Fuhrmann v. East Hanover Bd. Of Educ.* (3rd Cir. 1993) 993 F.2d 1031.) An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

Student's behaviors began to worsen early in the 2019 Spring semester. She did not participate in her academic class and at times was disruptive. Her academic and academic support class teachers could not redirect her. Student drew constantly in class. If Student was not drawing, she spent much of the time in class with her head down on the desk.

At the April 3, 2019, IEP team meeting, San Dieguito Union offered to assess Student in the area of functional behavior. Parent provided written consent to the assessment plan on April 3, 2019.

DEVELOPMENT OF THE JUNE 5, 2019 BEHAVIOR INTERVENTION PLAN

San Dieguito Union relied on current data to develop the June 5, 2019 behavior intervention plan. Caples assessed Student's functional behavior and presented her findings, conclusions, and recommendations in a written report dated May 14, 2019. The functional behavior assessment identified Student's avoidance of work demands and lack of compliance with adult requests as the problem behavior. Caples characterized this behavior to be severe, as it occurred in each class, at times lasting up to 60 minutes per class.

Caples interviewed a classroom aide, education specialist and Student's case manager Matthew Manuel, Student's teachers, Gluhak, and Oak Crest's assistant principal Kathryn Friedrichs. Manuel was Student's case manager during the 2017-2018 and 2018-2019 school years, and her academic support class teacher for the 2018-2019 school year. Caples observed Student on three occasions. She found Student to be very anxious. Student did not engage with peers in small group activity or complete work independently. Student became agitated and frustrated with adult support and would request to be left alone.

Caples opined the demands of the academic classes made Student anxious. Caples hypothesized that Student's anxiety was the source of Student's work avoidance and refusal to comply with adult directions. She recommended that Student request a compromise either verbally or nonverbally with the work demand instead of ignoring or resisting adult requests and avoiding the work altogether.

At the June 5, 2019 IEP team meeting, Caples presented her functional behavior assessment report. Caples developed a behavior intervention plan with the assistance of Gluhak and Manuel, which she proposed to the IEP team to review and revise. The behavior intervention plan presented to the IEP team was dated June 5, 2019.

Caples testified that she considered a prior behavior intervention plan dated February 22, 2018, in developing the June 5, 2019 behavior intervention plan. San Dieguito Union attached both the June 5, 2019, and the February 22, 2018 behavior intervention plans to the IEP addendum dated June 5, 2019. On June 5, 2019, Parents provided written consent to the IEP addendum dated June 5, 2019.

The evidence did not support Student's contention that June 5, 2019 behavior intervention plan was flawed simply because the proposed behavior plan was based on the IEP team's consideration of the prior behavior intervention plan dated February 22, 2018. Though the two plans contained similar verbiage, the evidence did not establish that the June 5, 2019 plan was developed based on stale data, nor did the similarities between the February 22, 2018, and June 5, 2019 behavior interventions plans prove the June 5, 2019 plan was based on outdated data. The evidence demonstrated the June 5, 2019 was based on current data derived from the May 14, 2019 functional behavior assessment and input from the IEP team. The January 24, 2019 IEP, as amended on June 5, 2019, reflected Student's present level of behavioral functioning at the time.

Furthermore, Student offered no persuasive evidence demonstrating that the June 5, 2019 behavior intervention plan's description of Student's problem behavior, its analysis of environmental factors, its conclusion as to the functions of the problem behavior, its proposed functionally equivalent replacement behavior, and its proposed teaching strategies and reinforcement procedures were inadequate to address Student's

behavioral needs at the time. No testimony was offered challenging the appropriateness of those aspects of the June 5, 2019 behavior intervention plan. Accordingly, Student failed to meet her burden of proving San Dieguito Union denied her a FAPE by relying on outdated data to develop the June 5, 2019 behavior intervention plan.

REVISION TO THE JUNE 5, 2019 BEHAVIOR INTERVENTION PLAN

2018-2019 SCHOOL YEAR

The June 5, 2019 behavior intervention plan described Student's ignoring and refusal to comply with adult directives, and instead, to engage in preferred activities such as drawing, as the problem behavior that impeded her learning. The plan identified the problem behavior as occurring daily, multiple times a day, and lasting for an hour at times.

San Dieguito Union's last day of instruction for the 2018-2019 school year was June 14, 2019. Student offered no evidence of changed circumstances at hearing to support Student's claim that the June 5, 2019 behavior intervention plan should have been revised prior to the last day of school for 2018-2019 school year, which was merely seven school days from the time parental consent was given to the plan. There were no changes to Student's behaviors during the last seven school days to warrant a revision to the June 5, 2019 behavior intervention plan. Accordingly, Student failed to prove that San Dieguito Union denied her a FAPE by failing to revise the June 5, 2019 behavior intervention plan before the end of the 2018-2019 school year.

2019-2020 SCHOOL YEAR AND EXTENDED SCHOOL YEAR

Student's problem behaviors persisted through the Fall of 2019, and her overall behaviors worsened as the semester progressed. She became more disruptive in class. She raised her voice, and was verbally defiant and disrespectful, to teachers and staff.

Student did not participate in her academic classes. She often spent class time sleeping or with her head down on the desk. She would at times leave the classroom to use the bathroom, but would not return to class after extended periods of time. That resulted in staff searching the campus and bathrooms for her.

On October 30, 2019, in response to Student's worsening behavior, San Dieguito Union offered to change Student's placement to its Seaside Prep program. Havlat testified that San Dieguito Union offered to change Student's placement to a more therapeutic educational setting rather than revising the June 5, 2019 behavior intervention plan. Havlat explained that San Dieguito Union's IEP team members were concerned that Oak Crest could no longer meet Student's academic, mental health and behavioral needs, and therefore, focused their attention on placement options, rather than modifying the behavior intervention plan.

San Dieguito Union offered two Seaside Prep programs, one in at a middle school and another at a high school. The middle school Seaside Prep program was located within another comprehensive San Dieguito Union middle school. The program was tailored for students who required a more therapeutic setting due to social emotional and behavioral challenges. The program offered embedded mental health services and instructional aide support.

Academically, Seaside Prep offered what was described as “fundamental” classes. Davey testified that the fundamentals classes provided instruction of the general education curriculum but delivered at a slower pace. In addition, the class workload was less compared to non-fundamental classes. Davey explained that the fundamentals classes at Seaside Prep was offered to support Student’s need for a reduced workload and a slower pace of instruction.

The evidence did not establish that the June 5, 2019 behavior intervention plan required a revision during Student’s eighth grade year for Student to receive a FAPE. Student’s expert witness Cynthia Norall, Ph.D., testified. Dr. Norall was a licensed educational psychologist and doctorate level board certified behavioral analyst. She had a doctorate degree in education. Parents hired Dr. Norall to assist them in identifying an appropriate placement for Student. She observed Student once at Oak Crest and participated in three IEP team meetings on December 8, 2019, and January 13 and 23, 2020. Dr. Norall testified that Student could make progress on her IEP goals if Student was placed in the right program. Dr. Norall also testified that the June 5, 2019 behavior intervention plan should have been amended in the Fall of 2019 to address emerging problem behaviors such as Student sleeping in class.

However, at hearing, Havlat persuasively opined that if a placement change occurred, better practice was to implement the behavior intervention plan as-is in the new placement and revise the behavior intervention plan if changes to it became necessary in the new placement. Student did not offer testimony to the contrary.

Student displayed more troubling behaviors involving elopement and classroom disruption in eighth grade. Student remained overwhelmed with the workload in school, did not participate in class, refused to attend her counseling and speech and language services, and experienced significant anxiety. Student's behavioral challenges were intertwined with her academic and emotional struggles, as her avoidance behaviors were fueled by the anxiety and stress stemming from her inability to keep up with her academic classes. Therefore, San Dieguito Union's response to the Student's behaviors by recommending a change of placement to Seaside Prep, as opposed to modifying the behavior intervention plan, was sound. Student offered no persuasive evidence challenging the soundness of San Dieguito Union's approach or that the June 5, 2019 behavior intervention plan as written could not be successful at Seaside Prep. Accordingly, Student failed to meet her burden of proving San Dieguito Union denied her a FAPE by failing to revise the June 5, 2019 behavior intervention plan during the 2019-2020 school year.

IMPLEMENTATION OF THE JUNE 5, 2019 BEHAVIOR INTERVENTION PLAN

Student contends the lack of improvement in her behavior and her school discipline were evidence that San Dieguito Unified failed to implement her behavior intervention plan. San Dieguito Union contends its staff properly implemented Student's behavior intervention plan, and any deviation from the plan was not material and did not deny Student a FAPE.

Student relies on the lack of improvement in Student's behavior, service logs prepared by instructional aides, and Student's disciplinary records to support her claim that San Dieguito Union failed to implement Student's June 5, 2019 behavior intervention plan with fidelity. However, the evidence did not support that claim.

Student offered no persuasive evidence that San Dieguito Union materially failed to implement the June 5, 2019 behavior intervention plan. (*Van Duyn, supra*, 502 F.3d. 811, 821 [no statutory requirement of perfect adherence to the IEP or that minor implementation failures result in a denial of a FAPE].) At beginning of the 2019-2020 school year, Manuel emailed Student's teachers a copy of the June 5, 2019 behavior intervention plan. The strategies offered in the behavior intervention plan were used by the teachers and staff working with Student. The teachers and staff implementing the plan utilized the strategies outlined in the plan such as offering Student offered choices when asked to do non-preferred tasks. Also, the IEP gave Student the option of doing one task first, and then the other, to give her a sense of control in her tasks. The IEP also allowed Student to draw as a response to assignments, and staff presented tasks that were relatable to Student's interests, such as art and attending art school.

Eighth grade English teacher Megan Richards implemented the most recent behavior intervention plan, which she identified at the hearing as the plan dated June 5, 2019. Richards observed the instructional aide communicating with Student in a supportive manner. To avoid Student feeling singled out, the aide worked with other students in the class, did not hover over Student, spoke softly to Student, and checked on her using subtle verbal cues, or by tapping on Student's desk. In addition, the aides did not follow Student out of class. However, the aides did check on Student when Student was out of class for extended periods of time.

Caples and Friedrichs offered similar testimony. They persuasively explained that they utilized strategies within the June 5, 2019 behavior intervention plan to support Student.

In addition, San Dieguito Union's discipline of Student did not violate the behavior intervention plan, contrary to Student's contention. A student with an IEP and a behavior intervention plan is not discharged from complying with classroom and school rules and is subject to school disciplinary measures for violating the rules. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 48915.5, subd. (a).)

Friedrichs convincingly testified that she took into consideration Student's behavior intervention plan, and behavioral and mental health needs in determining whether Student should be disciplined. Though Student's problem behaviors occurred frequently, she was often not disciplined for her behaviors. When Student was disciplined, it was due to a violation of a class or school policy after being repeatedly warned, such as wearing shoes with wheels in violation of school policy after being warned numerous times not to wear them at school, or refusing to leave the classroom with Friedrichs and becoming verbally hostile towards Friedrichs.

Furthermore, the logs prepared by the instructional aides offered little insight as to whether the June 5, 2019 behavior intervention plan was implemented with fidelity. No instructional aide testified at hearing to explain the logs or the significance of the information or lack of, within the logs. Thus, a conclusion could not be drawn that if an entry in the logs failed to note a particular intervention to Student's behavior, that the intervention did not occur. Therefore, the logs were not persuasive and given little weight. Student offered no persuasive evidence demonstrating a failure by San Dieguito Union to implement the June 5, 2019 behavior intervention plan with fidelity. Accordingly, Student failed to meet her burden of proving San Dieguito Union denied her a FAPE by failing to implement her June 5, 2019 behavior intervention plan with fidelity.

ISSUES 1(D)(I-IV) AND 2(E)(I-IV): DID SAN DIEGUITO UNION FAIL TO OFFER APPROPRIATE SUPPORTS AND SERVICES DESIGNED TO MEET STUDENT'S ACADEMIC, BEHAVIORAL, MENTAL HEALTH, AND PRAGMATIC LANGUAGE NEEDS FROM JANUARY 24, 2019, THROUGH THE 2019-2020 SCHOOL YEAR AND EXTENDED SCHOOL YEAR?

Student contends San Dieguito Union failed to offer support and services to adequately address her lack of academic progress in light of her high average and superior cognitive and academic abilities. Student also contends that San Dieguito Union should have offered Student behavior supports, services, and a behavior intervention plan as part of the January 24, 2019 IEP.

In addition, Student argues that her IEPs failed to address her anxiety and provide Student with an appropriate level of counseling services. Further, Student claims that 30 minutes per week of speech and language services was inadequate to meet Student's deficits in the areas of social interaction and perspective-taking. San Dieguito Union contends it offered Student appropriate supports and services at all relevant times to provide Student with a FAPE.

The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) It is the "modus operandi" of the IDEA, "a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and

related services to be employed to meet those needs." (*School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996].)

In California, related services are called designated instruction and services, and must be provided as required to assist an individual with exceptional needs to benefit from special education. (Ed. Code, § 56363, subd. (a).) The educational benefit provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, abrogated in part on other grounds by *Schaffer*, *supra*, 546 U.S. 49.)

ISSUES 1(D)(I) AND 2(E)(I): ACADEMICS

San Dieguito Union offered appropriate supports and services to address Student's academic needs. Student struggled in her general education academic classes at the onset of her seventh grade year. Her inability to organize and follow through with assignments hurt her grades. Student received an F in English, math, and science, a D in in history, a D in physical education, and an A in art for the Fall semester of the 2018-2019 school year.

An education specialist assessed Student's as part of the January 14, 2019 multidisciplinary assessments, using a standardized assessment tool to assess Student's academic abilities. Student's standard scores in reading fluency and in reading rate

were in the high range. Student's standard scores in reading comprehension and in written expression were in the high average range. Her standard scores in basic reading, math calculations and math problems solving fell in the average range. Student's only area of relative weakness was in math fact fluency, where her standard score fell in the low average range.

The January 24, 2019 IEP noted that Student did not consistently organize, prioritize, complete, and turn in assignments in her academic classes. The IEP offered accommodations that provided Student preferential seating near the point of instruction, copies of notes to allow her follow along during lessons, and access to a smart device to take photos of class assignments, homework, and classroom agendas.

The IEP offered 270 minutes a week of specialized academic instruction to be provided in an academic support class. The special education academic support class lessons primarily involved developing executive functioning skills. Class assignments were geared towards improving goal setting, prioritizing work, study skills, and organization. The class offered students additional opportunities for reteaching and time to complete assignments from other classes.

Following Parents' consent to the January 24, 2019 IEP, Student was placed in general education classes for history, math, science, English, and art. She participated in an independent studies class for physical education. Her sole special education class was the academic support class.

Student's academic struggles continued through the 2019 Spring semester. On February 5, 2019, Parent A explained to Student's academic support class teacher that Student was overwhelmed with the workload from her classes. In math class, Student

did not take notes or do work. Student received a poor grade primarily due to her poor performance on tests and quizzes, which accounted for 70 percent of the grade.

At the April 3, 2019 IEP team meeting, Manuel shared that teachers reported that Student was not completing class assignments and homework. Student was disengaged and off-task in class. Student was unprepared and unorganized in class. She struggled with initiating work, and completing and turning in assignments. Parents shared that Student would complete the work, but misplaced assignments.

The IEP amendments dated April 3, 2019, offered two additional accommodations. The IEP permitted an accommodation for a reduction in homework assignments so long as mastery of grade-level content standards were not impacted. The IEP also allowed Student to submit assignments electronically.

The June 5, 2019 IEP offered additional accommodations. A reduction in math problems up to 50 percent was permitted so long as it did not impact mastery of content standards.

In addition, the IEP offered Student access to the Learning Academy. The Learning Academy was not a class, nor a program students were placed into, but rather, a classroom space accessible to students throughout the day. Students could access the Learning Academy to self-regulate, take breaks, and receive academic support and accommodations. The Learning Academy also offered instructional aides that came into the classroom to support a student.

At the IEP team meeting, San Dieguito Union's IEP team members explained the Learning Academy was specifically offered to Student to allow for instructional aide support in the class as Student demonstrated a need for additional adult support in her

general education classes to help Student with organization, task initiation, and task completion. For the Spring semester, she received Fs in physical education, English, math, and history, Cs in science and academic support, and a B in Art.

Student's academic struggles continued in 2019-2020 school year. She was still not completing assignments or participating in the class. As a consequence, she was at risk of failing her academic classes.

At the October 30, 2019 IEP team meeting, San Dieguito Union offered to change Student's placement to its Seaside Prep program and increase her specialized academic instruction to 920 minutes weekly, to occur in Seaside Prep's fundamental classes for history, math, science, and English. Student would also have access to an Art class. Parents did not consent to the October 30, 2019 IEP amendments.

As of November 15, 2019, Student had made no progress in improving her ability to organize and complete work. She was completing only 10 percent of her class assignments in her core academic classes. For the first quarter of the 2019-2020 school year, Student received Fs in English, math, science and in the academic support class. She received a C minus in history and an A plus in art.

The evidence did not establish that the support and services offered in Student's IEP during the 2018-2019 and 2019-2020 school years were inadequate to meet her academic needs. Student was very intelligent, but her inability to consistently focus, follow through, and organize, negatively impacted her learning.

The January 24, 2019 IEP and its amendments in April and June 2019, were appropriately designed to meet Student's academic needs. Student's inability to keep up with her academic classes was a significant source of anxiety for Student. The

workload was too demanding. The academic support class provided the appropriate support and skill training to help improve Student's difficulties with focus, organization, task initiation, and assignment completion. However, she could not focus, take in information, nor benefit from the supports and services offered in her IEP as result of her severe anxiety. As Student's anxiety increased, her IEP appropriately supplemented her academic needs with counseling services, and eventually, intensive mental health services, and a behavior intervention plan to support her social emotional and behavioral needs that were negatively impacting her academic performance.

The specialized academic instruction through the academic support class continued to be necessary and appropriate during the start of the 2019-2020 school year. Student's inability to consistently organize, initiate and follow through with assignments, and focus in class were significant impediments to her learning, which was compounded by her worsening anxiety.

The IEP amendments offered on October 30, 2019, were equally necessary and appropriate. Student was overwhelmed with the workload and pace of her academic classes. Despite accommodations to allow her to access notes during lectures, to reduce homework assignments, to reduce math problems by 50 percent, to use a smart device to photograph assignments, and agendas, and to submit assignments electronically, she could not keep up in her academic classes. The fundamentals classes offered at Seaside Prep was appropriate for Student as the fundamentals classes offered access to grade level curriculum at a slower pace. The fundamental classes reduced work demand would reduce Student's stress and anxiety and allow her to catch up on lost instruction. Accordingly, Student failed to meet her burden of proving that

San Dieguito Union denied her a FAPE by failing to offer appropriate supports and services to meet Student's academic needs from January 24, 2019, through the 2019-2020 school year and extended school year.

ISSUES 1(D)(II), 1(D)(III), 2(E)(II) AND 2(E)(III): BEHAVIOR AND MENTAL HEALTH

CLAIMS NOT ADDRESSED

Student claims San Dieguito Union failed to include a general education teacher at the April 3, 2019 IEP team meeting to weigh in on the IEP revisions and the need for behavioral supports and services. Student also claims that San Dieguito Union failed to assess Student's mental health prior to offering Student counseling and educationally related mental health services, and that her IEP goal to address her mental health was inappropriate. However, Student's due process hearing request did not raise the issue alleging a denial of a FAPE for failing to include a general education teacher at the April 3, 2019 IEP team meeting, or at any other IEP team meeting during the relevant period. Further, Student's due process hearing request failed to allege a denial of a FAPE due to the lack of an assessment regarding Student's mental health. In addition, Student's due process hearing request does not challenge the appropriateness of Student's IEP goals. A due process hearing is limited to the issues alleged in the due process hearing request. (20 U.S.C. § 1415(f)(3)(B).) Furthermore, these issues were not tried by the parties expressly or implicitly at hearing. (*M.C. v. Antelope Valley Unified School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196.) Therefore, this Decision makes no determination as to whether the absence of a general education teacher at Student's IEP

team meetings, or the lack of a mental health assessment denied Student a FAPE, nor does this Decision make any determination as to the appropriateness of Student's IEP goals.

The evidence did not support Student's contention that San Dieguito Union failed to offer appropriate supports and services to address her behavioral and mental health needs. At the start of the 2018-2019 school year, teachers observed Student to be easily distracted. Student put little effort in class, and often had her head down on her desk. Her teachers observed Student to be withdrawn and displayed poor social interactions. Student was defiant at times and did not follow class rules.

On January 24, 2019, Parents shared Student's aversion with special education and her special education experience during elementary school with the IEP team. Student did not want to be in special education and did not want to be viewed by peers as different. Thus, Parents wanted minimal special education supports and services. Parents did not want Student to be pulled from the general education classroom for related services, because Student perceived being pulled from class as being part of special education.

The January 24, 2019 IEP noted that Student's inability to manage and follow through with assignments in her academic classes was a behavior that impeded her learning. The IEP noted that attention and executive functioning skills were areas of need. The IEP also noted that Student had difficulty with thinking flexibly and adapting to new situations.

San Dieguito Union scheduled Student's pull-out speech and language services during the academic support class to reduce Student's anxiety of being pulled from general education classes. In addition, the IEP offered an appropriate accommodation to allow Student to engage in non-disruptive, off-task behaviors such as drawing, during whole class lectures, to help her self-regulate. The IEP also offered appropriate specialized academic instruction in an academic support class to address her difficulties with organization and task completion.

Student argues that San Dieguito Union should have offered a behavior intervention plan as part of the January 24, 2019 IEP. The evidence did not support that argument. The January 24, 2019 IEP identified Student's ability to manage and follow through with academic tasks as a behavior impeding her learning. The IEP team offered an IEP goal to improve her task completion on January 24, 2019, in addition to the academic support class to improve her executive functioning skills. The IEP team identified no other behaviors, nor did Student point to any behaviors as of January 24, 2019, that required a behavior intervention plan. Therefore, a behavior intervention plan was not required as of January 24, 2019 for Student to receive a FAPE.

However, Student's anxiety worsened following the January 24, 2019 IEP team meeting. In February 2019, Manuel informed Student she had an IEP. Manuel testified he normally reviewed an IEP with a student to make the student aware of the IEP's goals and expectations, and to give the student a sense of ownership of the IEP. Student was upset to learn she had an IEP.

By April 2019, Student did not participate, was disengaged, and often off-task in her academic classes. Her class participation in academic classes became non-existent. She was not doing work, nor taking notes in class. In response, the IEP amended Student's IEP on April 3, 2019, to add a goal to improve Student's coping skills and ability to regulate her emotions. In addition, the IEP team added 30 minutes each week of guidance and counseling services to her IEP. Caples opined that the IEP team added the counseling services to help Student work through her anxiety and stress.

Student's anxiety did not improve in April 2019. She became resistant to speech and language therapy following the spring break. By mid-May 2019, Student was experiencing significant anxiety, and getting her to school was a challenge for Parents.

On May 20, 2019, Parent B emailed Manuel that Student was struggling with anxiety. Student was emotional and fearful, and would not get out of bed. Parent B reported that Student's anxiety was not only school related, and Student was troubled with "bigger issues".

In response to Student's worsening anxiety, and non-complaint behaviors, Student's IEP team amended the IEP on June 5, 2019, to offer a behavior intervention plan and educationally related mental health services for Student and Parents. Student would receive 120 minutes each month of intensive mental health services, and Parents would receive 40 minutes each month of counseling services. The IEP team added intensive counseling services to help Student address her increasing anxiety, to help her become more aware of how her autism affected her, and to work through her perceptions and negative thoughts associated with special education.

As of June 14, 2019, Student made no progress in the use of self-regulation skills to help regulate and cope with feelings of significant anxiety. Also, organization and work completion continued to be an area of need. She still required additional help and prompting with perspective taking and understanding other people's perspectives.

Student's interactions with peers and adults did not improve. She continued to state her mind without filter and ignored interactions with peers and adults. She shut down rather than accept feedback.

Student's behaviors at school worsened during the 2019-2020 school year. By October 30, 2019, Student was still acting out in class. Her anxiety had worsened, she could not focus and take in information in the classroom. She continued to ignore adult directions, refused to attempt, or complete classwork, and remained disengaged in her academic classes. Student refused to attend speech and language services and counseling services.

In response to her worsening anxiety and behaviors, San Dieguito Union offered to place Student at Seaside Prep. Seaside Prep offered a smaller class size, slower pace of instruction, and embedded mental health and aide support, all of which were necessary to increase Student's access to lessons, services, and supports.

The evidence established that San Dieguito Union's offer of supports and services were appropriate to address Student's worsening behavioral and mental health needs during the 2018-2019 and 2019-2020 school years. San Dieguito Union added counseling services as Student's anxiety worsened in the Spring of 2019. The IEP team later added intensive counseling services for Student and Parents, in addition to a

behavior intervention plan in June 2019 when her behaviors and anxiety got worse. The evidence did not prove that the level of counseling and educationally related mental health services were inadequate to meet Student's behavioral and mental health needs or that her IEP was lacking an additional support and service to address her mental health needs. Furthermore, as discussed in Issues 1(c) and 2(d), the evidence did not prove the June 5, 2019 behavior intervention plan was inadequate to meet her behavioral needs.

Moreover, San Dieguito Union appropriately responded to Student's social emotional and behavioral needs by recommending a change in environment to a more therapeutic setting when Student's behaviors and anxiety escalated in the Fall of 2019, and she refused to attend counseling services. In addition to a behavior intervention plan, Davey persuasively testified that Seaside Prep's embedded mental health services and aide support was appropriate and readily accessible to Student within the classroom. Student did not offer testimony to the contrary.

The evidence established that San Dieguito Union offered appropriate supports and services to Student as all relevant times to address her behavioral and mental health needs. Accordingly, Student failed to meet her burden of proving San Dieguito Union denied her a FAPE by failing to offer appropriate supports and services to address her behavioral and mental health needs during the 2018-2019 and 2019-2020 school years and extended school year.

ISSUES 1(D)(IV) AND 2(E)(IV): PRAGMATIC LANGUAGE

Student did not prove San Dieguito Union failed to offer appropriate support and services to address her pragmatic language needs. The January 24, 2019 IEP and its addendums identified Student's social skills and pragmatic language abilities as areas of need and offered 30 minutes of speech and language services, to be delivered weekly. Student's claim that her lack of progress in the area of social skills and perspective taking were evidence that the speech and language services offered were inadequate is without merit. Student missed a significant amount of speech and language services during the 2018-2019 and 2019-2020 school years due to her absences and refusal to attend the service. Thus, the lack of progress in the area of pragmatic language is attributable to the lack of attendance on the part of Student and not to the inadequacy of San Dieguito Union's speech and language services. As discussed in Issues 1(a) and 2(a), San Dieguito Union did not fail to materially implement Student's speech and language services.

Furthermore, Student offered no evidence that she required more than 30 minutes of speech and language services a week or a different or additional service to meet her pragmatic language needs. Accordingly, Student failed to meet her burden of proving in Issues 1(d)(iv) and 2(e)(iv) that San Dieguito Union denied her a FAPE by failing to offer appropriate supports and services designed to meet Student's pragmatic language needs during the 2018-2019 through the 2019-2020 school year and extended school year.

ISSUE 2(C): DID SAN DIEGUITO UNION CHANGE THE SPEECH AND LANGUAGE SERVICES WITHOUT PARENT'S KNOWLEDGE OR CONSENT, OUTSIDE THE IEP TEAM MEETING PROCESS FOLLOWING THE OCTOBER 30, 2019 IEP TEAM MEETING?

Student contends San Dieguito Union amended its offer of speech and language services on November 19, 2019, outside of the IEP process and without Parents' knowledge or consent. San Dieguito Union contends it did not change the speech and language services offered to Student.

"IEPs are clearly binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to the statute – not to decide on its own no longer to implement part or all of the IEP." (*Van Duyn, supra*, 502 F.3d 811, 821 (citing 20 U.S.C. §§ 1414(d)(3)(F), 1415(b)(3)).) Among the most important procedural safeguards are those that protect the parent's right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).)

Two speech and language services were offered among the written IEP amendments dated October 30, 2019. The first offer read, "30 min x 30 Totaling: 900 min served Weekly, starting January 24, 2019, and ending January 24, 2020. The second offer read, "30 min x 30 Totaling: 900 min served" starting January 22, 2019 and ending February 1, 2020. Parents did not consent to the proposed amendments dated October 30, 2019. On November 19, 2019, Havlat provided Parents with a prior written notice. (20 U.S.C. § 1415(b)(3).) The prior written notice stated San Dieguito Union's offer of FAPE that included "Speech and Language 900 minutes/yearly."

Student's contention that she was denied a FAPE based on the inconsistency between the proposed speech and language services offered on October 30, 2019, and those reflected in the November 19, 2019, was not supported by the evidence. As discussed in Issues 1(a) and 2(a), the weekly 900 minutes of speech and language services written into the IEP was a clerical error, which San Dieguito Union did not intend to offer, and which Parents never expected to be provided to Student as Parents did not expect about half of Student's educational program to be speech and language services. Therefore, the addition of "yearly" to the speech and language services as stated in the November 19, 2019 prior written notice was the only difference from the October 30, 2019 IEP FAPE offer.

The addition of "yearly" to the IEP FAPE offer was not so unclear as to constitute a procedural violation of the IDEA. However, even assuming the addition of "yearly" to the offer of FAPE amounted to a procedural violation, that difference did not deny Student a FAPE. The November 19, 2019, prior written notice simply clarified that the 30 minutes a week San Dieguito Union would make available to Student would total 900 minutes in a year. San Dieguito Union consistently made available to Student

30 minutes a week of speech and language services during the 2018-2019 and 2019-2020 school year, until Student was unilaterally placed by Parents into the Winston School. San Dieguito Union made no changes to Student's speech and language services outside of the IEP team meeting process following the October 30, 2019 IEP team meeting.

The evidence did not establish that the differences in the speech and language services offered in the IEP amendment dated October 30, 2019, and the November 19, 2019 prior written notice, significantly impeded Parents' ability to meaningfully participate in the IEP process or deprive Student of an educational benefit. Accordingly, Student failed to prove that San Dieguito Union denied her a FAPE by changing her speech and language services without knowledge or consent from Parent following the October 30, 2019 IEP team meeting.

ISSUE 2(F): DID THE PLACEMENT OFFERED ON OCTOBER 30, 2019, FAIL TO MEET STUDENT'S ACADEMIC, BEHAVIORAL, AND MENTAL HEALTH NEEDS?

Student contends San Dieguito Union's offer of placement at the Seaside Prep program could not meet Student's unique academic, behavioral, and mental health needs and that her unique needs required placement with only disabled peers. San Dieguito Union contends its offer of placement at the Seaside Prep was reasonably calculated to provide Student with a FAPE.

School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services

cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56040.1.) The IDEA also requires, to the maximum extent appropriate, that a child with a disability must be educated with children who are not disabled. (*Ibid.*) 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 Ed.* (5th Cir. 1989) 874 F.2d 1036, 1050.)

School districts, as part of a special education local plan area, must have available a continuum of program options to meet the needs of individuals with exceptional needs for special education and related services as required by the IDEA and related federal regulations. (34 C.F.R. § 300.115; Ed. Code, § 56360.) The continuum of program options includes, but is not limited to:

1. regular education;
2. resource specialist programs;
3. designated instruction and services;
4. special classes;
5. nonpublic, nonsectarian schools;
6. state special schools;
7. specially designed instruction in settings other than classrooms;
8. itinerant instruction in settings other than classrooms; and
9. instruction using telecommunication in the home, hospitals or institutions.

(34 C.F.R. § 300.115; Ed. Code, § 56361.) In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

The Ninth Circuit has stated a four-factor evaluation to determine whether a placement is the least restrictive environment. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*)). The four factors are:

1. the educational benefits of placement full-time in a regular class;
2. the non-academic benefits of interaction with children who were not disabled;
3. the effect the child will have on the teacher and children in the regular class; and
4. the costs of mainstreaming the student. (*Ibid.*)

An analysis of the *Rachel H.* factors concludes that Student required a more restrictive placement than Oak Crest. Despite the array of accommodations, supports and services, Student made little to no progress academically, behaviorally, and emotionally. Student was not accessing her education in eighth grade and receiving no benefit in the general education academic classes. In addition, her peer interactions were minimal to non-existent. She was unwilling to accept the supports and services offered to her at Oak Crest to address her anxiety and problem behaviors. By October 30, 2019, Student was failing her academic classes, was experiencing significant anxiety to the point that attending school had become a daily struggle.

In addition, Student became increasingly disruptive in class leading up to the October 30, 2019 IEP team meeting. She ignored teachers and class rules. She often put her head down on her desk during class time. She at times got upset with teachers, yelled at them, and became disrespectful. Teachers were forced to stop lessons to attend to Student's behaviors. By October 30, 2019, it was evident that Oak Crest could not meet her academic, behavioral, and emotional needs. As to the fourth *Rachel H.* factor, neither party offered any evidence as to cost.

On October 30, 2019, San Dieguito Union revised its IEP offer to include placement at Seaside Prep. Student attended a follow-up IEP team meeting on the December 9, 2019. At the meeting, the IEP team asked Student to describe her ideal school setting. Student responded that it would be a place where she was not being followed and not being pulled out of class. Student subsequently toured the Seaside Prep program and did not like what she saw.

The evidence established that Student's academic, behavioral, and mental health needs could be met at Seaside Prep. As discussed in Issues 1(d)(i-iv) and 2(e)(i-iv), Seaside Prep's fundamentals classes with embedded mental health and aide supports was appropriate to meet Student's academic, behavioral, and mental health needs.

Parent A testified that in addition to her concerns regarding Seaside Prep's fundamentals classes, Parent A was also concerned about Seaside Prep's location within a comprehensive campus. Parent A opined that a segregated special education program contained in a comprehensive campus would cause Student significant anxiety due to being separated from her typical peers and being perceived as different. Thus, Parent A opined the Seaside Prep program would have been a disastrous experience for Student.

Dr. Norall shared Parent A's opinion. Dr. Norall testified that placement in a special education program within a comprehensive campus would exacerbate Student's anxiety and worsen her feelings of being different.

Student was strongly opposed to special education, and as result, any IEP service or placement would make her anxious. However, a student's aversion to an IEP service or a placement does not render it inappropriate. An IEP is required to provide a child with a disability a program in the least restrictive environment to address

- the child's unique academic,
- social, health,
- emotional,
- communicative,
- physical, and
- vocational needs.

(20 U.S.C. § 1412(a)(5)(A); *Seattle School Dist. No. 1, supra*, 82 F.3d. at p. 1500.) Further, a school district is not required to offer a program preferred by a student or parent.

(*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

Here, Student's problem behaviors and anxiety at school were areas of need that Student's IEP had to address, not avoid. Therefore, the question is not whether the placement at Seaside Prep was inappropriate because it would cause Student to be more anxious, but whether Seaside Prep offered Student placement in the least restrictive environment, while also providing the supports and services she needed to work through, and potentially overcome, the anxiety that she was expected to experience.

The evidence did not establish that Seaside Prep's location within a comprehensive campus would worsen Student's anxiety. Student offered no evidence that established that circumstances existed at Seaside Prep that might contribute to Student's anxiety. At Oak Crest, Student was not bullied or singled out as a special education student following the addition of the academic support class, despite being segregated for one period of her school day from her general education peers and pulled out for counseling and speech and language services. Student was not singled out by her peers at Oak Crest.

In addition, the middle school Seaside Prep program was located in a building mixed with general education classes. On campus, Student would not be distinguishable from the general education population. Student would also have access to general education classes in art and physical education. During breaks and lunch, she would have access to general education peers. Dr. Norall notably did not offer any criticism of, nor did Student offer any evidence that challenged, the offered supports and the mental health services at Seaside Prep to appropriately respond to an increase in Student's anxiety.

Furthermore, Student did not support her contention that she required a nonpublic school to meet her academic, behavioral, and mental health needs with any credible evidence. Dr. Norall's opinion that a nonpublic school was necessary for Student was not persuasive. Student wanted to be part of, not segregated from, her general education peers, and Dr. Norall's testimony did not weigh the benefits of Student's access to nondisabled peers. Furthermore, Dr. Norall did not opine that Student could not be educated with nondisabled peers.

Student called two additional witnesses to support her contention she required a nonpublic school. Their testimony did not support Student's contention that she required a nonpublic school. The Winston School's director of special education Holly Reed, Ph.D., testified. Similar to Seaside Prep's small class size with embedded supports, Dr. Reed explained that Student's classroom at the Winston School had about 10 students and was supported by an instructional aide. Dr. Reed opined that the Student's behaviors improved at the Winston School, and did not require the support of a behavior intervention plan.

Student's expert Sarah Turner, Ph.D. also testified. Dr. Turner was a licensed clinical psychologist who provided therapy to Student beginning in December 2019. Dr. Turner opined that Student was overwhelmed with the class size and work demands at Oak Crest. Dr. Turner reported that Student's anxiety had lessened since entering the Winston School, and Student was happier. However, Dr. Reed's and Dr. Turner's testimony was limited to Student's progress at the Winston School, and neither Dr. Reed, nor Dr. Turner offered an opinion as to whether placement at Seaside Prep could meet Student's needs. Accordingly, Dr. Reed's and Dr. Turner's testimony was not persuasive in determining whether placement at Seaside Prep offered Student a FAPE.

Furthermore, Student's contention that her aversion to being viewed as special or different from her typical peers was unique to her disability and thus, warranted placement with only disabled peers was unpersuasive. Seaside Prep's academic, behavior, and mental health services and supports were appropriately designed to meet Student's needs in the least restrictive environment, while also directly addressing Student's negative views of special education and the anxiety associated with feeling

different at school. Placement in a setting without access to typical peers to merely avoid the stigma of special education that Student feared would have been inconsistent to IDEA's intent to place students in the least restrictive environment.

Student did not establish that placement at the Seaside Prep program could not meet her academic, behavioral, and mental health needs. The academic fundamentals classes gave Student access to grade level curriculum at the pace she needed. The program also offered embedded aide support and mental health services to support her behavioral and mental health needs. In addition, the program's inclusion within a comprehensive campus gave Student access to nondisabled peers and general education classes. Accordingly, Student failed to meet her burden of proving San Dieguito Union denied Student a FAPE by failing to offer an appropriate placement to meet Student's academic, behavior, and mental health needs from October 30, 2019.

ISSUE 2(G): DID SAN DIEGUITO UNION FAIL TO TIMELY PRODUCE STUDENT'S EDUCATIONAL RECORDS IN RESPONSE TO PARENT'S MARCH 20, 2020 WRITTEN REQUEST?

Student contends San Dieguito Union failed to timely respond to the Parents' March 20, 2020 request for copies of Student's educational records. San Dieguito Union did not offer a contention on this issue in its closing argument.

California Education Code section 56504 states in relevant part that,

"[t]he parent shall have the right and opportunity to examine all school records of his or her child and to receive copies...within five business days after the request is made by the parent, either orally or in writing."

On March 20, 2020, Parents provided San Dieguito Union a written request for records. The request for records sought correspondence and memoranda, all notes of telephone calls, all discipline records, all attendance records, all class schedule changes, all IEPs, IEP team meeting notes, and related documents, progress reports, evaluation reports, assessment plans, request and referrals for evaluations, testing protocols administered, notes and reports of observations. The request also sought notes from the school psychologist or other personnel who provided services, evaluated, or were involved in the provision of services, any documents related to alternative programs that may have been offered, and all tape recordings.

On March 24, 2020, Havlat emailed Parents informing them that San Dieguito Union's offices were closed in response to the COVID-19 pandemic. Havlat explained that San Dieguito Union's staff were working remotely and did not have access to student records. Havlat stated that San Dieguito Union would fulfill the records request once regular school programming returned.

On May 18, 2020, Parents emailed Havlat inquiring as to the status of the records requested. Havlat replied the next day, advising Parents that due to the school closures, San Dieguito Union would respond to the records request when staff were permitted to return to schools and offices.

On July 12, 2020, Parent again emailed Havlat following up on the status of the records requested. San Dieguito Union responded on August 31, 2020, informing Parents that the records requested were available for pickup on September 1, 2020.

San Dieguito Union's delivery of Student's educational records occurred more than five business days from the date of Parent's written records request, thus the production of records was untimely. However, the evidence did not establish that the

untimely production of Student's educational records significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student or deprive Student of an educational benefit. Student was enrolled in the Winston School when Parents requested the records, and the evidence did not demonstrate that the lack of the records requested impacted Student's education at the Winston School.

In addition, Parents did not request an IEP team meeting during the 2019-2020 school year or extended school year after Student's enrollment at the Winston School. Student offered no evidence at hearing as to how the delay in Parents receiving the requested records impeded their involvement in Student's education or deprived Student of an educational benefit. Accordingly, Student failed to meet her burden of proving San Dieguito Union denied her a FAPE by failing to timely respond to Parent's March 20, 2020 request for Student's records.

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(a): San Dieguito Union did not deny Student a FAPE by failing to implement Student's speech and language services as set forth and consented to in Student's January 24, 2019 IEP and addendum IEPs during the 2018-2019 school year, from January 24, 2019. San Dieguito Union prevailed on Issue 1(a).

Issue 1(b): San Dieguito Union did not deny Student a FAPE by failing to provide a clear and concise offer of a FAPE in Student's January 24, 2019 IEP, and addendum IEPs dated April 3 and June 5, 2019, during the 2018-2019 school year, from January 24, 2019. San Dieguito Union prevailed on Issue 1(b).

Issue1 (c): San Dieguito Union did not deny Student a FAPE by failing to develop a behavior intervention plan based on current data and revise it as conditions warranted and/or behaviors changed during the 2018-2019 school year, from January 24, 2019. San Dieguito Union prevailed on Issue 1(c).

Issues 1(d)(i-iv): San Dieguito Union did not deny Student a FAPE by failing to offer appropriate supports and services designed to meet Student's needs in the areas of academics, behavior, mental health, and pragmatic language during the 2018-2019 school year, from January 24, 2019. San Dieguito Union prevailed on Issues 1(d)(i-iv).

Issue 2(a): San Dieguito Union did not deny Student a FAPE during the 2019-2020 school year and extended school year by failing to implement Student's speech and language services as set forth and consented to in Student's January 24, 2019 IEP and addendum IEPs. San Dieguito Union prevailed on Issue 2(a).

Issue 2(b): San Dieguito Union did not deny Student a FAPE during the 2019-2020 school year and extended school year by failing to provide a clear and concise offer of a FAPE in Student's September 18, 2019 addendum IEP. San Dieguito Union prevailed on Issue 2(b).

Issue 2(c): San Dieguito Union did not deny Student a FAPE during the 2019-2020 school year and extended school year by changing Student's speech and language

services without Parent's knowledge or consent, outside of the IEP team meeting process, following the October 30, 2019 IEP team meeting. San Dieguito Union prevailed on Issue 2(c).

Issue 2(d): San Dieguito Union did not deny Student a FAPE during the 2019-2020 school year and extended school year by failing to develop a behavior intervention plan based on current data; revise it as conditions warranted and/or behaviors changed; and implement it with fidelity after the June 5, 2019 IEP team meeting. San Dieguito Union prevailed on Issue 2(d).

Issue 2(e)(i-iv): San Dieguito Union did not deny Student a FAPE during the 2019-2020 school year and extended school year by failing to offer appropriate supports and services designed to meet Student's needs in the areas of academics, behavior, mental health, and pragmatic language. San Dieguito Union prevailed on Issues 2(e)(i-iv).

Issue 2(f): San Dieguito Union did not deny Student a FAPE during the 2019-2020 school year and extended school year by failing to offer an appropriate placement to meet Student's academic, behavior, and mental health needs from October 30, 2019. San Dieguito Union prevailed on Issue 2(f).

Issue 2(g): San Dieguito Union did not deny Student a FAPE during the 2019-2020 school year and extended school year by failing to timely produce educational records in response to Parents' March 20, 2020 written request. San Dieguito Union prevailed on Issue 2(g).

ORDER

All Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

/s/

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings