

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021040386

PARENT ON BEHALF OF STUDENT,

v.

PLEASANT VALLEY SCHOOL DISTRICT.

DECISION

AUGUST 30, 2021

On April 8, 2021, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Pleasant Valley School District as respondent. The complaint was subsequently deemed filed by OAH on April 16, 2021, based on the date of service of the complaint on Pleasant Valley. The

hearing in the matter was continued on May 28, 2021, for good cause. Administrative Law Judge Ted Mann heard this matter via videoconference on June 15, 17, 22, 23, 24 and 25, 2021.

Attorney Coleman Alguire represented Student. Student's father attended portions of all hearing days on Student's behalf. Attorney Melissa Hatch represented Pleasant Valley. Erin Smith, Pleasant Valley's Special Education Director, attended all hearing days on Pleasant Valley's behalf.

At the parties' request, the matter was continued to August 2, 2021, for written closing briefs. The record was closed, and the matter was submitted on August 2, 2021.

ISSUES

ISSUE CLARIFICATION

Following a discussion on the record, Student withdrew his Issue 7 on the record at the prehearing conference and the issues were renumbered accordingly. Following the hearing, the undersigned reorganized and renumbered the issues for clarity and accessibility. No substantive changes were made. Student's Issue 1 was reorganized into Student's Issues 1 and 5. The ALJ has authority to clarify a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

ISSUES DETERMINED

1. Did Pleasant Valley deny Student a free appropriate public education, referred to as a FAPE, from March 16, 2020, until June 17, 2020, by assigning Student to distance learning without:
 - A. continuing to provide in-person services; and
 - B. evaluating Student or providing necessary accommodations to ensure Student was able to obtain a FAPE through distance learning?
2. Did Pleasant Valley deny Student a FAPE at the August 28, 2020, individualized education program, called an IEP, team meeting, by failing to develop an IEP that included an appropriate program and services reasonably calculated to enable Student to receive educational benefit during distance learning?
3. Did Pleasant Valley deny Student a FAPE at the August 28, 2020, IEP team meeting, by failing to offer Student appropriate goals in the areas of reading, writing, math, motor skills development, and social-emotional, reasonably calculated to enable Student to receive educational benefit?
4. Did Pleasant Valley deny Student a FAPE at the August 28, 2020, IEP team meeting, by failing to offer Student intensive individual services in the form of an one-to-one aide?

5. Did Pleasant Valley deny Student a free appropriate public education, referred to as a FAPE, from August 26, 2020, until April 8, 2021, by assigning Student to distance learning without:
 - A. continuing to provide in-person services, and
 - B. evaluating Student or providing necessary accommodations to ensure Student was able to obtain a FAPE through distance learning?
6. Did Pleasant Valley deny Student a FAPE, from March 2020 until April 8, 2021, by failing to address Student's regression caused by distance learning?

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing concerning any matter relating to the identification, assessment, or educational placement of the child or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint unless the other party consents; and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student had the burden of proof on all 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 six years old and had just completed kindergarten at the time of the hearing. Student resided within Pleasant Valley's geographic boundaries at all relevant times. Student was eligible for special education under the categories of Other Health Impairment.

ISSUE 1(A): DID PLEASANT VALLEY DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION, REFERRED TO AS A FAPE, FROM MARCH 16, 2020 UNTIL JUNE 17, 2020, BY ASSIGNING STUDENT TO DISTANCE LEARNING WITHOUT CONTINUING TO PROVIDE IN-PERSON SERVICES?

Student contends that, beginning on March 16, 2020, and continuing to June 17, 2020, the end of the 2019-2020 school year, Pleasant Valley denied Student a FAPE by failing to provide direct, in-person services when distance learning commenced,

specifically in the areas of specialized academic instruction and occupational therapy. Pleasant Valley argues that to fulfill the September 19, 2019 and February 20, 2020 IEPs in their entirety was not possible under the circumstances, and it provided services closely approximating what was offered in the IEP and that any shortfall was not materially significant.

A FAPE means special education and related services 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.) Parent 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 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 District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Id.*) For a school district's offer to a disabled pupil to constitute a FAPE under the IDEA, the educational services and/or placement offered must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*; 20 U.S.C. § 1401(9).) The IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp.2d 127, 139 [IDEA does not provide for an "education ... designed according to the parent's desires"], citing *Rowley*, *supra*, 458 U.S. at p. 207.) Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in

providing education for a disabled student. (*Rowley, supra*, 458 U.S. at pp. 207-208.) As long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 209; *Roland M. v. Concord Sch. Committee* (1st Cir. 1990) 910 F.2d 983, 992.)

Where a student alleges the denial of a FAPE based on the failure to implement an IEP, the student must prove that any failure to implement the IEP was "material," which means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822 (*Van Duyn*).) There is no statutory requirement of perfect adherence to the IEP, nor is there any reason rooted in the statutory text to view minor implementation failures as denials of a FAPE. (*Id.* at p. 821.) "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." (*Id.* at p. 815.)

[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, 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.)

THE COVID-19 SHUTDOWN

Beginning in March 2020, California's governor, consistent with the federal government and local health authorities, ordered a statewide shutdown of businesses and schools due to a global corona virus pandemic. The particular coronavirus was called Covid-19. California's Governor issued an executive order on March 22, 2020, granting local educational agencies the authority to close schools, accompanied by a directive to the California Department of Education, referred to as the CDE, to develop

guidance that included “ensuring students with disabilities” receive a FAPE consistent with their IEPs, and local educational agencies meeting other procedural requirements under the IDEA.

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

In subsequent guidance, the Office of Special Education and Rehabilitative Services, known as OSERS, recognized that educational institutions are “straining to address the challenges of this national emergency.” (OSERS, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, (March 21, 2020) at p. 1.) OSERS assured school districts that “ensuring compliance with the IDEA should not prevent any school from offering educational programs through distance instruction.” (*Ibid.*). OSERS noted the provision of FAPE might include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.” (*Id.* at pp. 1-2.) OSERS reiterated its March 12, 2020 guidance on compensatory

education. “Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services” IEP teams must make an individualized determination “whether and to what extent compensatory services may be needed when schools resume normal operations.” (*Id.* at p. 2.)

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

When a local educational agency offers distance learning for instructional delivery instead of regular classroom instruction during a school site closure for students, it must also provide equitable access to those services for students with disabilities. A local educational agency must create access to the instruction, including “planning for appropriate modifications or accommodations based on the individualized needs of each student and the differences created by the change in modality such as a virtual

classroom." (*CDE Guidance* (April 9, 2020), *supra*, at Point 2). Educational and support services should be commensurate with those identified in the IEP for each student to ensure educational benefit. (*Ibid.*)

Local educational agencies may consider the use of accessible distance technology, instructional phone calls, and other curriculum-based activities that have been "scaffolded" based on student needs. (*CDE Guidance* (April 9, 2020), *supra*, at Point 2.) The local educational agency could also consider alternative service delivery options such as in-home service delivery, meeting with individual students at school sites, or other appropriate locations to deliver services. (*CDE Guidance* (March 20, 2020), *supra*, at Point 1.)

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

SEPTEMBER 26, 2019 IEP

On September 26, 2019, the IEP team convened an IEP meeting for Student's transitional kindergarten year. Student had just recently turned five years old. Student's mother attended. The IEP team provided the procedural safeguards to her. Student had been previously assessed in 2017, but not found eligible for special education. In

November 2018, Parent had requested Pleasant Valley conduct an assessment of Student due to concerns about Student's behavior, impulsivity and attentional issues after he had been asked to leave a preschool program.

Pleasant Valley received the signed assessment plan on May 20, 2019, and conducted a multidisciplinary assessment of Student in occupational therapy, speech and language, and psychoeducation in preparation for an IEP. The assessments were conducted by school psychologist Lori Bowe, speech/language pathologist Marlo Albritton, and occupational therapist Victa Parsa. Bowe's in-class observations of Student indicated both distractibility and the need for frequent redirection. The occupational therapy assessments found that Student had below average fine motor skills, including a nonfunctional pencil grasp, resulting in a recommendation that he receive occupational therapy services to address the need. Social-emotional assessments found that Student had elevated inattention, hyperactivity, aggression and impulsivity, but he did not meet the criteria for either autism spectrum or emotional disturbance. The assessors concluded that Student's needs were better represented by an eligibility of other health impaired due to attention deficit, hyperactivity disorder types of behaviors, and suggested the IEP consider such eligibility.

The September 26, 2019 IEP had six goals, including two in motor skills development, one each in academics-reading and academics-math, and two in social-emotional. Bowe helped with drafting the two social emotional goals. Goal number five focused on classroom participation and goal number six on coping/calming strategies.

- The IEP provided various services, aids and accommodations to assist Student, including placement in a transitional kindergarten special day class 77 percent of the time. That IEP provided for consisting of

specialized academic services of 224 minutes daily, and push-in occupational therapy at 40 minutes weekly in two 20-minute sessions. The IEP included a positive behavior intervention plan focused on addressing Student's physical and verbal aggression. Parent fully consented to the IEP at the meeting.

FEBRUARY 20, 2020 IEP

On February 20, 2020, the IEP team convened a progress review IEP meeting to address Student's transitional kindergarten performance, particularly in the area of classroom behavior. The IEP was amended to add a new social emotional goal to decrease verbal aggression and 30 minutes of counseling to begin on March 16, 2020.

PLEASANT VALLEY MATERIALLY IMPLEMENTED STUDENT'S SEPTEMBER 19, 2019 AND FEBRUARY 20, 2020 IEPs FROM MARCH 16, 2020 TO JUNE 17, 2020, EXCEPT FOR THE PERIOD FROM MARCH 16, 2020 THROUGH APRIL 2, 2020

Student contends Pleasant Valley failed to provide his specialized academic instruction, occupational therapy and counseling during the school campus closure from March 16, 2020 through June 17, 2020, including failing to provide direct, in-person services when distance learning commenced on April 3, 2020.

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

Endrew F. v. Douglas County School Dist. RE-1 (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].). The relevant inquiry here is whether Pleasant Valley materially failed to implement Student's September 19, 2019 and February 20, 2020 IEPs from March 16 through June 17, 2020, because of the COVID-19 school campus closure. (*N.D. v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1117, citing *Van Duyn, supra*, 502 F.3d at p. 822).) In *N.D.*, the Ninth Circuit Court of Appeals held that school closures related to a fiscal crisis did not constitute a change of placement. However, the Ninth Circuit also suggested that a school closure caused by furloughs due to a state fiscal crisis could support a claim of "material failure to implement an IEP." (*Id.* at p. 1117.) The facts of this case present an analogous situation.

Following the March 16, 2020 emergency school closures resulting from the Covid-19 health emergency, neither general education nor special education students received educational services from Pleasant Valley. This complete closure lasted from March 16, 2020 through April 2, 2020, a total of 14 school days or approximately three weeks of school. During this time Student received no specialized academic instruction, or occupational therapy services, or counseling.

Beginning on April 3, 2020, Pleasant Valley initiated an alternative education delivery system, referred to as distance learning. Distance learning relied on students accessing a virtual classroom through the internet, such as using a Zoom link, or accessing other web-based educational programming, as well as completing materials sent home by the teacher. The virtual classroom time was called synchronous learning. Time spent on other web-based educational programming or studying and or completing material sent home from school was called asynchronous learning. The distance learning model relied on the synchronous and asynchronous minutes

approximating the program and services in a student's IEP. Distance learning continued until the end of the 2019-2020 school year, on June 17, 2020, with the exception of Spring Break week from April 13-17, 2021.

On May 1, 2020, Katie Burchell, the Interim Director of Special Education of the Pleasant Valley School District, issued a prior written notice to parents of children with disabilities that pursuant to 34 Code of Federal Regulations part 300.503, all Pleasant Valley public schools would be closed for in-person services from March 16, 2020, through the end of the school year. This prior written notice supplemented and superseded the initial prior written notice issued by Pleasant Valley on March 23, 2020, indicating that school would be closed until at least May 1, 2020.

Student's operative IEP for the period from March to June of 2020 was the September 19, 2019 IEP as amended on February 20, 2020. That IEP provided for specialized academic services of 224 minutes daily; and push-in occupational therapy at 40 minutes weekly in two 20-minute sessions. The IEP included a positive behavior intervention plan focused on addressing Student's physical and verbal aggression.

Student's transitional kindergarten classroom had two classroom instructional aides, and approximately 12 students. The classroom's special education teacher, Carol Johnson, was very familiar with Student. Before the school closures, Student had trouble with attention and distractibility, and often exhibited negative behaviors, including verbal and physical aggression. Student required constant redirection and prompting from adults in the classroom in order to access his education. On February 20, 2020, the IEP team added a new social emotional goal to decrease verbal aggression and 30 minutes of counseling to begin on March 16, 2020.

Here, the analysis turns on whether Pleasant Valley materially complied with Student's September 19, 2019 and February 20, 2020 IEPs during the closure, given the COVID-19 guidance issued by the state and federal governments, and if so, whether Pleasant Valley satisfied the IDEA sufficiently to avoid a finding of a material failure to implement the IEP.

Beginning April 3, 2020, when Pleasant Valley rolled out its distance learning program, Johnson offered specialized academic instruction via Zoom classes, and then began adding in other online and offline education designed to provide Student with his full complement of academic instruction daily. Starting on April 3, 2020, Johnson offered 135 minutes of specialized academic instruction per week to her transitional kindergarten students. Johnson increased the amount of specialized academic instruction to 215 minutes per week on around the beginning of May 2020 through the end of the school year. The specialized academic instruction via Zoom was supplemented with asynchronous classwork, reading and resources, including weekly materials and supplies delivered by Johnson to her students.

Special education teacher Johnson testified credibly, convincingly, and in great detail as to her efforts to implement distance learning for Student. Student's father testified to his great satisfaction with Johnson's efforts during distance learning and to the work she did with his son.

Student's IEP called for 40 minutes per week of occupational therapy, split into two 20-minute sessions. Student was not provided with occupational therapy from March 16, 2020, through April 2, 2020. Beginning April 3, 2020 through June 17, 2020, Pleasant Valley occupational therapist Veneracion made the occupational therapy

services called for in the IEP available via Zoom. Student did miss some sessions, and Student's mother had difficulty with Zoom during the month of April 2020. The issues with Zoom were resolved by May of 2020.

Occupational therapist Veneracion offered straightforward, credible testimony that she was able to implement occupational therapy for Student through distance learning, and that she was able to work with him online as well as provide asynchronous materials for him to use to practice his writing. She was also able to assess Student's progress during distance learning and report service time in her service logs.

It is undisputed that during the period from March 16, 2020 through April 2, 2020, Student did not receive the 224 daily minutes of special academic instruction as called for in his IEP. Student established that he was deprived of special academic instruction and occupational therapy during the approximately three-week period from March 16, 2020 through April 2, 2020. Student proved that there was a material discrepancy in the provision of both specialized academic instruction and occupational therapy services during that period.

While unavoidable circumstances prevented Pleasant Valley from providing Student both the specialized academic instruction and the occupational therapy during that period, the IDEA includes no exceptions to implementing IEPs due to physical school closures caused by pandemics or governmental directives to close schools. Thus, Pleasant Valley remained responsible under the IDEA for materially implementing the IEPs despite the school closure, even if by alternate delivery methods. (*N.D. v. Hawaii Dept. of Education*, *supra*, 600 F.3d at p. 1117).)

Although it is undisputed that the initial weeks of the school closures were a time of uncertainty, Pleasant Valley could have offered Student additional compensatory services or hours to make up the three weeks of no specialized academic instruction or occupational therapy. It did not do so. Accordingly, Pleasant Valley denied Student a FAPE for the weeks of March 16, 2020, March 23, 2020, and March 30, 2020 by not implementing the IEP in academics and occupational therapy. The week of March 30, 2020 was the last week of complete school closure. (*Van Duyn, supra*, 502 F.3d at p. 822.)

Student failed to establish that Pleasant Valley denied student a FAPE by failing to continue to provide in-person services for specialized academic instruction or occupational therapy during the period from April 3, 2020, through June 17, 2020. Student did not establish that the services he received for the remainder of the 2019-2020 school year were materially deficient compared to the services offered in his operative IEPs. Pleasant Valley's instructional model was consistent with the relevant guidelines while its staff worked from home during the period of stay at home and shelter in place directives in the Spring of 2020. Despite the challenges Pleasant Valley faced, once it began with a distance learning model, Pleasant Valley's personnel worked diligently to make distance learning work, and to implement Student's IEPs.

Consistent with the *Van Duyn* standard, the specialized academic instruction and occupational therapy Pleasant Valley provided from April 3, 2020, through June 17, 2020 were not materially deficient compared to the offer of those services in Student's IEPs. Between the synchronous and asynchronous instruction, Student's specialized academic instruction minutes and occupational therapy minutes were approximated, and did not breach the *Van Duyn* standard by failing to materially implement Student's operative IEPs.

ISSUE 1(B): DID PLEASANT VALLEY DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION, REFERRED TO AS A FAPE, FROM MARCH 16, 2020 UNTIL JUNE 17, 2020, BY ASSIGNING STUDENT TO DISTANCE LEARNING WITHOUT EVALUATING STUDENT OR PROVIDING NECESSARY ACCOMMODATIONS TO ENSURE STUDENT WAS ABLE TO OBTAIN A FAPE THROUGH DISTANCE LEARNING?

Student argues Pleasant Valley denied him a FAPE by assigning him to distance learning without an evaluation regarding his ability to access his education under that model. Student also contends, Pleasant Valley failed to provide accommodations necessary to ensure Student was able to receive a FAPE during Distance learning. Pleasant Valley argues that it had no duty to assess Student for distance learning, and that it provided the necessary accommodations for him during distance learning.

A school district is required to evaluate students in all areas of need to determine whether supplemental services may be necessary. (34 C.F.R. §300.304; Ed. Code §56320). Student failed to prove by a preponderance of the evidence that Pleasant Valley denied Student a FAPE by not evaluating Student for distance learning after the school closure.

Student failed to prove that Pleasant Valley should have assessed him prior to assigning him to distance learning. There is no evidence that Parent or a teacher requested an assessment from Pleasant Valley in any area from March 20 to June 17, 2020. Student presented no expert testimony or other evidence of a need that was not being met due to education being presented in a distance learning model. Nor did Student prove Pleasant Valley was on notice of any specific deficiencies that may have

required additional assessments at that time. Student presented no evidence that additional assessments between March 16 and June 17, 2020 were warranted.

Student also failed to prove that his accommodations were not provided to him during distance learning. In contrast, special education teacher Johnson testified convincingly that Student's accommodation were provided to him during distance learning.

ISSUE 2: DID PLEASANT VALLEY DENY STUDENT A FAPE AT THE AUGUST 28, 2020 IEP TEAM MEETING BY FAILING TO DEVELOP AN IEP THAT INCLUDED AN APPROPRIATE PROGRAM AND SERVICES REASONABLY CALCULATED TO ENABLE STUDENT TO RECEIVE EDUCATIONAL BENEFIT DURING DISTANCE LEARNING?

Student asserts the August 28, 2020 IEP failed to offer him an appropriate program and services to address Student's needs and allow him to make reasonable progress during distance learning, including offering Student additional services including instruction, occupational therapy, and counseling through an in-person model. Student did not assert that the placement offered to Student was not the least restrictive environment, but challenged the placement because it was delivered through distance learning rather than in person. Student did not assert that the IEP process contained procedural violations of any kind. Pleasant Valley asserts that Student's August 28, 2020 IEP offered him an appropriate program and services to meet his needs and allowed him to make reasonable progress either in-person or through distance learning.

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

The IEP must include a statement of the program modifications or supports that will be provided to the student, to allow the student to advance appropriately toward attaining the annual goals, to be involved in, and make progress in the general education curriculum, and to participate in extracurricular activities and other nonacademic activities. (34 C.F.R. § 300.320(a)(4)(i)-(ii); Ed. Code, § 56345, subds. (a)(4)(A) & (B).)

In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324 (a).).

Whether an IEP offers a student a FAPE is assessed in light of information available when the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP "is a snapshot, not a retrospective;" it must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid*, quoting *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1036.)

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

- The placement decision is made by a group of persons including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment;
- Placement is determined annually, is based on the child's IEP, and is as close as possible to the child's home;
- Unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled;
- In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or the quality of services that he or she needs; and
- A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116.)

California's implementing regulations define a "specific educational placement" as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs." (Cal. Code Regs., tit. 5, § 3042, subd. (a).)

Related services may be provided to individuals or small groups in a specialized area of educational need and throughout the full continuum of educational settings.

(Cal. Code Regs., tit. 5, § 3051, sub. (a)(1).) Related services, when needed, are determined by the IEP team. (Cal. Code Regs., tit. 5, § 3051, subd. (a)(2).).

The IEP team held the IEP meeting over two days: August 28, 2020 and October 17, 2020. The IEP team relied upon the oral reports of Johnson, Diego, Veneracion, and behaviorist Tinoco, along with the multidisciplinary report, and a report on Student's progress on his goals, for an understanding of Student's needs, progress, and present levels of performance.

Student had met his goals in motor skills development and academic-math, and had made progress, but not completely met, the five other goals. Student had not progressed on his two social emotional goals once Pleasant Valley went to distance learning. In response, to Student's difficulties with distance learning, the IEP team offered Student educationally related social emotional services with Tinoco, in order to address both physical and verbal aggression. Student was offered weekly counseling with Tinoco, along with weekly consultation by Tinoco with his educational team, including parents, teachers, and services providers.

Student's progress on his non social emotional goals had been inconsistent, but he was making reasonable progress with the September 26, 2019 goals, generally. The IEP team offered him meaningful and appropriate goals addressing his needs as further discussed, below in Issue 3. Here, the program and services offered on the August 28, 2020 IEP directly addressed Student's present levels of performance and his needs. The IEP team's offer of placement and services, including special academic instruction, educationally related social emotional services and occupational therapy, were agreed to by the team as addressing Student's needs and appropriate for him at the time of the offer. Parents' subsequent disagreement with the IEP offer was an extension of their

unhappiness with distance learning, generally, and what they felt was the lack of in-person services. However, Student did not meet his burden to show that in-person services were necessary for Student to make reasonable progress on his goals.

Student failed to meet his burden to show that Pleasant Valley failed to offer an appropriate placement in the least restrictive environment for Student in the August 28, 2020 IEP. The IEP met the requirements of title 20 United States Code section 1415(b)(1)(C). Student did not prove that the August 28, 2020 IEP failed to provide him with an appropriate program and services to meet his needs.

ISSUE 3: DID PLEASANT VALLEY DENY STUDENT A FAPE AT THE AUGUST 28, 2020 IEP TEAM MEETING, BY FAILING TO OFFER STUDENT APPROPRIATE GOALS IN THE AREAS OF READING, WRITING, MATH, MOTOR SKILL DEVELOPMENT, AND SOCIAL EMOTIONAL, REASONABLY CALCULATED TO ENABLE STUDENT TO RECEIVE EDUCATIONAL BENEFIT?

Student asserts that Pleasant Valley failed to offer him appropriate goals in the areas of

- reading,
- writing,
- math,
- motor skill development, and
- social emotional,

reasonably calculated to enable Student to receive educational benefit. Pleasant Valley asserts that the goals included in the IEP offer were appropriate to meet Student's needs and allowed him to make progress.

The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (OSERS March 25, 1988).) The IEP team need not draft IEP goals in a manner that the parents find optimal, if the goals are objectively measurable. (*Bridges v. Spartanburg County School Dist. Two* (D.S.C. 2011, No. 7:10-cv-01873-JMC) 2011 WL 3882850 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].)

The IEP must include appropriate,

- objective criteria,
- evaluation procedures, and
- schedules for determining, on at least an annual basis,

whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D. Cal. 2017, No. CV16-04356-BRO) 2017 WL 2864945; see also Ed. Code, § 56345; 20 U.S.C. § 1414(d)(1)A(i).) An examination of the goals in an IEP is central to determining whether a student received a FAPE. "[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer ... a meaningful benefit." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

Student failed to prove that the goals did not meet Student's needs or that they were de minimus so as to not allow Student to make reasonable progress. The August 28, 2020 IEP provided seven goals, numbered one through seven. The goals were reasonably developed based upon the information available to the IEP team at the August 28, 2020 IEP. In addition, the proposed goals directly addressed Student's areas of need. As described above, school psychologist Diego and behaviorist Tinoco contributed to the assessment report, including observations and standardized assessments of Student. Special education teacher Johnson contributed her class observations and experiences with Student, along with an academic assessment of Student. The IEP team had more than sufficient information regarding Student's needs, abilities, and present levels to formulate goals for him in the August 28, 2020 IEP.

Student's first goal was an academic goal in reading and print concepts. Student was able to label 11 uppercase and six lowercase letters. He was able to recognize and name all uppercase and lowercase letters of the alphabet with 30 percent correct for two consecutive trials as measured by teacher recorded data. By August 28, 2021, Student was to recognize and name all uppercase and lowercase letters of the alphabet with 80 percent correct for two consecutive trials as measured by teacher recorded data.

The second goal was an academic goal in math counting and cardinality. Student was able to represent a number of objects with a written numeral from zero to 20 with 90 percent correct for zero consecutive trials as measured by teacher recorded data. By August 28, 2021, Student was to represent a number of objects with a written numeral from zero to 20 with 90 percent correct for two consecutive trials as measured by teacher recorded data.

The third goal was an academic goal in writing and focused on handwriting. This goal also overlapped with his occupational therapy needs in fine motor. Student was able to trace/copy the uppercase letters in manuscript using pencil and paper with 25 percent correct for two consecutive trials as measured by work samples and observation record. By August 28, 2021, given a verbal prompt, Student was to write the uppercase letters in manuscript using pencil and paper with 80 percent correct for two consecutive trials as measured by work samples and observation record.

The fourth goal was in motor skills development and focused on handwriting grip or grasp. Student did not consistently use a tripod/quadruped grip on the pencil and often requires verbal prompts to do so. Student was able to exhibit hold writing in a tripod/quadruped grip to demonstrate motor control needed for prewriting tasks with 25 percent correct as measured by observation record. By August 28, 2021, given a verbal/gestural prompt, Student was to exhibit hold writing in a tripod/quadruped pencil grip to demonstrate motor control needed for prewriting tasks with 80 percent correct for two out of three opportunities as measured by observation record.

The fifth goal was in social emotional and focused on anger management. Student struggled to use appropriate language when his feelings were hurt or he was attempting to join in and play with peers and become verbally aggressive. Student was able to use appropriate language when his feelings were hurt or he was attempting to join in and play with peers with at least three prompts in one of five opportunities over a one week period as measured by observation record. By August 28, 2021, Student was to decrease inappropriate verbal comments by responding appropriately when his feelings were hurt or he was attempting to join in and play with peers with no more than one prompt in three of five opportunities for a two week period as measured by observation record.

The sixth goal was in social emotional and focused on working independently in class. Student struggled to attend during distance learning and was only able to attend to task and remain focused five percent of the time by himself, but was able to attend to task with one-to-one adult help for four out of five activities. Student was able to sit at a desk and begin a task when asked with fewer than two prompts for zero consecutive trials as measured by observation record. By August 28, 2021, given a maximum of two verbal cues and the use of a timer, Student was to attend to a non-preferred, small-group activity and or independent assignment, without protest, and remain on task with no task avoidance for the 13 minute center time in three out of four trials, as measured by observations and staff documentation.

The seventh goal was in social emotional and focused on self-management of frustration and tolerance. Student struggled with physical aggression issues when feeling angry or upset, tending to react with physical aggression towards both adults and children. Student was able to reduce incidence of hitting others to two times per day for zero days as measured by observation record. By August 28, 2021, using calming strategies, such as breathing, counting and self-talk, along with Stop/Think strategy when feeling angry or upset, Student was to refrain from physical aggression 100 percent of the day, across all environments, with all adults and children as measured by observation data, over four consecutive weeks.

Johnson worked with Student on the goals and helped prepare the goals. Johnson believed Student made meaningful progress on his 2019 goals. She agreed that Student did not make as much progress in Spring 2020 distance learning, particularly with his social emotional goals. She saw no regression, although in-person

classroom inattention and aggression had transferred to the virtual class setting. Johnson opined the 2020 goals were challenging enough for Student to progress and appropriate for his needs.

Student did not meet his burden to show that he needed more challenging goals in academics, fine motor skills, or social emotional. Student provided no credible evidence that the specific goals did not meet the IDEA's requirements or that the IEP team did not tailor the goals to Student's unique needs. Student presented no other evidence that demonstrated he needed additional goals or that these goals were insufficiently tailored for Student.

ISSUE 4: DID PLEASANT VALLEY DENY STUDENT A FAPE AT THE AUGUST 28, 2020 IEP TEAM MEETING BY FAILING TO OFFER STUDENT INTENSIVE INDIVIDUAL SERVICES IN THE FORM OF AN ONE-TO-ONE AIDE?

Student asserts he required an one-to-one aide in order to access his education either in-person or through distance learning and that by failing to offer one in the August 28, 2020 IEP, Pleasant Valley denied him a FAPE. Student contends that, without a one-to-one aide he is unable to access his education. Pleasant Valley argues that the combination of the special education teacher and two classroom aides was sufficient to allow Student to access his education.

Related services may be provided to individuals or small groups in a specialized area of educational need and throughout the full continuum of educational settings.

(Cal. Code Regs., tit. 5, § 3051, sub. (a)(1).) Related services, when needed, are determined by the IEP team. (Cal. Code Regs., tit. 5, § 3051, subd. (a)(2).)

Student's kindergarten class was staffed by the special education teacher and two paraeducators. No witness testified that Student needed an individual one-to-one aide in addition to the regular classroom staffing. Nor was any other evidence presented establishing that Student needed a dedicated one-to-one aide. On the contrary, Johnson, Diego, and Tinoco all testified that Student was able to do his work with redirection and prompting when needed. Student offered no evidence contradicting their opinions. As such, Student failed to prove by a preponderance of the evidence that Pleasant Valley's failure to offer a one-to-one aide in the August 28, 2020 IEP denied him a FAPE.

ISSUE 5(A): DID PLEASANT VALLEY DENY STUDENT A FAPE FROM AUGUST 27, 2020 UNTIL APRIL 7, 2021 BY ASSIGNING STUDENT TO DISTANCE LEARNING WITHOUT CONTINUING TO PROVIDE IN-PERSON SERVICES?

Student contends Pleasant Valley denied Student a FAPE by failing to provide in person academic services and instruction from August 27, 2020 to April 7, 2021, which was the date Student filed the complaint. Pleasant Valley argues it materially implemented the specialized academic instruction, occupational therapy and counseling called for in Student's IEPs, Student did not meet his burden of proof on this issue.

On August 5, 2020, special education director Smith wrote to Pleasant Valley special education parents notifying them that Pleasant Valley was following California Department of Public Health recommendations as delineated in the "Pandemic Plan for

Learning and Safe Schools". The Pandemic Plan recommended that school districts within counties on a monitoring list were to conduct distance learning only until the county has been removed from the monitoring list for 14 days.

As a result, Pleasant Valley remained in distance learning at the beginning of the 2020-2021 school year, and parents were advised that instruction to both general and special education classes would be implemented through a distance learning instructional model consistent with Senate Bill 98. The letter also notified parents that they would be contacted individually regarding their child's IEP and services would proceed through an alternative program based upon the IEP and developed by the student's case carrier.

The first day of school for the 2020-2021 school year was August 26, 2020. On August 27, 2020, special education teacher Carol Johnson, also Student's case carrier, provided Student's parents with an individualized distance learning plan for Student. The plan included 830 minutes per week of specialized academic instruction, 40 minutes per week of occupational therapy, and 120 minutes per month of individual counseling. Shortfalls in instructional time were made up in asynchronous time through Google Classroom, the SeeSaw online learning platform, or usage of material sent home by the teacher.

The distance learning delivery model continued in effect until Johnson's special education class cohort returned to "brick and mortar" school on October 26, 2020. The cohort continued in-person until the Thanksgiving Break, beginning on November 23, 2020. After Thanksgiving Break, the students returned to distance learning until approximately March 1, 2021, when they returned to in-person learning once more through the end of the 2020-2021 school year.

AUGUST 28, 2020 AND OCTOBER 20, 2020 IEP

On August 20, 2020, the IEP team convened an IEP meeting for Student's kindergarten year. The IEP meeting was held in two parts: opened on August 28, 2020, and completed on October 20, 2020, once assessment results were available. Student turned six years old shortly after the first meeting date. Pleasant Valley completed a multidisciplinary report, including an assessment of Student's need for educationally related social/emotional services, and presented it at the October 20, 2020 IEP meeting. School psychologist Rebekah Kolb and behavioral therapist Angela Tinoco contributed to the report.

Kolb was an educational psychologist who had worked for Pleasant Valley since 2005. She earned a master's degree in school psychology and counseling. She is a licensed educational psychologist in California. She taught pre-school prior to becoming a school psychologist. As part of preparing the report, she observed Student in class via Zoom on September 18, 2020 for 30 minutes. She observed Student showing limited attention to the Zoom class and engaging in near constant movement both presenting challenges to his accessing his education. She did observe Student responding to the teacher's questions and also completing a white board writing assignment with his father's help.

Tinoco was a behavioral health technician who had been with her outside behavioral agency for about 10 years. She provided educationally related social emotional services to students in the Pleasant Valley district, including IEP services. Following the IEP, she began providing both individual services to Student and social work services to Student's educational team. She conducted two observations of Student during Zoom classes in preparation for the report. On September 21, 2020,

Tinoco observed Student in teacher Carol Johnson's class for about an hour. She observed Student participating successfully in the class and completing a variety of activities with minimal prompting or assistance. On October 2, 2020, Tinoco again observed Student in Johnson's class and in two breakout sessions. Student generally engaged in the classwork and assignments although he evidenced some conflict and negative interaction with his mother. He appeared to focus on one task at a time to the exclusion of others.

The IEP team reviewed Student's progress on his six goals from the September 26, 2019 IEP and the one additional goal from the February 20, 2020 IEP. Student had met his goals in motor skills development and academic-math, and had made progress, but not completely met, the five other goals. Student had not progressed on his two social emotional goals once Pleasant Valley went to distance learning.

The August 28, 2020 IEP had seven goals, including one in motor skills development, one each in academics-reading, academics-math and academics-writing, and three in social-emotional. Bowe helped with drafting the two social emotional goals. Goal number five focused on classroom participation and goal number six on coping/calming strategies.

The IEP team agreed on various aids and accommodations to assist Student, including placement in a kindergarten special day class 77 percent of the time consisting of specialized academic services at 224 minutes daily, and push-in occupational therapy at 100 minutes monthly. Student began educationally related social emotional services with 120 minutes of individual counseling per month and added 60 minutes per month of social work services intended to include consultations by Tinoco with any and all members of Student's educational team, including his parents.

The IEP included a positive behavior intervention plan focused on addressing Student's physical and verbal aggression. The IEP team considered moving Student to a behaviorally-structured classroom, but Student's mother wanted to give his attention deficit medication a chance to work before making that decision. In Student's mother's opinion, Student had made good progress in Johnson's classroom and she wanted Student to stay with Johnson's class. The IEP did not specify that services would be in-person. Parent fully consented to the IEP at the meeting.

FEBRUARY 2, 2021 IEP

On February 2, 2021, the IEP team convened an IEP meeting to review a functional behavior assessment report and consider changes to Student's existing IEP, including a change of program and the addition of services. The meeting was held via Zoom. The team reviewed the functional behavior assessment, reviewed Student's behavior support plan, and revisited the issue of changing Student's placement to the behaviorally structured program classroom. Following discussion, Student's program and services remained unchanged. Parent fully consented to the IEP at the meeting.

Special education teacher Johnson taught Student once again for kindergarten for the 2020 to 2021 school year. She offered compelling testimony at hearing as to her and the IEP teams' efforts and the reasonable progress Student made during the period in question. At the commencement of the 2020-2021 school year, Johnson prepared specific materials and assignments for her students and delivered them to each Student's home or made them available for pick-up at the school. She included a white board for Student's writing practice, and weekly assignments and reading tailored to

Student. Johnson provided synchronous and asynchronous Zoom instruction throughout the school week, and she provided instruction and instructional videos to all her students.

Student began to receive educationally related social emotional services from behaviorist Tinoco pursuant to the August 28, 2020 IEP, beginning in approximately November of 2020. Parent chose not to avail Student of the services through Zoom and waited until January of 2021 when the services could be provided in-person.

Occupational therapist Veneracion provided all occupational therapy called for in Student's operative IEP to him either by Zoom or in-person once the cohort formed. Veneracion was able to provide the occupational therapy to Student through distance learning. She was able to conduct Student's fine motor work and she was able to implement Student's accommodations. She was able to observe Student performing the occupational therapy tasks and assignments and was able to measure and record his progress as evidenced in her service logs.

Student failed to prove that Pleasant Valley denied Student a FAPE by assigning Student to distance learning without continuing to provide in-person services to Student in specialized academic instruction, occupational therapy and counseling. Student was unable to show that Pleasant Valley materially failed to implement Student's IEPs. Pleasant Valley delivered distance learning special academic instruction, educationally related social emotional services, and occupational therapy services to Student that "closely approximated" Student's in person services during the 2020-2021 school year.

During the portions of the 2020-2021 school year where Pleasant Valley utilized distance learning, Johnson provided Zoom synchronous services similar to what she provided in-person before the closure. Johnson personally delivered materials to each of her students as needed. She provided a themed box with supplies and manipulatives. In addition, she had Zoom sessions and provided instructional videos for students to assist them in completing assignments, and she had individual time with each Student each week.

ISSUE 5(B): DID PLEASANT VALLEY DENY STUDENT A FAPE FROM AUGUST 27, 2020 UNTIL APRIL 8, 2021 BY ASSIGNING STUDENT TO DISTANCE LEARNING AND FAILING TO EVALUATE STUDENT OR PROVIDING NECESSARY ACCOMMODATIONS TO ENSURE STUDENT WAS ABLE TO OBTAIN A FAPE THROUGH DISTANCE LEARNING?

Student also did not provide any evidence to establish that from August 26, 2020 to April 8, 2021, Pleasant Valley was required to assess or evaluate Student for distance learning, beyond the evaluations that were completed for Student's triennial IEP, including a functional behavior assessment. Student did not prove Pleasant Valley had sufficient reason to believe Student could not access his education through distance learning so as to make reasonable progress on his goals. Likewise, Student did not meet his burden of proof that Pleasant Valley failed to provide necessary accommodations to Student. The evidence was to the contrary and established that by April 8, 2021, Student was progressing, his behavior had greatly improved, and he was keeping up with his work.

ISSUE 6: DID PLEASANT VALLEY DENY STUDENT A FAPE FROM MARCH 20, 2020, UNTIL APRIL 8, 2021, BY FAILING TO ADDRESS STUDENT'S REGRESSION CAUSED BY DISTANCE LEARNING?

Student argues that he regressed from March 20, 2020 to April 8, 2021 due to the inadequacy of his distance learning instruction. Student contends that to make progress, he requires compensatory, in-person education. Pleasant Valley denies Student regressed and argues it provided Student sufficient, appropriate services despite school closures, and that, as of April 8, 2021, Student has made significant progress on his August 28, 2020 IEP goals including improvements in his classroom behavior. Student did not prove that Student had regressed as of the filing of the complaint, or that Pleasant Valley failed to address any regression by Student.

Parent testified that Student's attention and behavior regressed during distance learning. However, the preponderance of the evidence established Student continued to make progress year over year on his goals from 2019 to 2020 and from 2020 to 2021. In testimony, Student's father, special education teacher Johnson, behaviorist Tinoco and occupational therapist Veneracion all agreed that Student was doing well at school as of April 8, 2021 and was making substantial progress. Student offered no expert testimony establishing that he had regressed in any area; nor was any other evidence of regression at the time of the filing of the complaint offered by Student. Pleasant Valley squarely addressed parental concerns with regression at the August 28, 2020 IEP in conducting extensive social emotional assessments and observations, and adding educationally related social emotional services. Goals were also drafted at the August 28, 2020 IEP that directly addressed Student's needs during distance learning. Student

failed to meet his burden of establishing that he had suffered regression due to the inadequacy of Pleasant Valley's distance learning program or that Pleasant Valley denied him a FAPE by failing to address regression.

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): Pleasant Valley denied Student a FAPE from March 16, 2020 through April 2, 2020, by not providing Student special education instruction and services during that time. Pleasant Valley did not deny Student a FAPE from April 3 to June 17, 2020, by assigning Student to distance learning without continuing to provide in-person services. Student partially prevailed on Issue 1(a). Pleasant Valley also partially prevailed on Issue 1(a).

Issue 1(b): Pleasant Valley did not deny Student a FAPE from March 16, 2020 to June 17, 2020 by assigning Student to distance learning without evaluating Student or providing necessary accommodations to ensure Student was able to obtain a FAPE through distance learning. Pleasant Valley prevailed on Issue 1(b).

Issue 2: Pleasant Valley did not deny Student a FAPE at the August 28, 2020 IEP team meeting by failing to develop an IEP that included an appropriate program and services reasonably calculated to enable Student to receive educational benefit during distance learning. Pleasant Valley prevailed on Issue 2.

Issue 3: Pleasant Valley did not deny Student a FAPE at the August 28, 2020 IEP team meeting by failing to offer Student appropriate goals in the areas of

- reading,
- writing,
- math,
- motor skills development, and
- social-emotional,

reasonably calculated to enable Student to receive educational benefit. Pleasant Valley prevailed on Issue 3.

Issue 4: Pleasant Valley did not deny Student a FAPE at the August 28, 2020 IEP team meeting by failing to offer Student intensive, individual services in the form of a one-to-one aide. Pleasant Valley prevailed on Issue 4.

Issue 5(a): Pleasant Valley did not deny Student a FAPE from August 26, 2020 until April 8, 2021 by assigning Student to distance learning without continuing to provide in-person services. Pleasant Valley prevailed on Issue 5(a).

Issue 5(b): Pleasant Valley did not deny Student a FAPE from August 26, 2020 until April 8, 2021 by assigning Student to distance learning without evaluating Student or providing necessary accommodations to ensure Student was able to obtain a FAPE through distance learning. Pleasant Valley prevailed on Issue 5(b).

Issue 6: Pleasant Valley did not deny Student a FAPE from March 2020 until April 8, 2021, by failing to address Student's regression caused by distance learning. Pleasant Valley prevailed on Issue 6.

REMEDIES

Student partially prevailed on Issue 1(a). Student is entitled to a remedy for the denial of a FAPE from March 16, 2020 through April 2, 2020.

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

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

To calculate remedies, the ALJ relied on the school calendars for the 2019-2020 regular school year. Pleasant Valley failed to provide the special academic instruction

and occupational therapy services, provided for in the September 26, 2019 and February 29, 2020 IEPs, for the weeks of March 16, March 23, and March 30, 2020, essentially three weeks. Student's IEPs provided that he would receive 224 minutes of specialized academic instruction per day. This totals 3360 minutes or 56 hours of academic instruction. Student's IEPs provided that he would receive 40 minutes of occupational therapy per week. This totals 120 minutes of occupational therapy or 2 hours of occupational therapy

Student failed to present evidence related to requested remedies, including proposed providers or costs. Compensatory education is ordered as an equitable remedy. Compensatory services shall be available to Student until June 30, 2023 and shall not exceed a total of 56 hours of academic instruction/tutoring and 2 hours of occupational therapy to be provided by Pleasant Valley personnel. For the academic tutoring, the Pleasant Valley personnel shall be a resource teacher or other personnel certificated in special education. For the occupational therapy, the compensatory hours shall be provided by a licensed occupational therapist employed by Pleasant Valley.

ORDER

1. Pleasant Valley shall make available to Student compensatory education to compensate for its denial of FAPE from March 16 to April 2, 2020, as set forth above. This compensatory education shall take the form of 56 hours of individual sessions of specialized academic instruction and two hours of occupational therapy, provided by Pleasant Valley personnel and shall be available to Student until June 30, 2023, as set forth above.
2. Student's other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

/s/

Ted Mann

Administrative Law Judge

Office of Administrative Hearings