

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021090098

PARENT ON BEHALF OF STUDENT,

v.

COMPTON UNIFIED SCHOOL DISTRICT.

DECISION

DECEMBER 31, 2021

On September 2, 2021, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Compton Unified School District. On October 15, 2021, OAH granted a continuance of the due process hearing. Administrative Law Judge Marlo Nisperos heard this matter by videoconference on November 9, 16, 17, 18, 19, 22, and 23, 2021.

Attorneys Julie Stromberg and Diana Maltz represented Student. Parent attended two hearing days and authorized her attorneys to proceed without her present. Attorneys Rodolfo Estrada and Anthony Macklin represented Compton Unified.

Salvador Aquino, Director of Special Education, attended one hearing day on Compton Unified's behalf and authorized its attorneys to proceed on the remaining days.

At the parties' request the matter was continued to December 6, 2021, for written closing briefs. The record was closed, and the matter was submitted on December 6, 2021.

ISSUES

1. Did Compton Unified School District deny Student a free appropriate public education, called FAPE, from September 2, 2019, through the end of the 2019-2020 school year by:
 - a. failing to timely consider the January 21, 2020 speech and language independent educational evaluation report;
 - b. failing to consider the August 26, 2019 augmentative or alternative communication and assistive technology independent educational evaluation report;
 - c. failing to consider the January 1, 2020 transition independent educational evaluation report;
 - d. failing to assess in all areas of need, specifically social emotional functioning and orientation and mobility;
 - e. failing to make a written placement offer to the nonpublic school agreed upon in the settlement agreement, based upon Compton's FAPE obligation;
 - f. failing to make a clear written offer of FAPE indicating the placement at the commencement of the school year;

- g. failing to timely offer and materially implement the service minutes, that the parties agreed was FAPE, in the August 22, 2019 settlement agreement, specifically physical therapy, occupational therapy, specialized vision services, speech and language, adaptive and augmentative communication services and assistive technology services, and a trained one to one aide;
- h. failing to offer assistive technology and adaptive and augmentative communication systems;
- i. failing to implement related services and supplementary supports and services offered in the October 29, 2019 individualized education program, referred to as IEP, specifically physical therapy, adapted physical education, occupational therapy, and one to one aide services;
- j. failing to provide agreed upon equipment during remote learning, specifically a laptop or tablet, magnification device or visual assistance device, adapted toileting system, gait trainer, and adapted stander;
- k. failing to implement the October 29, 2019 IEP, based upon Student's inability to access services in the virtual format;
- l. failing to implement the in-person in-home aide service during remote learning resulting in a failure to materially implement the October 29, 2019 IEP;
- m. failing to offer appropriate placement for the 2019-2020 extended school year based upon the June 8, 2020 IEP;

- n. reporting inaccurate present levels of performance in the June 8, 2020 IEP, during the 2019-2020 extended school year;
 - o. offering inappropriate goals in the June 8, 2020 IEP, specifically in the areas of reading, writing, math, speech and language, and occupational therapy, during the 2019-2020 extended school year;
 - p. offering an inappropriate individual transition plan in the June 8, 2020 IEP, during the 2019-2020 extended school year;
 - q. denying Parent's right to meaningfully participate in the IEP process by failing to timely provide Parent with a copy of the June 8, 2020 IEP; and
 - r. denying Parent's right to meaningfully participate in the IEP process by implementing the June 8, 2020 IEP without parental consent?
2. Did Compton Unified School District deny Student a FAPE during the 2020-2021 school year by:
- a. failing to timely consider the January 21, 2020 speech and language independent educational evaluation report;
 - b. failing to consider the August 26, 2019 augmentative or alternative communication and assistive technology independent educational evaluation report;
 - c. failing to consider the January 1, 2020 transition independent educational evaluation report;
 - d. failing to consider the July 7, 2020 occupational therapy independent educational evaluation report;
 - e. failing to assess in all areas of need, specifically social emotional functioning and orientation and mobility;

- f. failing to offer assistive technology and adaptive and augmentative communications systems;
- g. failing to provide agreed upon equipment during remote learning, specifically a laptop or tablet, magnification device or visual assistance device, adapted toileting system, gait trainer, and adapted stander;
- h. failing to implement the October 29, 2019 IEP based upon Student's inability to access services in the virtual format;
- i. failing to implement the in-person in-home aide service during remote learning resulting in a failure to materially implement the October 29, 2019 IEP;
- j. failing to offer an appropriate placement in the June 8, 2020 IEP;
- k. reporting inaccurate present levels of performance in the June 8, 2020 IEP;
- l. offering inappropriate goals in the June 8, 2020 IEP, specifically in the areas of reading, writing, math, speech and language, and occupational therapy;
- m. offering an inappropriate individual transition plan in the June 8, 2020 IEP;
- n. denying Parent's right to meaningfully participate in the IEP process by failing to timely provide Parent with a copy of the June 8, 2020 IEP;
- o. denying Parent's right to meaningfully participate in the IEP process by implementing the June 8, 2020 IEP without parental consent;

- p. denying Parent's right to meaningfully participate in the IEP process by failing to provide prior written notice in response to a request for in-person services, or in-home aide at the February 22, 2021 IEP team meeting; and
- q. failing to timely hold an annual IEP team meeting?

JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); 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 has the burden of proof. 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 18 years old and in the 11th grade at the time of hearing. Student resided within the Compton Unified School District's geographic boundaries at all relevant times. Student was eligible for special education under the primary eligibility category of multiple disabilities and secondary eligibility category of visual impairment.

THE AUGUST 22, 2019 SETTLEMENT AGREEMENT WAS OPERATIVE THROUGH THE 2019-2020 REGULAR SCHOOL YEAR

Student and Compton Unified entered into a settlement agreement on August 22, 2019. The agreement settled all disputes raised in a prior OAH case. Student waived all claims through August 22, 2019, the date of the executed settlement agreement.

The Parties agreed that the terms and conditions set forth in the agreement for the 2019-2020 school year constituted a FAPE. The agreement then set forth in specificity the components of the Student's FAPE program that included placement at a nonpublic school for the 2019-2020 school year. It also included various related services for the 2019-2020 school year in the following areas: physical therapy, specialized vision services, language and speech, adaptive and augmentative communication services and

assistive technology services, and a trained one to one aide for transportation. Additionally, Compton Unified agreed to assess Student in some areas and to fund independent educational evaluations in others.

As pertaining to summer 2020, the agreement did not offer placement or services for the 2020 extended school year. The agreement stated that Student's services could be changed through an amended agreement or future IEP. The parties held an IEP team meeting on October 29, 2019, and Compton Unified offered placement and services for the 2020 extended school year.

Based upon the plain language of the settlement agreement and the October 29, 2019 IEP, the parties demonstrated their intent for the settlement agreement to apply only to the 2019-2020 regular school year, not the 2020 extended school year.

STUDENT WAIVED HER RIGHT TO A TIMELY IEP TEAM MEETING, PRIOR TO SUMMER 2020, TO REVIEW INDEPENDENT EDUCATIONAL EVALUATIONS

The settlement agreement made no guarantees or promises of any kind concerning the timeline for completing agreed upon assessments, or the requisite IEP team meeting to be held thereafter. Parent agreed that the IEP meeting would not be held until all the agreed upon assessments were completed.

Student may, therefore, not allege a denial of FAPE based upon an untimely IEP team meeting to consider the independent educational evaluations during the 2019-2020 regular school year. Any such claims are barred by the settlement agreement.

However, as discussed above, the conclusion of the 2019-2020 regular school year marked the end of Student's waiver of statutory or regulatory timelines to review the independent educational evaluations.

THE SETTLEMENT AGREEMENT, IF IMPLEMENTED, CONSTITUTED FAPE

In addition to the explicit waiver of statutory timelines, the parties agreed that the placement and services listed in the settlement agreement constituted FAPE for the 2019-2020 school year. So long as Compton Unified implemented the placement and services in the settlement agreement, Student received a FAPE.

ISSUE 1(a): TIMELY CONSIDERATION OF SPEECH AND LANGUAGE INDEPENDENT EDUCATIONAL EVALUATION

As discussed above, Student waived Issue 1(a) for the period of time through the end of the 2019-2020 regular school year. Therefore, Issue 1(a) is analyzed solely for the period of time during extended school year 2020.

Student contended she was denied a FAPE based upon Compton Unified's failure to timely review the speech and language independent educational evaluation by Ellen Horvath. Student claimed that Horvath was invited to present the report at an IEP team meeting more than one year after it was prepared. Based upon the delay, the outdated information was not appropriate to determine Student's present levels of performance and needs. Student argued if Compton Unified considered Horvath's recommendations at an earlier IEP team meeting and implemented them, Student would have received an appropriate speech program and would have made appropriate progress.

Compton Unified contended that it did not timely receive the speech and language report and therefore did not review it with the IEP team. Compton Unified argued that it acted in accordance with applicable law, evidenced by the fact the California Department of Education, referred to as CDE, did not find Compton Unified to be out of compliance based on a complaint initiated by Parent alleging the same conduct.

A free appropriate public education, 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 (2006).) 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 (2006).)

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].)

A school district is required to provide extended school year services to a student with an IEP if an extended school year is necessary to provide the student a FAPE. (34 C.F.R. § 300.106(a) (2006).) Some students have disabilities that are likely to continue indefinitely or for a prolonged period. In this situation, interruption of the student's educational program may cause regression, when coupled with limited recoupment

capacity rendering it impossible or unlikely that the student will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition. (Cal. Code of Regs., tit. 5, § 3043.)

COMPTON UNIFIED DENIED STUDENT A FAPE DURING THE 2020 EXTENDED SCHOOL YEAR BY FAILING TO CONSIDER THE SPEECH AND LANGUAGE INDEPENDENT EDUCATIONAL EVALUATION

The conclusion of the 2019-2020 regular school year marked the end of Student's waiver of statutory or regulatory timelines to review the findings of Horvath's speech and language independent educational evaluation. Beginning 2020 extended school year, Compton Unified was required to abide by the IDEA and state laws to provide Student a FAPE.

Compton Unified agreed to fund the independent educational evaluation in the August 22, 2019 settlement agreement and paid Horvath after she completed it. Horvath authored the independent educational evaluation report dated January 21, 2020 after assessing Student. Horvath was named as the preferred assessor in the settlement agreement. Compton Unified claimed it did not receive the report, and therefore was not obligated to hold an IEP team meeting to consider the results. This argument is unpersuasive.

The local educational agency must consider an independent educational evaluation that parent obtains and gives to the agency in any decision made with respect to the provision of FAPE to the child, so long as the evaluation meets agency criteria. (34 C.F.R. § 300.502(c) (2006); Ed. Code, § 56329, subd. (c).) An independent

educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. (34 C.F.R. § 300.502(a)(3)(i) (2006).)

The evidence established that Horvath sent the report to Compton Unified in late January or early February 2020. Additionally, Horvath conducted an observation on the Centennial High School campus, so Compton Unified knew that an evaluation was underway as of August 2019. Certainly by the time it paid Horvath's invoice, Compton Unified was on notice that the report had been completed and was obligated to request a copy to consider. Compton Unified's failure to consider the speech and language independent educational evaluation by the June 8, 2020 IEP team meeting was a procedural error.

The due process hearing officer shall make its decision on substantive grounds based on a determination of whether the child received a FAPE. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f)(1).) In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following:

- impeded the right of the child to a FAPE;
- significantly impeded the opportunity of the parent to participate in the decision-making process regarding the provision of a FAPE to the child of the parent; or

- caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f)(2); see also *W.B. v. Board of Trustees of Target Range School Dist. No. 23, etc.* (9th Cir. 1992) 960 F.2d 1479, 1485, *superseded in part by statute on other grounds*; see also 20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a) (2006).)

A procedural error results in a denial of educational opportunity where, absent the error, there is a “strong likelihood” that alternative educational possibilities for the student “would have been better considered.” (*M.L. v. Federal Way School Dist.* (9th Cir. 2003) 394 F.3d 634, 657.)

Horvath was a licensed speech pathologist who had been in practice since 1976. She was a qualified assessor. She was also identified by name in the parties’ settlement agreement. Horvath had ample training and experience and her opinion was given significant weight.

Horvath conducted a thorough speech and language evaluation of Student. Her evaluation included standardized tests, observations in a school setting, and speaking with staff and Student. Horvath authored a comprehensive report in January 2020, with detailed recommendations for Student’s IEP team to consider.

There is no specific time period in which an independent educational evaluation is required to be reviewed by an IEP team. However, it should be reviewed while the information is relevant to the Student’s present functioning so services to address Student’s then existing needs can be developed and implemented. (34 C.F.R. § 300.502(c) (2006); Ed. Code, § 56329, subd. (c).)

Horvath typically presented individualized educational evaluations at IEP team meetings within a few months and up to five or six months after the report is prepared. However, in this case, Horvath presented her findings to Student's IEP team on February 22, 2021, more than one year after the report was completed. Moreover, Compton Unified held Student's IEP team meeting on June 8, 2020. The report was not presented, nor did Student's IEP team consider Horvath's recommendations during that meeting or at any time during the 2019-2020 school year, including the extended school year.

There was no reasonable explanation for Compton Unified's failure to review the January 21, 2020 speech and language independent educational evaluation at the June 8, 2020 IEP team meeting. This IEP team meeting was held five months after the report was prepared and sent to Parent and Compton Unified.

Compton Unified argued that this failure should not be considered a FAPE denial because CDE found them in compliance in a report of December 8, 2020. This argument is not persuasive. Compton Unified provided no legal authority that states CDE compliance investigation findings are binding on OAH due process hearings. (*People v. Sims* (1982) 32 Cal.3d 468.) CDE did not find Compton Unified in violation based upon the information gathered during its investigation. According to the CDE report, there was no evidence presented to CDE regarding the date Horvath provided the speech and language evaluation to Compton Unified. CDE concluded that Compton Unified was in compliance because Compton Unified did not have Horvath's report. However, evidence demonstrating Horvath provided Compton Unified the report shortly after it was completed in January 2020 was established in this matter. Compton Unified has

failed to establish a defense for its failure to review the speech and language assessment in a timely manner.

The evidence demonstrated the failure to consider Horvath's report denied Student a FAPE. The failure to consider the evaluation at an IEP team meeting significantly impeded the opportunity for Parent to participate in the decision-making process regarding the provision of Student's FAPE. (*Target Range, supra*, 960 F.2d at p. 1484.) As a result, modifications to Student's IEP services were not considered by the IEP team until February 22, 2021, when Horvath presented her report.

Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE during 2020 extended school year by failing to timely review the speech and language independent educational evaluation.

ISSUE 1(b): CONSIDERATION OF AUGMENTATIVE OR ALTERNATIVE COMMUNICATION AND ASSISTIVE TECHNOLOGY INDEPENDENT EDUCATIONAL EVALUATION

Student waived Issue 1(b), as discussed above, for the period of time through the end of the 2019-2020 regular school year. Accordingly, Issue 1(b) is analyzed solely for the period of time during 2020 extended school year.

Student contended that Compton Unified denied her a FAPE for failing to consider the augmentative or alternative communication and assistive technology independent educational evaluation report. Compton Unified asserted that it did not fail to consider the independent educational evaluation report because it did not have a copy of it.

The August 22, 2019 settlement agreement stated that Compton Unified would fund an independent educational evaluation in the area of augmentative or alternative communication and assistive technology. The independent educational evaluation was conducted by Toni Salisbury, who completed the assessment and authored a report dated August 26, 2019.

Salisbury was a licensed speech pathologist with a specialized emphasis in assistive technology-augmentative alternative communication. Salisbury was a qualified assessor who had conducted augmentative or alternative education assessments for over 40 years. Salisbury's assessment consisted of directly working with Student, observations, a records review, and interviews with family and school staff. Salisbury sent her completed report to Compton Unified on February 28, 2020. Salisbury was knowledgeable about Student's needs and her testimony was given great weight.

Student was deprived of the benefit of considering the recommendations for assistive technology that Salisbury provided in the report. Compton Unified received Salisbury's report on February 28, 2020, this provided ample time to consider it at the June 8, 2020 IEP team meeting, or at any other time prior to the end of the 2019-2020 extended school year. Failing to do so was a procedural violation. As with Horvath's assessment, Parent was deprived an opportunity to advocate for Salisbury's recommendations at an IEP team meeting. This impeded Parent's right to participate in the IEP development process. This resulted in a substantive FAPE violation. Compton Unified denied Student a FAPE during 2020 extended school year by failing to consider the augmentative or alternative communication system and assistive technology independent educational evaluation.

ISSUE 1(c): CONSIDERATION OF THE TRANSITION INDEPENDENT EDUCATIONAL EVALUATION REPORT

As discussed above, Student waived Issue 1(c) for the period of time through the end of the 2019-2020 regular school year. Therefore, Issue 1(c) is analyzed solely for the period of time during 2020 extended school year.

Student claimed that she was denied a FAPE based upon Compton Unified's failure to consider the January 1, 2020 transition independent educational evaluation by Dr. Gary Greene. Student argued that if Dr. Greene had been given the opportunity to present his report at an IEP team meeting, he would have recommended changes to Student's individual transition plan and goals.

Compton Unified contended that it did not consider Dr. Greene's report at the June 8, 2020 IEP team meeting because it did not possess the report. Compton Unified argued that although consideration of the assessment may be late, the report has value even now in Student's current educational placement.

Beginning not later than the first IEP to be in effect when the student is 16 years of age, or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP shall include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and the transition services, including courses of study, needed to assist the pupil in reaching those goals. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); Ed. Code, §§ 56345, subd. (a)(8), 56043, subd. (g)(1).)

“Transition services” are defined in the IDEA as a coordinated set of activities described within a results-oriented process, focused on improving the academic and functional achievement to facilitate movement from school to post-school activities, such as

- postsecondary education;
- vocational education;
- integrated employment, including supported employment;
- continuing and adult education;
- adult services;
- independent living; or
- community participation.

Transition services are to be based upon individual needs, taking into account individual strengths, preferences, and interests. Transition services include instruction, related services, community experiences, development of employment and other post-school adult living objectives. If appropriate, transition services include acquisition of daily living skills and provision of a functional vocational evaluation. (20 U.S.C. § 1401(34); 34 C.F.R. § 300.43(b) (2006); Ed. Code, § 56345.1, subd. (a).)

The analysis of whether FAPE was offered is not altered by the fact that “transition services” are at issue. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938.) Transition services like special education and related services, are sufficient when student is offered a FAPE under *Rowley*. (*J.L. v. Mercer Island School Dist.*, *supra*, 592 F.3d 938.) The failure to properly formulate a transition plan may be a procedural violation of the IDEA that warrants relief only upon showing a loss of educational

opportunity of the denial of FAPE. (*Board of Education v. Ross* (7th Cir. 2007) 486 F.3d 267, 276 [despite transition plans being a mandatory component of an IEP, notation in IEP that the transition plan would be “deferred” was a procedural violation]; *A.S. v. Madison Metro School Dist.* (D. Wis. 2007) 477 F.Supp.2d 969, 978 [allegation of inadequate transition plan treated as a procedural violation].)

Dr. Greene was an independent special education consultant in transition services since 2012. Dr. Greene was a qualified assessor and his assessment consisted of observations at school, records review, and assessment instruments administered to Parent and Student’s teacher. Dr. Greene’s opinion was given considerable weight based on his training and experience.

Dr. Greene was obligated to send the completed report to Compton Unified because they contracted him to complete the evaluation; he sent the report to Compton Unified in January 2020. Although his report says “draft”, it was complete and he marked it as a draft in anticipation of presenting it to the IEP team and expecting that the team would suggest changes to it. Dr. Greene has not been invited to present his report to Student’s IEP team.

By the June 8, 2020 IEP team meeting, Compton Unified had Dr. Greene’s report for more than four months and it was required to consider the report within a reasonable time. The evidence established a procedural violation based upon Compton Unified’s failure to review the transition report by the June 8, 2020 IEP team meeting.

Compton Unified’s failure to review the transition assessment denied Parent the opportunity to participate in the decision-making process regarding the provision of FAPE to Student. Dr. Greene’s recommendations of additional services to increase

Student's skills related to employment and other supports she needed to develop independent living skills were not considered by the IEP team; this caused a deprivation of educational benefits. Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE during 2020 extended school year by failing to consider the transition report.

ISSUE 1(d): FAILING TO ASSESS IN ALL AREAS OF NEED, SPECIFICALLY SOCIAL EMOTIONAL FUNCTIONING AND ORIENTATION AND MOBILITY

Student contended Compton Unified was aware that she had needs in the area of social emotional functioning, specifically peer interaction. Student asserted that based on her vision impairment, Compton Unified knew navigating campus with her wheelchair was difficult, for which an orientation and mobility assessment would be appropriate. Compton Unified claimed that it tried to schedule assessments but Parent's busy schedule made it challenging.

Assessments must be conducted in all areas of suspected disability. (20 U.S.C. § 1414 (b)(3)(B); 34 C.F.R. § 300.532(g) (2006); Ed. Code, § 56320, subd. (f).)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007, No. C05-04977 VRW) 2007 WL 949603, the District Court held that OAH had jurisdiction to adjudicate claims alleging denial of free and appropriate public education as a result of a violation of a mediated settlement agreement that should be addressed by the California Department of Education compliance complaint procedure.

The August 22, 2019 settlement agreement stated that Compton Unified would conduct assessments in social and emotional functioning and orientation and mobility. Compton Unified was aware that Student had needs in those areas based upon

Student's behavior and orthopedic and vision impairments. Compton Unified had a duty to assess Student in these areas of need to provide a FAPE, independent of its obligation to conduct assessments pursuant to the settlement agreement. (*Pedraza, supra*, 2007 WL 949603.) Compton Unified's failure to assess Student in all areas of suspected disability was a procedural violation.

The failure to assess in all areas of suspected disability may constitute a denial of FAPE if it has deprived the student of educational opportunity. (*Park, ex rel Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.)

Compton Unified's failure to assess student in the area of social emotional functioning caused a deprivation of educational opportunity. (*Park, ex rel Park, supra*, 464 F.3d 1025.) The evidence established that Student was not appropriately engaging with peers and that she needed services to help develop her social skills. The failure to assess Student in orientation and mobility caused a deprivation of educational benefits based upon her visual and physical impairments. (20 U.S.C. § 1415 (f)(3)(e); Ed. Code, §56505, subd. (f)(2).)

As Student transitioned to adulthood, she needed to develop skills that would permit her to become more independent in the community. The evidence demonstrated that if assessments for social emotional functioning and orientation and mobility had been conducted, Student's needs in these areas would have been better considered by the IEP team. (*M.L. v. Federal Way School Dist., supra*, 394 F.3d at p. 657.) For the reasons stated, Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE during the 2019-2020 school year by failing to assess in all areas of need, specifically social emotional functioning and orientation and mobility.

ISSUES 1(e) AND 1(f): WRITTEN PLACEMENT OFFER OR A CLEAR WRITTEN OFFER OF FAPE

Student alleged that Compton Unified's delay in making a written offer of placement constituting FAPE resulted in a delay of placement at Student's preferred nonpublic school, Wayfinder. Student also argued that Parent was denied the right to meaningfully participate in the IEP process based upon Compton Unified's failure to make a clear written offer of FAPE indicating the placement at the commencement of the school year.

Compton Unified contended that at all relevant times it offered Student an educational placement that addressed her unique needs in the least restrictive environment and allowed her to retain an educational benefit. Compton Unified claimed that any procedural violation did not result in any loss of educational opportunity for Student.

A school district must have an IEP in place at the beginning of each school year for each child with exceptional needs residing within the district. (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 56334, subd. (c).)..

A student's IEP must contain a clear written offer of placement. The offer must include a statement of the special education and related services and supplementary aids and services, including program modification or supports. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526.) The offer must also include a statement of the anticipated frequency, location, and duration of services and modifications. (34 C.F.R. § 300.320(a)(7) (2006); Ed. Code, § 563.45, subd. (a)(7).)

A FAPE offer must be sufficiently clear that a parent can understand it and make intelligent decisions based on it. In *Union School Dist., supra*, 15 F.3d 1519, the Ninth Circuit observed that the formal requirements of an IEP are not merely technical and therefore, should be enforced rigorously. The requirement of a coherent, formal, written offer creates a clear record that helps eliminate factual disputes about when placements were offered, what placements were offered, and what additional assistance was offered to supplement a placement. It also assists parents in presenting complaints with respect to any matter relating to the educational placement of the child. (*Ibid.*) The requirement of a formal, written offer alerts the parents to the need to consider seriously whether the offered placement was an appropriate placement under the IDEA, so that the parents can decide whether to oppose the offered placement or accept it with the supplement of additional education services. (*Ibid.; Glendale Unified School Dist. v. Almasi* (C.D. Cal. 2000) 122 F.Supp.2d 1093, 1107.)

The August 22, 2019 settlement reflects the offered placement at Wayfinder for the 2019-2020 regular school year. Compton Unified agreed to memorialize the offer in an administrative amendment to the August 20, 2019 IEP team meeting. Compton Unified also offered related services in the following minimum frequency, amounts and duration: Physical therapy for 30 minutes, three times weekly, delivered by two direct services and one consult per week. Occupational therapy services 30 minutes, three times weekly, with ten minutes of each session reserved for consult. Adapted physical education for 30 minutes, three times weekly. Specialized vision services 30 minutes weekly. Language and speech for 30 minutes, three times per week, with two group and one individual service. Adaptive and augmentative communication services and assistive technology services pending results of the independent educational evaluation and a trained one to one aide for transportation.

The agreed upon placement and services at Wayfinder were not memorialized in Student's IEP until the October 29, 2019 IEP team meeting. However, Compton Unified's failure to memorialize the placement is of no legal consequence. The written offer of placement and services contained in the settlement agreement was a legally compliant written offer; further memorialization in Student's IEP was not required to provide Student a FAPE.

As a result, Student failed to meet her burden of proving Compton Unified failed to make a written placement offer to the nonpublic school agreed upon in the settlement agreement. Student also failed to meet her burden of proving Compton Unified failed to make a clear written offer of FAPE indicating placement at the commencement of the school year.

ISSUE 1(h): FAILURE TO OFFER AUGMENTATIVE OR ALTERNATIVE COMMUNICATION AND ASSISTIVE TECHNOLOGY SYSTEMS

Student contended that Compton Unified denied her a FAPE by failing to offer augmentative or alternative communication and assistive technology systems. Compton Unified argued that it did not have an obligation to offer Student augmentative or alternative communication and assistive technology systems because it was not recommended by the IEP team.

Of note, the settlement agreement's language regarding assessments carved out augmentative or alternative communication and assistive technology systems from Compton Unified's FAPE offer. Accordingly, whether Student could establish a need in

these areas, and Compton Unified's obligation to meet those needs, survived the settlement agreement. Student is entitled here to make those claims. (*Pedraza, supra*, 2007 WL 949603.)

Salisbury made specific recommendations in the August 2019 augmentative or alternative communication and assistive technology report. As noted, the assessment report was thorough and was provided to Compton Unified on February 28, 2020. Salisbury was a credible witness who was knowledgeable about Student's needs. Salisbury's recommendations were given great weight.

The evidence established that Student's needs required assistive technology equipment so she could access her education. Specifically, Student required a tray for her wheelchair; this would have allowed Student to sit next to and face the same direction as her classmates. A tablet or laptop raised to eye level using a stand would have allowed Student to make educational progress and accommodated her vision impairment. The magnifier or large print visual materials would have made the classroom curriculum accessible to Student based on her vision impairment. Compton Unified's failure to provide Student the assistive technology systems denied her educational benefits. As a result, Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE from February 28, 2020, through the end of the 2019-2020 school year by failing to offer the assistive technology systems recommended in the augmentative or alternative communication and assistive technology report.

The issue was not waived in the settlement agreement because only the timeframe in which to review assessments were waived, not the provision of appropriate services in these areas. Accordingly, Student prevailed on Issue 1(h).

ISSUE 1(g): OFFER AND IMPLEMENTATION OF SERVICE MINUTES AGREED TO IN THE AUGUST 22, 2019 SETTLEMENT AGREEMENT.

Student contended that Compton Unified's failure to memorialize the services from the settlement agreement into an IEP resulted in service providers failing to implement appropriate services. Student claimed when she began attending Wayfinder, it implemented services from a prior IEP, and not those specified in the settlement agreement that the parties jointly agreed were FAPE.

Compton Unified claimed that any issues stemming from the settlement agreement had been remedied by findings made by CDE in response to Parent's numerous complaints. Compton Unified argued that Student's service minutes were not timely implemented at Wayfinder because of Student's failure to learn of Wayfinder's enrollment process prior to entering into the settlement agreement.

THE SERVICES CONTAINED IN THE SETTLEMENT AGREEMENT WERE TIMELY OFFERED

The August 22, 2019 settlement agreement contained the parties agreed upon placement and services for the 2019-2020 school year. The agreement specified that Compton Unified would memorialize the FAPE offer in an IEP document, referred to in the agreement as an "administrative amendment." As noted previously, however, such memorialization was a contractual term, but was of no consequence in determining the program and services to which Student was entitled as a FAPE, because they were specified in the agreement.

As a result, Student did not meet her burden of proving Compton Unified failed to timely offer services contained in the August 22, 2019 settlement agreement.

COMPTON UNIFIED FAILED TO MATERIALLY IMPLEMENT PHYSICAL THERAPY, OCCUPATIONAL THERAPY, SPECIALIZED VISION, AND SPEECH AND LANGUAGE SERVICES

When a student alleges the denial of 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*).) No statutory requirement of perfect adherence to the IEP exists, nor is there any reason rooted in the statutory text to view minor implementation failures as denials of FAPE. (*Ibid* at p. 921.) "A material failure occurs when there is more than a minor discrepancy between the services of a school provides to a disabled child and the services required by the child's IEP." (*Ibid* at p. 819.)

PHYSICAL THERAPY SERVICES

Pursuant to the settlement agreement, Student was entitled to physical therapy services for 30 minutes, three times per week. The physical therapy logs demonstrated that between September 2, 2019, and November 21, 2019, a total of six sessions were scheduled. Student should have had 33 scheduled physical therapy sessions during that time period based on the terms of the settlement agreement. It was a material failure for Compton Unified to implement inappropriate physical therapy services between September 2, 2019, and November 21, 2019, the date a different IEP became operative.

OCCUPATIONAL THERAPY

Wayfinder implemented Student's May 3, 2019 IEP beginning October 2, 2019, the date she began attending school there. At hearing, there was no evidence presented regarding occupational therapy services Student received prior to attending Wayfinder. The May 3, 2019 IEP offered Student 30 minutes of occupational therapy 11 times per year. Student was entitled to receive occupational therapy three times weekly for 30 minutes pursuant to the settlement agreement. The occupational services provided in one month in the settlement agreement was greater than the services offered for the entire year in the May 3, 2019 IEP. It was a material failure to implement the occupational therapy services pursuant to the settlement agreement from October 2, 2019, through November 21, 2019.

VISION SERVICES

Student was entitled to 30 minutes of vision services weekly according to the settlement agreement. Wayfinder implemented the May 3, 2019 IEP vision services, that offered 30 minutes, twice per month, beginning October 2, 2019. The evidence did not establish the frequency Student received vision services prior to attending Wayfinder. The services that were implemented at Wayfinder were half of what Student was entitled to receive pursuant to the settlement agreement. From October 2, 2019, through November 21, 2019, Compton Unified failed to implement vision services in accordance with the settlement agreement and the failure was material.

SPEECH AND LANGUAGE

In the settlement agreement, Student was entitled to three weekly sessions of speech and language services for 30 minutes each. Wayfinder implemented the May 3, 2019 IEP beginning October 2, 2019, which offered speech and language for 20 minutes, two times per month. Compton Unified failed to materially implement Student's speech and language services offered in the agreement from October 2, 2019, through November 21, 2019.

For the reasons stated, Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE by failing to materially implement Student's occupational therapy, specialized vision, and speech and language services listed in the settlement agreement from October 2, 2019, through November 21, 2019. Student also proved that Compton Unified denied her a FAPE by failing to materially implement Student's physical therapy services from September 2, 2019, through November 21, 2019. Remedies are discussed below.

NO SERVICE MINUTES FOR ADAPTIVE AND AUGMENTATIVE COMMUNICATION SERVICES AND ASSISTIVE TECHNOLOGY SERVICES WERE OFFERED IN THE SETTLEMENT AGREEMENT

Student alleged that Compton Unified denied her a FAPE by failing to materially implement the adaptive and augmentative communication services and assistive technology services the parties agreed to in the settlement agreement.

However, the settlement agreement did not contain a specific provision offering adaptive and augmentative communication services and assistive technology services. The settlement agreement stated that Compton Unified would offer service minutes pending the outcome of the independent educational evaluation. As a result, Student failed to meet her burden of proving that Compton Unified denied her a FAPE by failing to implement adaptive and augmentative communication services and assistive technology service minutes contained in the settlement agreement.

COMPTON UNIFIED PROVIDED STUDENT A TRAINED ONE TO ONE AIDE

Student alleged that Compton Unified denied her a FAPE for failing to materially implement the trained one to one aide services that the parties agreed was FAPE in the settlement agreement.

In the settlement agreement, Student was entitled to a trained one to one instructional aide to support school attendance and transportation, within five days of Student being accepted to Wayfinder. The trained one to one aide was to accompany Student at all times including during the provision of specialized transportation, and at school.

Rosalina Drayton, was a certified nurse assistant and knew Student for approximately two years because Student attended Centennial High School when Drayton worked there as an aide. When Student began attending Wayfinder, Drayton was assigned to be Student's one to one aide. Drayton accompanied Student round trip on the school bus to Wayfinder and back home, and provided support in the classroom.

Drayton also provided for Student's personal care, including changing and feeding needs during the school day. Drayton's support resulted in Student attending school more often.

During in-person instruction, Drayton sometimes assisted teachers by providing hand over hand support or educational assistance, if needed. Drayton turned on the iPad used in the classroom so Student could use it. Drayton provided redirection and helped Student maneuver her wheelchair because Student could not do so. Drayton assisted the physical therapist in placing Student into the stander or gait trainer. Besides the physical therapist, Drayton did not provide support when Student received services. Drayton did not work on Student's IEP goals.

Drayton provided one to one aide service for Student the entire time Student attended Wayfinder in-person. Accordingly, Student failed to prove that Compton Unified denied her a FAPE by failing to provide one to one aide services as described in the settlement agreement from October 2, 2019, through November 21, 2019.

ISSUE 1(i): FAILURE TO IMPLEMENT RELATED SERVICES IN THE OCTOBER 29, 2019 IEP, SPECIFICALLY PHYSICAL THERAPY, ADAPTED PHYSICAL EDUCATION, OCCUPATIONAL THERAPY, AND ONE TO ONE AIDE SERVICES

Student argued that Wayfinder failed to materially implement the October 29, 2019 IEP until early 2020 and failed to implement it before and during distance learning. Compton Unified claimed it did not fail to implement related services and supplementary supports in Student's October 29, 2019 IEP. Compton Unified argued any failure to implement the IEP during the COVID-19 pandemic was based upon school

closures and recommendation by the governor that required it to stop in-person instruction for the remainder of the school year beginning March 16, 2020.

THE OCTOBER 29, 2019 IEP MODIFIED THE TERMS OF THE SETTLEMENT AGREEMENT

On November 21, 2019, Parent consented to the implementation of the October 29, 2019 IEP and agreed to the proposed eligibility categories. The settlement agreement included a provision that the terms could be changed in writing through an amended agreement or future IEP.

Based upon the agreement of the parties, Compton Unified was required to implement the services and supports contained in the October 29, 2019 IEP beginning on November 21, 2019, the date Parent consented to it. The October 2019 IEP offered the same services, in the same frequency, amount, and duration, as the settlement agreement. The evidence demonstrated that Wayfinder received Student's October 29, 2019 IEP on February 4, 2020. Wayfinder continued to implement the outdated May 3, 2019 IEP until February 4, 2020.

STATE AND FEDERAL GUIDANCE ON PROVIDING SPECIAL EDUCATION DURING THE COVID-19 PANDEMIC

On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency in California as a result of the highly contagious coronavirus, referred to as the COVID-19 pandemic.

On March 12, 2020, the United States Department of Education Office of Special Education and Rehabilitative Services, known as OSERS, published guidance to states for

educating children with disabilities during the COVID-19 pandemic. (OSERS, March 12, 2020, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (OSERS Q & A), Answer to Question A-1.)

OSERS advised local educational agencies they would not violate the IDEA if they closed schools to slow or stop the spread of COVID-19 and did not provide educational services to the general student population, then they would not be required to provide services to students with disabilities during that same time period. (*Ibid*, at p. 2, Answer A-1.) Once school resumed instruction, the local educational agency was required to “make every effort to provide special education and related services to the child in accordance with the child’s IEP.” (*Ibid*.)

OSERS acknowledged that local educational agencies might not be able to provide FAPE to some students through educational programs developed in response to COVID-19 and would need to evaluate whether those students needed compensatory education as a result. “There may be exceptional circumstances that could affect how a particular service is provided... “[An] IEP team ... would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.” (*Ibid* at p. 2, Answer A-1.)

On March 13, 2020, Governor Newsom issued Executive Order N-26-20 which authorized school districts to continue educating students to the extent feasible through distance learning and/or independent study. The Order directed CDE to issue guidance on how to ensure students with disabilities received a FAPE. In response, CDE advised local educational agencies to “do their best in adhering to IDEA requirements ... to the maximum extent possible.” CDE encouraged local educational agencies to “consider

ways to use distance technology to meet these obligations.” (CDE, *Special Education Guidance for COVID-19, COVID-19 School Closures and Services to Students with Disabilities* (March 20, 2020) (CDE March 20, 2020 Guidance).)

On March 19, 2020, Governor Newsom issued Executive Order N-33-20, which directed all California residents “to immediately heed the current State public health directives,” including the requirement “to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors.” (See Cal. Exec. Order N-33-20 (Mar. 19, 2020).) Further, the California State Public Health Officer issued a list of designated “essential” workers who were allowed to leave their homes to support specified critical infrastructure sectors, which included workers teaching at “public and private ... K-12 schools,” but only for “distance learning.” As recently noted by the Ninth Circuit, Executive Order N-33-20 remained in effect until June 11, 2021, and California residents were prohibited from leaving their homes except to the extent State officials provided an exception. “[The] ability to operate schools (or anything else) turned on what sort of permission State officials granted back either in the form of rules governing ‘critical infrastructure sectors’ or some exception to the stay-at-home order.” (*Brach v. Newsom* (9th Cir. 2021) 6 F.4th 904, 911.)

On March 21, 2020, the U.S. Department of Education’s Office of Civil Rights, called OCR, and OSERS issued supplemental guidance in response to reluctance by some school districts to provide any distance instruction because they believed that federal disability law presented insurmountable barriers to remote education. Recognizing that “educational institutions are straining to address the challenges of this national emergency,” OCR and OSERS assured school districts they should not opt to close or decline to provide distance instruction. (OCR and 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 Supplemental Fact Sheet.) "To be clear: ensuring compliance with [the IDEA] ... should not prevent any school from offering educational programs through distance instruction." (*Ibid.*) "[The] provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically." (*Ibid* at pp. 1-2.) OSERS emphasized that "federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities" and the "determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency." (*Ibid.*) OSERS encouraged parents and educators to collaborate creatively to meet the needs of students with disabilities, and to consider practices, "such as distance instruction, teletherapy ... [and] meetings held on digital platforms," and noted "there are low-tech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects and written assignments." (*Ibid.*)

The Department of Education acknowledged, during the national emergency, schools may not be able to provide all services in the same manner as typically provided, including some in-person services such as hands-on physical therapy, occupational therapy, or tactile sign language educational services. (*Ibid.*) It advised that many disability-related modifications, and services, may be effectively provided online, including "for instance, extensions of time for assignments, videos ... accessible reading materials, and many speech or language services through video conferencing." (*Ibid.*) The Department of Education encouraged parents and educators to collaborate creatively to meet the needs of students with disabilities, and to consider practices, "such as distance instruction, teletherapy.... [and] meetings held on digital platforms,"

and noted “there are low-tech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects and written assignments.”
(*Ibid.*)

COMPTON UNIFIED HAD NO DUTY TO PROVIDE STUDENT IEP SERVICES DURING SCHOOL CLOSURE RELATED TO COVID-19 FROM MARCH 16, 2020, THROUGH MARCH 30, 2020

Compton Unified was closed for in-person instruction for all students beginning on March 16, 2020. Compton Unified began distance learning on March 30, 2020. Wayfinder’s spring break was March 16, through March 20, 2020. Wayfinder began providing distance learning to students on April 13, 2020.

Compton Unified was not required to offer services to Student until it provided distance learning to all students, which it commenced doing on March 30, 2020.

The Department of Education advised school districts in its March 2020 guidance that school districts that closed to all students because of the pandemic did not violate the IDEA by closing to special education students. (*Questions and Answers on Providing Services to children with Disabilities During the Coronavirus Disease 2019 Outbreak, supra*, p. 2, Answer A-1.) The Department of Education’s guidance was consistent with the Ninth Circuit’s decision in *N.D. v. Hawaii Dep’t of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116-1117, which upheld a district court’s denial of a motion by special education students to enjoin the state’s shutdown of all schools on Fridays during a fiscal emergency. The Ninth Circuit rejected the student’s arguments that ceasing services owed to them under their IEP’s constituted a change of placement and violated IDEA’s

stay put rule. The Ninth Circuit explained, “Congress did not intend for the IDEA to apply to system wide administrative decisions” and “[an] across the board reduction of school days such as the one here does not conflict with Congress’s intent of protecting disabled children from being singled out.” (*Ibid*, at p. 1116.)

Student failed to establish that Compton Unified had a duty to provide services to her while schools were closed to all students. Accordingly, Student did not prove Compton Unified denied her a FAPE from March 16, 2020, through March 30, 2020.

COMPTON UNIFIED FAILED TO MATERIALLY IMPLEMENT STUDENT’S PHYSICAL THERAPY SERVICES

Student was entitled to receive 27 physical therapy sessions between November 21, 2019, and March 16, 2020. The evidence demonstrated that Student was scheduled to receive 10 physical therapy sessions in this timeframe. Compton Unified failed to materially implement Student’s physical therapy services from November 21, 2019, through March 16, 2020.

Between March 30, 2020, and the end of the 2019-2020 school year, Student was entitled to receive 27 physical therapy sessions but was only scheduled to receive nine sessions. Compton Unified did not implement Student’s physical therapy services from February 12, 2020, to May 14, 2020. The failure to implement physical therapy services from March 30, 2020, through the end of the 2019-2020 school year was a material failure.

For the reasons stated, Compton Unified denied Student a FAPE from November 21, 2019 through March 16, 2020, and March 30, 2020, through the end of

the 2019-2020 school year, by failing to materially implement physical therapy services in the October 29, 2019 IEP. Implementation of Student's October 2019 IEP during 2020 extended school year is discussed in Issue 1(k).

COMPTON UNIFIED FAILED TO MATERIALLY IMPLEMENT STUDENT'S ADAPTED PHYSICAL EDUCATION SERVICES

Daniel Cardona was an adapted physical education instructor at Compton Unified. Cardona provided Student adapted physical education services six times per month in accordance with her May 3, 2019 IEP. Cardona implemented these services between November 21, 2019, through March 16, 2020.

Student's October 2019 IEP entitled her to receive adapted physical education three times per week for 30 minutes. The adapted physical education services implemented by Cardona consisted of whole body stretching and exercises for approximately four to five minutes; Cardona did not provide 30 minutes of services. There was a break in Cardona's adapted physical education services from March 30, 2020, until the end of the 2019-2020 school year, when he mistakenly believed Wayfinder was providing them.

Compton Unified's failure to implement adapted physical education from the October 29, 2019 IEP beginning November 21, 2019, was a procedural violation. The services Cardona provided, when he provided them, were half of the frequency of what Student's October 29, 2019 IEP offered and were for a five-minute, instead of 30-minute duration. Compton Unified materially failed to implement Student's adaptive physical education services from November 21, 2019, through the end of the 2019-2020 school

year. Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE from November 21, 2019, through the end of the 2019-2020 school year by failing to implement adapted physical education services.

Student did not raise an allegation related to the provision of adaptive physical education before November 21, 2019. As a result, no findings are being made regarding the adapted physical education services implemented prior to November 21, 2019. Implementation of adapted physical education services during 2020 extended school year is discussed in Issue 1(k).

COMPTON UNIFIED FAILED TO MATERIALLY IMPLEMENT STUDENT'S OCCUPATIONAL THERAPY SERVICES

Wayfinder implemented occupational therapy services from Student's May 2019 IEP from November 21, 2019, through February 4, 2020. The May 2019 IEP offered 30-minute sessions 11 times per year, and the October 2019 IEP offered 30-minute sessions, three times per week. As discussed in Issue 1(g), implementation of the May 2019 IEP was a material failure, and continued from November 21, 2019, through February 4, 2020.

Between February 4, 2020, and May 2020, the evidence did not establish the frequency, amount, or duration Student received occupational therapy services. Wayfinder was closed for instruction from March 16, through April 13, 2020, when it began distance learning. The evidence established that a staffing shortage affected occupational therapy services, but it is unclear to what degree Student was impacted. It was a procedural violation to provide occupational therapy services that deviated from Student's October 2019 IEP. However, since the evidence did not establish the

discrepancy between the services provided and those required by the IEP, Student did not prove a material failure to implement between February 4, 2020, and March 16, 2020, and April 13, 2020, through the end of the 2019-2020 school year. (*Van Duyn, supra*, 502 F.3d 811.)

For the reasons stated, Compton Unified denied Student a FAPE from November 21, 2019, through February 4, 2020, and March 30, through April 13, 2020, by failing to materially implement occupational therapy services from Student's October 29, 2019 IEP. Implementation of Student's IEP from April 13, 2020, through the end of the 2019-2020 school year is discussed in Issue 1(k).

COMPTON UNIFIED PROVIDED STUDENT WITH ONE TO ONE AIDE SERVICES

Implementation of Student's one to one aide services during in-person instruction was discussed above in Issue 1(g) and the analysis is applicable here. Compton Unified implemented Student's one to one aide service as required by the October 29, 2019 IEP from November 21, 2019, through March 16, 2020. For the reasons stated, Student failed to meet her burden of proving Compton Unified denied her a FAPE by failing to implement the one to one aide service from November 21, 2019, through March 16, 2020.

The allegation that Compton Unified failed to implement the one to one aide service during distance learning, from March 30, 2020, through the end of the 2019-2020 school year is discussed in Issue 1(l).

ISSUE 1(j): FAILURE TO PROVIDE AGREED UPON EQUIPMENT DURING REMOTE LEARNING

Student claimed that Compton Unified denied her a FAPE by failing to provide equipment necessary to access distance learning. Student also alleged that during remote learning Compton Unified failed to provide equipment listed in her IEP.

Compton Unified argued that it did not deny Student a FAPE during distance learning because it offered Parent an iPad and Parent did not accept it. Compton Unified also contended that it provided Parent multiple devices, but Parent had difficulties using them. Compton Unified claimed that it offered Parent the adapted toileting system, gait trainer, and adapted stander when it closed to in-person instruction, but Parent did not have room for them and refused the offer.

Changes to the IEP may be made either by the entire IEP team or, as provided in subparagraph (d), by amending the IEP rather than by redrafting the IEP. (20 U.S.C. § 1414(d)(3)(F).)

FAILURE TO PROVIDE EQUIPMENT IN STUDENT'S IEP

Student's October 29, 2019 IEP listed the equipment Student needed to make progress on her goals. Student required an adapted toileting system to work on her toileting needs. An adapted stander was required to improve eye contact and socialization in the standing position. The gait trainer helped improve Student's endurance and functional mobility. The evidence demonstrated that Compton Unified

offered to provide Parent the adapted toileting system, adapted stander, and gait trainer at the beginning of distance learning, but Parent declined due to lack of space in the home.

In the face of Parent's refusal of the equipment, Compton Unified was under an obligation to hold an IEP team meeting. The team could have assessed Student's ongoing needs in this area, reviewed Student's goals, and determined if there were alternate means available to meet Student's needs. Had the IEP team determined that Student's educational needs were different in-home, such that the equipment was not necessary to meet Student's needs in that environment, the IEP could have been amended specifying that the equipment was no longer required for a FAPE. (20 U.S.C. § 1414(d)(3)(F).) Compton did not do so; the IEP was never amended.

A magnification device was an accommodation in Student's October 29, 2019 IEP to support Student's visual impairment. Without a magnification device, Student was unable to see her teacher, service providers, or instructional materials presented in the virtual format during distance learning. Compton Unified did not provide Student a magnification device to use during distance learning.

Compton Unified's failure to provide Student the equipment offered in the October 29, 2019 IEP was a procedural violation.

The evidence established that Compton Unified failed to provide Student the adapted toileting system, gait trainer, adapted stander, and magnification device during the 2019-2020 school year. As a result, Compton Unified did not implement Student's IEP goals or services that required the equipment. Accordingly, Compton Unified's

failure to provide this equipment was a material failure to implement Student's October 29, 2019 IEP during distance learning. Notwithstanding Parent declining some of the home equipment when offered, Student established that Compton Unified denied her a FAPE from March 30, 2020, through the end of the 2019-2020 school year by failing to provide Student the adapted toileting system, gait trainer, adapted stander, and magnification device.

FAILURE TO PROVIDE LAPTOP OR TABLET

Student required a laptop or tablet to access the online component of distance learning, including to receive related services. Student did not receive the laptop or tablet during the 2019-2020 school year to access distance learning; this was a procedural violation.

Parent used her iPhone to access distance learning; the screen was too small for Student to see due to her visual impairment. Student was able to hear the instruction but was not able to see what was being presented by her teacher or service providers. Failure to provide Student a laptop during distance learning deprived her of educational benefits. Compton Unified denied Student a FAPE from March 30, 2020, through the end of the 2019-2020 school year by failing to provide Student a laptop or tablet.

ISSUE 1(k): FAILURE TO IMPLEMENT THE OCTOBER 29, 2019 IEP, BASED UPON STUDENT'S INABILITY TO ACCESS SERVICES IN THE VIRTUAL FORMAT

Student claimed that due to her complex disabilities, including her visual and orthopedic impairments, she did not receive the full benefit of instruction and related

services delivered virtually. Student argued that Compton Unified denied her a FAPE by failing to implement the October 29, 2019 IEP based upon Student's inability to access services during distance learning.

Compton Unified argued that it provided Student the best service it could. Compton Unified contended that it did not deny Student a FAPE because a CDE report stated it was not out of compliance for failing to provide in-person services during COVID-19.

Due to Student's visual impairment, she required a large viewing screen, the size of a tablet or laptop, with the addition of a magnification device, to access her education. Parent used her iPhone to access distance learning and Student could not see what was being presented visually. Student required the use of a wheelchair and could not maneuver it on her own. Student required maximum assistance during the school day including assistance to access equipment during physical therapy sessions.

Student was not able to maintain alertness and focus when she received services virtually. Student had difficulty maintaining attention, focus, and concentration; she sometimes fell asleep during virtual learning sessions. Student benefitted from her education when she was able to interact and engage with the service provider or teacher in-person. Student required in-person opportunities, encouragement, and coaching to increase her social skills and interact with others. Student was prompt-dependent and was unable to work independently, initiate a conversation, or ask questions of her teacher.

The settlement agreement and October 2019 IEP called for Student's programs and services to be provided in-person. Moving to a virtual delivery format was a failure to implement those services as specified in the IEP. The question becomes whether the

change to virtual learning was material for this Student. If Student was still able to access her education, the failure may not have been material. Here, however, the evidence established that Student could not access her education in the virtual format. The failure to implement Student's services in-person was material to Student. Thus she was denied a FAPE from March 30, 2020, through the end of the 2019-2020 school year, including extended school year, based upon Compton Unified's failure to materially implement the October 29, 2019 IEP due to Student's inability to access services in the virtual format.

ISSUE 1(I): IMPLEMENTATION OF IN-PERSON IN-HOME AIDE SERVICE DURING REMOTE LEARNING

Student claimed that failure to implement in-person in-home aide service during remote learning resulted in effective non-implementation of her October 29, 2019 IEP. Compton Unified contended that it was following the governor's executive order that required it to stop in-person instruction during the COVID-19 pandemic. Compton Unified argued that school districts were granted flexibility in offering students a FAPE through the distance learning format.

The services provided in an IEP are tied to a particular location. An IEP must include "anticipated frequency, location, and duration of services" (20 U.S.C. § 1414(d)(1)(A)(i)(VII).) Special education and related services provided in the home are limited to students for whom the IEP team recommends home instruction. (Cal. Code Regs., tit. 5, § 3051.4; *C.L. v. Lucia Mar Unified School District* (C.D. Cal. Jan 9, 2014) 2014 WL 117339, affirmed by *C.L. ex rel. V.L. v. Lucia Mar unified School District* (9th Cir. 2016) 646 Fed.Appx. 524 [nonpub. opn.] [IDEA did not require a school district to transplant

the entirety of services offered in student's IEP which contemplated in-school instruction to home environment during interim period mother and IEP team were considering changes to student's educational placement].)

Student was offered the one to one aide service in the August 22, 2019 settlement agreement which described it as "a trained 1:1 aide for transportation." The same service was offered in the October 29, 2019 IEP.

Compton Unified's failure to implement the one to one aide services during distance learning was a procedural violation. Student's one to one aide was required for transportation, as discussed in Issue 1(g). During distance learning, Student received services and instruction at home; she did not attend school and did not require the aide to accompany her during transportation to school. As a result, the failure to implement the one to one aide services in-person and at-home was not material.

Student offered no legal authority that the one to one aide services were required to be provided outside the classroom, such as in the home setting during virtual learning. Student cited an OAH decision, *Student v. Orcutt Union School District*, (2021) OAH Case No. 2020100618, that found a district denied Student a FAPE for failing to offer additional in-person distance learning supports when the student's disability prevented him from receiving meaningful educational benefit from an online format. OAH decisions are not binding precedent, but may be persuasive authority. (Cal. Code Regs., tit. 5, § 3085.)

Student's reliance on *Orcutt* is not persuasive. In *Orcutt*, Student claimed he was denied a FAPE based upon the district's failure to offer additional support services to meet his needs during distance learning. Here, Student alleged a failure to implement

the services in Student's IEP. *Orcutt* is inapplicable and does not support Student's contention that she was denied a FAPE for a failure to implement her one to one aide services at home.

Accordingly, Student failed to prove by a preponderance of the evidence that Compton Unified denied her a FAPE by failing to materially implement the October 29, 2019 IEP by failing to provide in-person in-home aide services during remote learning.

ISSUE 1(m): FAILURE TO OFFER APPROPRIATE PLACEMENT FOR THE 2019-2020 EXTENDED SCHOOL YEAR BASED UPON THE JUNE 8, 2020 IEP

Student asserted that Compton Unified knew that Wayfinder was an inappropriate placement by June 8, 2020, and should have offered a different placement for the 2020 extended school year. Compton Unified contended that the placement offered Student a FAPE.

A complaint for due process must include a description of the alleged violation by the public agency that forms the basis of the complaint. (20 U.S.C. § 1415(b)(6).)

The extended school year offer in the June 8, 2020 IEP related to the 2021 extended school year. The October 29, 2019 IEP contained the offer for the 2020 extended school year.

Student's complaint alleged the incorrect IEP that purported to offer an inappropriate placement for 2020 extended school year. Based upon the error in the complaint of the incorrect date, June 8, 2020 IEP, Compton Unified is not on notice to defend the placement offer made in the October 29, 2019 IEP for the 2020 extended school year. Compton Unified did not consent to litigate this issue.

For the reasons stated, no claim was made regarding the appropriateness of the 2020 extended school year. Accordingly, no findings are made regarding placement for the 2020 extended school year. Student failed to prove Compton Unified denied her a FAPE during the 2020 extended school year by failing to offer an appropriate placement in the June 8, 2020 IEP.

ISSUE 1(n): REPORTING INACCURATE PRESENT LEVELS OF PERFORMANCE IN THE JUNE 8, 2020 IEP

Student contended Compton Unified denied her a FAPE during 2020 extended school year by reporting inaccurate present levels of performance in the June 8, 2020 IEP. Student argued the IEP did not include accurate present levels of performance, did not fully describe the impact of Student's disability on her education, and did not incorporate relevant information from the independent educational evaluations. Compton Unified asserted that it accurately reported Student's present levels of performance in the June 8, 2020 IEP.

An IEP must include a "statement of the individual's present levels of academic achievement and functional performance." (34 C.F.R. § 300.320 (2006); Ed. Code, § 56345, subd. (a)(1).) Implicit within this law, and explicit in case law, is that present levels must be accurate and reflect current achievement and functioning of the student. In *Endrew F.*, the Supreme Court held that IEP teams must give, "careful consideration to the child's present levels of achievement, disability, and potential for growth." (*Endrew F.*, *supra*, 137 S.Ct. at p. 999.)

In *Endrew F.*, the Supreme Court rejected the suggestion that present levels are part of a mere checklist of procedural obligations:

The school district protests that these provisions impose only procedural requirements – a checklist of items the IEP must address – not a substantive standard enforceable in court ... But the procedures are there for a reason, and their focus provides insight into what it means, for purposes of the FAPE definition, to ‘meet the unique needs’ of a child with a disability. (*Endrew F.*, *supra*, 137 S.Ct. at p. 1000.)

Under California regulations, an IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040(c).)

The June 8, 2020 IEP contained present levels of performance observed by the Wayfinder classroom teacher, Compton Unified’s adapted physical education teacher, and Wayfinder service providers in the areas of occupational therapy, physical therapy, speech and language, and teacher of the visually impaired. The physical therapy service provider cautioned that in June 2020, they had only provided limited services to Student after school closure and did not have enough data at the time to provide updated present levels of performance. Failure to include Student’s present levels of performance related to her physical therapy needs was a procedural violation.

A procedural violation constitutes a denial of FAPE only if it impeded the child’s right to a FAPE, significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a FAPE to their child, or caused a

deprivation of educational benefits for the child. (20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2) (2006); Ed. Code, § 56505, subd. (f)(2); see also, *W.G. v. Board of Trustees of Target Range School Dist.*, *supra*, at p. 1483-1484.)

Without an accurate description of Student's present levels of performance related to her physical therapy needs, Student's IEP team was unable to develop appropriate annual goals; this caused deprivation of educational benefits. The baseline for Student's endurance goal referenced Student's ability prior to March 16, 2020, when Student attended Wayfinder in-person, rather than Student's present functioning. Compton Unified's failure to provide an accurate present level of performance in the June 2020 IEP significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to Student.

Student's contention that the June 8, 2020 IEP should have reflected the observations of the independent educational evaluators in Student's present levels of performance is not persuasive. The independent educational evaluations were several months old by June 8, 2020, and the assessors were not present to describe Student's behavior so the IEP team could understand the significance of what they observed. The independent evaluators observed Student for several hours whereas the service providers had many weeks to make observations while working with Student. Student's service providers were best equipped to provide information regarding Student's present level of performance in June 2020.

Additionally, a significant change in Student's education program occurred after these assessments were completed: the COVID-19 pandemic and school closures. By June 2020, Student had engaged in distance learning for approximately two months.

The distance learning environment was vastly different than the environments in which the assessors observed Student when they conducted their evaluations. None of the evaluators that testified at hearing had observed Student during distance learning, let alone were willing to offer an opinion on how it affected Student's functioning. As a result, Compton Unified's failure to include the observations made in the independent educational evaluations was not a procedural violation.

Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE by reporting inaccurate present levels of performance in the June 8, 2020 IEP.

ISSUE 1(q): COPY OF THE JUNE 8, 2020 IEP

Student alleged that Compton Unified denied her a FAPE by failing to timely provide Parent with a copy of the June 8, 2020 IEP. Compton Unified argued that it did not deny Parent's ability to meaningfully participate in the development of the June 8, 2020 IEP. Compton Unified contended that the IEP team meeting notes reflect that Parent asked questions and was provided an opportunity to voice concerns.

The IDEA contains numerous procedural safeguards that are designed to protect the rights of disabled children and their parents. (See 20 U.S.C. § 1415.) These safeguards are a central feature of the IDEA process, not a mere afterthought ... "Therefore, compliance with the IDEA's procedural safeguards 'is essential to ensuring that every eligible child receives a FAPE, and those procedures which provide for meaningful parent participation are particularly important.'" [Citation omitted.] *Antelope Valley, supra*, 858 F.3d at p. 1195, citing *Amanda J. v. Clark Cty. Sch. Dist.* (9th Cir. 2001) 267 F.3d 891, 892.)

The IDEA explicitly requires written prior notice to parents when an educational agency proposes, or refuses, to initiate or change the educational placement of a disabled child. (See 20 U.S.C. § 1415(b)(1)(C); *Union School Dist.*, *supra*, 15 F.3d at p. 1526; *Antelope*, *supra*, 858 F.3d at 1197.)

Parent did not receive a copy of the June 8, 2020 IEP until February 4, 2021. Compton Unified's argument that the notes reflect Parent's participation is unpersuasive. Without a copy of the IEP document itself, Parent had no way to know if Parent's concerns were accurately reported. Further, an IEP is a comprehensive, multi-page document. Parent cannot be expected to remember each goal, service, and duration discussed without comparing it to what was actually offered. The failure to provide Parent the June 8, 2020 IEP for eight months after the IEP team meeting significantly impeded the opportunity of Parent to participate in the decision-making process regarding the provision of a FAPE to Student.

The evidence established that Parent was unable to consider Compton Unified's June 8, 2020 IEP offer because she did not receive a copy of it. The June 2020 IEP offered 16 goals, nine program accommodations, program modifications, and 16 services in various areas offered for the regular and extended school years. Based on the complexity of the June 8, 2020 IEP offer, Compton Unified's failure to provide Parent with a copy of the document significantly impeded the opportunity for Parent to participate in the decision-making process regarding the provision of a FAPE to Student.

Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE during the 2019-2020 school year by failing to provide Parent a copy of the June 8, 2020 IEP.

ISSUE 1(r): IMPLEMENTING THE JUNE 8, 2020 IEP WITHOUT PARENTAL CONSENT

Student alleged Compton Unified denied her a FAPE by implementing the June 8, 2020 IEP without Parent's consent. Compton Unified argued that it implemented the June 8, 2020 IEP with parental consent.

The June 8, 2020 IEP was not implemented by Wayfinder teachers or service providers because it was not finalized in the computer system and it had not been sent to Parent for signature. Wayfinder staff and service providers were aware of their obligation to implement only signed IEP's.

Student relied on a document that purported to be the annual IEP team meeting held on February 22, 2021, arguing that that document established that the June 8, 2020 IEP goals were implemented without Parent's consent. However, no foundation was laid for that document and it was not reliable. As a result, Student failed to meet her burden of proof on this issue.

Student also contended that Dr. Erica Lowe implemented the physical therapy goals from the June 8, 2020 IEP. However, Dr. Lowe testified credibly that she did not implement any IEP for which Parent did not consent. For the reasons stated, Student failed to meet her burden to prove that Compton Unified denied her a FAPE by implementing the June 8, 2020 IEP.

ISSUE 2(a): FAILURE TO TIMELY CONSIDER THE SPEECH AND LANGUAGE INDEPENDENT EDUCATIONAL EVALUATION REPORT

Student alleged Compton Unified denied her a FAPE by failing to timely consider the January 21, 2020 speech and language independent educational evaluation. Compton Unified argued that the report was not considered because it was not provided to the IEP team. Compton Unified claimed that once the report was provided, it was timely considered.

The same analysis that pertains to Issue 1(a) is applicable here. Horvath provided the speech and language report to Compton Unified in late January or early February 2020. Compton Unified invited Horvath to present her independent educational evaluation at the February 22, 2021 IEP team meeting.

Accordingly, Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE during the 2020-2021 school year through February 22, 2021, by failing to timely consider the speech and language independent educational evaluation.

ISSUES 2(b), 2(c), AND 2(d): FAILURE TO CONSIDER INDEPENDENT EDUCATIONAL EVALUATIONS

Student alleged that Compton Unified denied her a FAPE by failing to timely consider independent evaluation reports in the areas of augmentative or alternative communication and assistive technology, transition, and occupational therapy.

Compton Unified argued that the reports were not discussed because it did not possess the reports in time for the June 8, 2020 IEP team meeting. Compton Unified

also claimed that there is no timeline in which it was required to review the reports. Furthermore, Compton Unified contended that several assessors believed there was value in discussing the evaluations and there was likely minimal educational loss caused by the delay in reviewing the reports because the assessors testified the information was still current.

AUGMENTATIVE OR ALTERNATIVE COMMUNICATION AND ASSISTIVE TECHNOLOGY

The same analysis that applies in Issue 1(b) applies equally here. Salisbury has yet to be invited to present the independent educational evaluation report at an IEP team meeting. Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE through the end of the 2020-2021 school year by failing to consider the augmentative or alternative communication and assistive technology independent educational evaluation.

TRANSITION

As discussed in Issue 1(c), to date, Compton Unified had not invited Dr. Greene to present his January 2020 transition report to Student's IEP team. The failure to review the transition report with Student's IEP team was a denial of FAPE because it caused a deprivation of an educational benefit. Student proved that Compton Unified denied her a FAPE through the end of the 2020-2021 school year by failing to consider the transition report.

OCCUPATIONAL THERAPY

Richard Furbush was a licensed occupational therapist who worked as a specialist in pediatrics. Furbush conducted an occupational therapy individual educational

evaluation of Student and completed his report in July 2020. Furbush sent the report to Compton Unified on August 4, 2020. The evaluation was funded by Compton Unified pursuant to the settlement agreement where Furbush was named as the preferred assessor. Furbush had not been invited to a meeting to present his report to Student's IEP team. Furbush demonstrated expertise in occupational therapy and his testimony was given considerable weight.

Student would have benefitted if Furbush's report was considered at an IEP team meeting. Compton Unified's failure to hold an IEP team meeting to consider Furbush's report was a procedural violation. Similar to the assessments discussed in Issues 1(a), 1(b), and 1(c), Parent was deprived of an opportunity to participate in the decision-making process regarding the provision of a FAPE. As a result, Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE from August 4, 2020, through the end of the 2020-2021 school year by failing to consider the occupational therapy independent educational evaluation.

ISSUE 2(e): FAILURE TO ASSESS IN ALL AREAS OF NEED

The analysis of Compton Unified's failure to assess Student in all areas of need in Issue 1(d) applies to the 2020-2021 school year. Essentially, the evidence established that Compton Unified was on notice that Student had social emotional functioning and orientation and mobility needs. These areas were not adequately assessed which caused a deprivation of educational benefit. Of note, Student was not appropriately engaging with peers and she needed services to help develop her social skills. Additionally, as Student transitioned to adulthood, Compton Unified was on notice that Student needed skills to access and navigate the outside world. These needs were not adequately assessed during the 2020-2021 school year.

As a result, Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE through the end of the 2020-2021 school year by failing to assess Student in the areas of social emotional functioning and orientation and mobility.

ISSUE 2(f): FAILURE TO OFFER AUGMENTATIVE AND ALTERNATIVE COMMUNICATION AND ASSISTIVE TECHNOLOGY SYSTEMS.

As discussed in Issue 1(h), Salisbury's independent educational evaluation established that Student would have benefitted from assistive technology systems to access her education. Student required assistive technology including a tray for her wheelchair, a stand for a laptop or tablet, and a device to magnify the display of the tablet or laptop. Compton Unified's failure to offer Student the devices recommended by Salisbury's evaluation deprived Student of educational benefits based upon her physical and visual impairments. Accordingly, Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE through the end of the 2020-2021 school year by failing to offer assistive technology systems.

ISSUE 2(j): FAILURE TO OFFER APPROPRIATE PLACEMENT IN THE JUNE 8, 2020 IEP

Student argued that Compton Unified denied her a FAPE by failing to offer a different placement in the June 8, 2020 IEP for the 2020-2021 school year. The IEP offered continued placement at Wayfinder. Student contended that Compton Unified knew that Wayfinder could not implement Student's IEP or meet her needs based upon Wayfinder's failure to provide related services. Compton Unified argued that the placement at Wayfinder provided Student a FAPE.

Compton Unified was aware of problems Parent experienced with Student's services not being implemented when distance learning began. Parent voiced those concerns at the June 8, 2020 IEP team meeting, but Wayfinder service providers assured the IEP team that all services were being provided. Based upon the service providers' representations at the June 8, 2020 IEP team meeting, it was reasonable to maintain Student's placement at Wayfinder because the IEP team was informed services were being delivered. Parent did not challenge the appropriateness of Wayfinder generally. In fact, this was Parent's preferred nonpublic school placement. The challenge was only in light of Parent's contention that Wayfinder could not implement Student's services as offered in the June 8, 2020 IEP for the 2020-2021 school year. Student failed to meet her burden by a preponderance of the evidence that Compton Unified denied her a FAPE from June 8, 2020, through February 4, 2021, by failing to offer an appropriate placement.

At the next IEP team meeting on February 4, 2021, Parent informed the IEP team that Student was not receiving services, there were technical issues, and a lack of variety of learning platforms. Parent's ongoing concern was consequential enough for Compton Unified to inform Parent that a district placement would be better able to serve Student during distance learning. Compton Unified was on notice at the February 4, 2021 IEP team meeting that Wayfinder was an inappropriate placement for Student based on the various issues Parent shared. At the February 22, 2021 IEP team meeting Compton Unified reiterated its verbal offer of a district placement, in-person small cohort, or a different nonpublic school. However, Compton Unified did not formally offer a different placement after the discussions at the February 4, or 22, 2021 IEP team meetings.

Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE by failing to offer an appropriate placement from February 4, 2021, through the end of the 2020-2021 school year.

ISSUE 2(g): FAILURE TO PROVIDE AGREED UPON EQUIPMENT DURING REMOTE LEARNING

As discussed in Issue 1(j), Compton Unified failed to provide Student with necessary equipment during the 2019-2020 school year. Compton Unified provided Student a functional iPad that permitted her to access her curriculum on January 26, 2021. Compton Unified delivered Student's adapted toileting system, gait trainer, and adapted stander on January 7, 2021. Compton Unified did not provide Student the magnification device or visual assistance device that she required to accommodate her visual impairment.

Compton Unified denied Student a FAPE during the 2020-2021 school year, through January 26, 2021, by failing to provide Student a tablet or laptop. Compton Unified denied Student a FAPE through January 7, 2021, by failing to provide Student's adapted toileting system, gait trainer, and adapted stander. Compton Unified denied Student a FAPE through the end of the 2020-2021 school year by failing to provide a magnification device or visual assistance device.

ISSUE 2(h): FAILURE TO IMPLEMENT STUDENT'S IEP BASED UPON STUDENT'S INABILITY TO ACCESS SERVICES IN THE VIRTUAL FORMAT

As discussed in Issue 1(k), Student's disability affected her vision and required her to use a magnification device in addition to a large screen found on a laptop or tablet.

Because Compton Unified never provided Student with a magnification device, Student was unable to access her education during distance learning. This failure was material for Student. Accordingly, Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE during the 2020-2021 school year by failing to provide equipment that would have permitted her to access services in the virtual format.

ISSUE 2(i): FAILURE TO IMPLEMENT THE IN-PERSON IN-HOME AIDE SERVICE DURING REMOTE LEARNING

As discussed in Issue 1(l), Student failed to prove that an in-person in-home aid was necessary to provide Student a FAPE during remote learning. Compton Unified failed to implement the one to one aide service; however, its failure was not material for Student. Accordingly, Student failed to prove Compton Unified denied her a FAPE by failing to implement in-person in-home aide services during remote learning.

ISSUE 2(k): REPORTING INACCURATE PRESENT LEVELS OF PERFORMANCE IN THE JUNE 8, 2020 IEP

The analysis in Issue 1(n) is equally applicable for the 2020-2021 school year. Compton Unified failed to report accurate present levels of performance in the area of physical therapy which impeded Parent's ability to participate in the decision-making process regarding the provision of FAPE. Compton Unified's failure to report accurate present levels of performance also caused Student deprivation of educational benefits. For the reasons stated, Student proved by a preponderance of the evidence that she was denied a FAPE during the 2020-2021 school year based upon inaccurate present levels of performance in the June 8, 2020 IEP.

ISSUES 1(o) and 1(p): INAPPROPRIATE GOALS AND TRANSITION PLAN IN THE JUNE 8, 2020 IEP

Student alleged that the June 8, 2020 IEP denied her a FAPE for both the 2019-2020 and 2020-2021 school years based upon inappropriate goals and transition plan. The evidence established that at the time the IEP was offered, the goals and transition plan were offered for the 2020-2021 school year rather than the 2020 extended school year. Additionally, the standard for appropriate extended school year program is governed by 34 Code of Federal Regulations part 300.106(a), and the California Code of Regulations, title 5, section 3043 and based on a recoupment and retention standard rather than FAPE. Accordingly, Student did not meet her burden of proving that she was denied a FAPE based on these contentions during the 2020 extended school year. The appropriateness of the goals and transition plan will be analyzed under a FAPE standard for the 2020-2021 school year.

ISSUE 2(l): INAPPROPRIATE GOALS IN THE JUNE 8, 2020 IEP

Student claimed that Compton Unified denied her a FAPE by offering inappropriate goals in the areas of reading, math, speech and language, occupational therapy, and by omitting a writing goal in the June 8, 2020 IEP. Student argued that as a result of the inappropriate goals, she failed to make progress in all areas of need during the 2020-2021 school year. Compton Unified contended that it offered appropriate goals in the June 8, 2020 IEP.

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;

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) (2006); 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) (2006); 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) (2006); Ed. Code, § 56345, subd. (a)(3), (4).) 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.)

READING GOAL

Student argued that she was denied a FAPE because her June 8, 2020 IEP reading goal was nearly identical to her previous goal, did not reflect reasonably ambitious progress in a one-year period, and was inappropriate for Student.

Student's functional reading goal in the June 8, 2020 IEP was inappropriate because it was not measurable, in that it did not measure reading. The goal was for Student to read, match, and identify a total of 15 community and safety signs with 80 percent accuracy. The skill of reading means that Student is reading the words on the sign. The skill of matching could be matching by color, shape, or other distinguishing characteristic rather than reading the words. Based on the ambiguity of the skill being taught and progress measured, reading versus matching, one could not determine whether Student met this goal.

Student proved by a preponderance of the evidence that the reading goal in the June 8, 2020 IEP was not measurable, nor did it meet her reading need as it merged matching and reading.

WRITING GOAL

Student contended that she was denied a FAPE because the June 8, 2020 IEP did not have a written expression goal, despite written expression being a known area of need and despite the availability of alternate methods of working on written expression.

Although it is true that Student's June 8, 2020 IEP did not have a written expression goal, there was no evidence that established Student had a need in this area. Student's October 29, 2019 IEP and June 8, 2020 IEP established that none of the IEP team members had any concern about Student's ability for written expression or

believed Student had a need in this area. Since the IEP team was not concerned about Student's need in written expression, a goal was not developed. Student presented no contrary evidence at hearing establishing a need in this area. As a result, Student failed to prove by a preponderance of the evidence that Compton Unified denied her a FAPE for failing to offer a written expression goal in the June 8, 2020 IEP.

MATH GOAL

Student argued that her math goals in the June 8, 2020 IEP were contradictory, requiring development of the same skill at different levels, and were inappropriate for Student.

The counting goal in the June 8, 2020 IEP was for Student to count up to 30 objects and group up to 10 objects by category with no more than three prompts and with 80 percent accuracy. The functional math goal was for Student to count up to 50 objects, with prompts as needed, at 80 percent accuracy.

These two goals were similar and therefore, not measurable, in that they conflicted by asking Student to count a different number of objects. The functional math goal was also unreasonable because it permitted an unlimited number of prompts. This goal, with unlimited number and type of prompts, is not useful and it is not clear what this goal attempted to accomplish. As a result, Student proved by a preponderance of the evidence that the math goals in the June 8, 2020 IEP were inappropriate and did not meet her math needs.

SPEECH AND LANGUAGE

Student claimed her speech and language goals did not reflect reasonably ambitious progress for a one-year period, were inappropriate and should have been modified in response to her failure to meet her previous goal.

Student had three speech and language goals in the June 8, 2020 IEP. The first goal addressed Student's intelligibility and volume; it required Student to use appropriate volume in utterances of at least five or more words with 100 percent accuracy. Student's prior goal was not met and required at least five or more words with 90 percent accuracy. Based upon Student's failure to meet the previous goal, the June 8, 2020 IEP goal was inappropriate. It increased the accuracy without explanation in the IEP or at hearing, despite Student not meeting the prior goal.

The pragmatic language goal in the June 8, 2020 IEP was for Student to engage in at least two or more conversational turns with a peer by either asking a question, answering a question, or by making an on-topic comment with 80 percent accuracy. The evidence demonstrated that Student never initiated conversations at school, but she would respond to questions and make on topic comments. This goal was inappropriate inasmuch as it required her to ask questions since Student had never developed that skill. The evidence established that Student's classmates at Wayfinder were prompt-dependent. Since Student's classmates were unable to initiate conversation because they required prompts, it was inappropriate for Student's goal to require conversational turns with peers.

The June 8, 2020 IEP expressive vocabulary goal required Student to use expanded utterances of at least six words with 80 percent accuracy given moderate cues

or prompts. This was inappropriate based on Student not meeting her previous goal of 70 percent accuracy with five to six word utterances. The evidence established that Student had limited breath capacity and respiratory control to get words out due to her cerebral palsy. When Student spoke she does not exhale air as her typically developing peers. This conflicts with the goal of improving intelligibility because it is stretching the point of where Student is intelligible. The 80 percent accuracy with prompts is a high level for Student given her medical challenges.

Overall, Student did not meet her speech and language goals from the October 29, 2019 IEP, but the IEP team continued to focus on the same goals. The evidence established that Student's goals should have emphasized functionality because Student would be moving to transition classes where the focus would be on functional life skills and functional communication. The goals in the June 8, 2020 IEP should have focused on Student communicating with as much benefit as possible.

The evidence established that although Student had not met the goals, she was making progress towards the October 29, 2019 IEP speech and language goals. That was no reason to keep them the same for the reasons stated.

OCCUPATIONAL THERAPY GOALS

Student only had one occupational therapy goal, that was arguably a transition goal, in the June 8, 2020 IEP. Student's single goal did not address her numerous occupational therapy needs.

The occupational therapy goal in the June 8, 2020 IEP was for Student to engage in four classroom chores and or vocational tasks daily with modeling and cues as needed, with 80 percent accuracy in four out of five opportunities.

Student was significantly impacted by her medical condition which resulted in complex orthopedic needs. The evidence established that Student exhibited approximately 30 areas of identified orthopedic need. Although, she did not require individual goals to address each of those deficits, as some could have been addressed in combined goals, the evidence established that she required far more than a single occupational therapy goal to meet these complex needs. Student established that Compton Unified failed to offer appropriate goals in the area of occupational therapy in the June 8, 2020 IEP.

Student established that the June 8, 2020 IEP did not offer Student a FAPE. Specifically, the reading goal was not measurable, there was not an appropriate functional reading goal despite an identified need. The math goals were inappropriate because they were not measurable and permitted an unlimited number of prompts. Student's speech and language goals were inappropriate because they should have emphasized functionality. The single occupational therapy goal was inappropriate to address Student's complex needs. In light of the forgoing, Student established that she was denied a FAPE from June 8, 2020, through the end of the 2020-2021 school year. Student did not prove Compton Unified denied her a FAPE based upon a failure to offer a writing goal.

ISSUE 2(M): INDIVIDUAL TRANSITION PLAN IN THE JUNE 8, 2020 IEP

Student alleged that Compton Unified denied her a FAPE by offering an inappropriate individual transition plan. Student argued that based on her level of functioning, she required a transition plan that emphasized specific independent living and vocational skills, and provided training which would allow her to develop these skills. Student argued that the plan offered by Compton Unified was not sufficiently

tailored toward those goals and was not individualized based on Student's needs. Compton Unified contended the individual transition plan offered Student a FAPE.

In June 2020, Student was 17 years old. In the individual transition planning portion of Student's IEP, was a section called "description of the results of the assessments". In this section Compton Unified stated that due to the COVID-19 school closure, Student's teacher was not able to interview Student concerning her transition preferences. Compton Unified did not conduct a formal or informal assessment to determine what Student's individual goals should be for her transition plan.

For each of the three categories, postsecondary goal in training or education, employment, and independent living, a space is provided for a description of proposed activities to support the postsecondary goal. For each of the three areas, the IEP stated the same description: "[work] toward functional skills through IEP goals. when (sic) on site learning resumes complete community based instruction activities and classroom vocational tasks." This description was not sufficiently individualized to Student's needs or goals for the three categories of transition planning.

Student's goal for independent living stated that she would reside with her mother, where she was then living. The postsecondary independent living goal was not supported by any services that would help Student acquire daily living skills to make progress towards adulthood or independence. The evidence established that goals or services to develop independent living skills include putting groceries away, pointing to where groceries should be put, knowing how to move around in her house, or basic cooking activities. Student's June 8, 2020 IEP offered no specific skills to support Student's independent living goals to prepare her to transition to adulthood.

The transition plan offered by Compton Unified in the June 8, 2020 IEP was inappropriate because a transition assessment, or even informal assessment by speaking to Student, was deferred based upon COVID-19. Additionally, individualized courses of study to assist Student in reaching her individualized goals were not offered. Based upon the generic nature of the individual transition plan, no goals or services were offered that would help achieve Student's postsecondary goal in training or education, employment, or independent living. Student proved by a preponderance of the evidence that Compton Unified denied her a FAPE through the 2020-2021 school year by failing to offer an appropriate individual transition plan in the June 8, 2020 IEP.

ISSUE 2(n): FAILURE TO TIMELY PROVIDE PARENT WITH A COPY OF THE JUNE 8, 2020 IEP

As discussed in issue 1(q), based upon Compton Unified's failure to provide Parent a copy of the June 8, 2020 IEP until February 4, 2021, Student established she was denied a FAPE. Accordingly, Compton Unified denied Student a FAPE until February 4, 2021, by failing to provide Parent a copy of the June 8, 2021 IEP.

ISSUE 2(o): IMPLEMENTING THE JUNE 8, 2020 IEP WITHOUT PARENTAL CONSENT

As discussed in Issue 1(r), the evidence established that Compton Unified did not implement the June 8, 2020 IEP through the 2020-2021 school year. Student failed to prove by a preponderance of the evidence that Compton Unified denied Student a FAPE through the end of the 2020-2021 school year by implementing the June 8, 2020 IEP without Parent's consent.

ISSUE 2(p): FAILURE TO PROVIDE PRIOR WRITTEN NOTICE IN RESPONSE TO A REQUEST FOR IN-PERSON SERVICES OR IN-HOME AIDE AT THE FEBRUARY 22, 2021 IEP TEAM MEETING

Student contended that Compton Unified denied her a FAPE by failing to provide a prior written notice in response to her request for in-person or in-home aide services at the February 22, 2021 IEP team meeting. Compton Unified did not address this allegation at hearing or in its closing brief.

Student did not establish that a request was made at the February 22, 2021 IEP team meeting for in-person or in-home aide services. The IEP team meeting notes reflect that the purpose of the meeting was to discuss Student's distance learning plan and to review the speech and language independent educational evaluation. The meeting notes established that Student's attorney asked for prior written notices regarding a change of placement, request for a particular kind of a certified teacher, and a van for transportation. The meeting notes showed that Student's attorney asked for prior written notice regarding Student's ability to access the campus given her wheelchair needs and pertaining to an update of Student's current functioning.

No documentary evidence or testimony was offered to establish that Parent or Student's attorney made a request for in-person or in-home aide services at the February 22, 2021 IEP team meeting.

Based upon the evidence presented, Student failed to meet her burden to prove by a preponderance of the evidence that Compton Unified denied her a FAPE by failing to provide a prior written notice in response to a request for in-person or in-home aide services made at the February 22, 2021 IEP team meeting.

ISSUE 2(q): FAILURE TO TIMELY HOLD AN ANNUAL IEP TEAM MEETING

Student contended that after the June 8, 2020 annual IEP team meeting, the next annual IEP team meeting was not convened until September 30, 2021. Student argued that her present needs were not addressed timely based upon the delay in the annual IEP team meeting. Further, Student asserted that the June 8, 2020 IEP was inappropriate, and failing to convene a timely annual IEP team meeting deprived her of the opportunity to receive an appropriate program. Compton Unified argued Parent's unreliable schedule caused the delay in convening an IEP team meeting and that any procedural errors that might have been committed, did not cause a detriment or result in the loss of an educational opportunity for Student.

A public agency must conduct meetings to review a child's IEP at least once per year, although is not prohibited from convening additional meetings. (34 C.F.R. § 300(b)(1)(i) (2006).) An IEP meeting must be convened no less frequently than annually to determine whether the student is making appropriate progress towards goals and to revise the offer of FAPE. (20 U.S.C. § 1414(d)(4)(A).)

After Student's annual IEP team meeting was held on June 8, 2020, the next annual meeting wasn't convened until September 30, 2021. It was a procedural violation to hold the annual IEP team meeting more than one year after June 8, 2020.

As discussed above in Issues 1(o) and 1(p), extended school year is based on a recoupment and retention standard rather than FAPE. Student did not establish that Compton Unified impeded her right to a FAPE, impeded Parent from participating in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefits from June 2021 through the end of the 2020-2021 school year by

failing to hold a timely IEP team meeting. As a result, Student did not meet her burden of proving Compton Unified denied her a FAPE by failing to timely hold an annual IEP team meeting during the 2020-2021 school year.

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, subsection a: Compton Unified denied Student a FAPE during 2020 extended school year by failing to timely consider the January 21, 2020 speech and language independent educational evaluation report. Student partially prevailed on Issue 1, subsection a.

Issue 1, subsection b: Compton Unified denied Student a FAPE during 2020 extended school year by failing to consider the August 26, 2019 augmentative or alternative communication and assistive technology independent educational evaluation report. Student partially prevailed on Issue 1, subsection b.

Issue 1, subsection c: Compton Unified denied Student a FAPE during 2020 extended school year by failing to consider the January 1, 2020 transition independent educational evaluation report. Student partially prevailed on Issue 1, subsection c.

Issue 1, subsection d: Compton Unified denied Student a FAPE from September 2, 2019, through the end of the 2019-2020 school year by failing to assess in all areas of need, specifically social emotional functioning and orientation and mobility. Student prevailed on Issue 1, subsection d.

Issue 1, subsection e: Compton Unified did not deny Student a FAPE from September 2, 2019, through the end of the 2019-2020 school year by failing to make a written placement offer to the non-public school agreed upon in the settlement agreement, based upon Compton's FAPE obligation. Compton Unified prevailed on Issue 1, subsection e.

Issue 1, subsection f: Compton Unified did not deny Student a FAPE from September 2, 2019, through the end of the 2019-2020 school year by failing to make a clear written offer of FAPE indicating the placement at the commencement of the school year. Compton Unified prevailed on issue 1, subsection f.

Issue 1, subsection g: Compton Unified did not deny Student a FAPE from September 2, 2019, through the end of the 2019-2020 school year by failing to timely offer service minutes in the August 22, 2019 settlement agreement. Compton Unified denied Student a FAPE from September 2, 2019, through the end of the 2019-2020 school year, by failing to materially implement the service minutes, that the parties agreed was FAPE, in the August 22, 2019 settlement agreement, specifically physical therapy, occupational therapy, specialized vision services, and speech and language, and adaptive and augmentative communication services and assistive technology services. Compton Unified did not deny Student a FAPE by failing to implement a trained one to one aide. Student partially prevailed on Issue 1, subsection g.

Issue 1, subsection h: Compton Unified denied Student a FAPE from February 28, 2020, through the end of the 2019-2020 school year by failing to offer assistive technology and adaptive and augmentative communication systems. Student prevailed on Issue 1, subsection h.

Issue 1, subsection i: Compton Unified denied Student a FAPE from November 21, 2019, through February 4, 2020, by failing to implement related services and supplementary supports and services offered in the October 29, 2019 IEP, specifically physical therapy, adaptive physical education, and occupational therapy. Compton Unified did not deny Student a FAPE from March 16, 2020, through March 30, 2020, by failing to implement services in Student's October 2019 IEP. Compton Unified materially implemented the one to one aide services from November 21, 2019, through March 16, 2020. Student prevailed on Issue 1, subsection i.

Issue 1, subsection j: Compton Unified denied Student a FAPE from March 30, 2020, through the end of the 2019-2020 school year by failing to provide agreed upon equipment during remote learning, specifically a laptop or tablet, magnification device or visual assistance device; adapted toileting system, gait trainer, and adapted stander. Student prevailed on Issue 1, subsection j.

Issue 1, subsection k: Compton Unified denied Student a FAPE from March 30, 2020, through the end of the 2019-2020 school year by failing to implement the October 29, 2019 IEP, based upon Student's inability to access services in the virtual format. Student prevailed on Issue 1, subsection k.

Issue 1, subsection l: Compton Unified did not deny Student a FAPE from March 30, 2020, through the end of the 2019-2020 school year by failing to implement the in-person in-home aide service during remote learning resulting in a failure to materially implement the October 29, 2019 IEP. Compton Unified prevailed on issue 1, subsection l.

Issue 1, subsection m: Compton Unified did not deny Student a FAPE from June 8, 2020, through the end of the 2019-2020 school year by failing to offer appropriate placement for 2019-2020 extended school year based upon the June 8, 2020 IEP. Compton Unified prevailed on issue 1, subsection m.

Issue 1, subsection n: Compton Unified denied Student a FAPE from June 8, 2020, through the end of the 2019-2020 school year by reporting inaccurate present levels of performance in the June 8, 2020 IEP. Student prevailed on issue 1, subsection n.

Issue 1, subsection o: Compton Unified did not deny Student a FAPE from June 8, 2020, through the end of the 2019-2020 school year by offering inappropriate goals in the June 8, 2020 IEP, specifically in the areas of reading, math, speech and language, and occupational therapy, during the 2019-2020 extended school year. Compton Unified prevailed on issue 1, subsection o.

Issue 1, subsection p: Compton Unified did not deny Student a FAPE from June 8, 2020, through the end of the 2019-2020 school year by offering an inappropriate individual transition plan in the June 8, 2020 IEP, during the 2019-2020 extended school year. Compton Unified Student prevailed on issue 1, subsection p.

Issue 1, subsection q: Compton Unified denied Student a FAPE from June 8, 2020, through the end of the 2019-2020 school year by denying Parent's right to meaningfully participate in the IEP process by failing to timely provide Parent with a copy of the June 8, 2020 IEP. Student prevailed on issue 1, subsection q.

Issue 1, subsection r: Compton Unified did not deny Student a FAPE from June 8, 2020, through the end of the 2019-2020 school year by denying Parent's right to meaningfully participate in the IEP process by implementing the June 8, 2020 IEP without parental consent. Compton Unified prevailed on issue 1, subsection r.

Issue 2, subsection a: Compton Unified denied Student a FAPE during the 2020-2021 school year by failing to timely consider the January 21, 2020 speech and language independent educational evaluation report. Student prevailed on issue 2, subsection a.

Issue 2, subsection b: Compton Unified denied Student a FAPE during the 2020-2021 school year by failing to consider the August 26, 2019 augmentative or alternative communication and assistive technology independent educational evaluation report. Student prevailed on issue 2, subsection b.

Issue 2, subsection c: Compton Unified denied Student a FAPE during the 2020-2021 school year by failing to consider the January 1, 2020 transition independent educational evaluation report. Student prevailed on issue 2, subsection c.

Issue 2, subsection d: Compton Unified denied Student a FAPE during the 2020-2021 school year by failing to consider the July 7, 2020 occupational therapy independent educational evaluation report. Student prevailed on issue 2, subsection d.

Issue 2, subsection e: Compton Unified denied Student a FAPE during the 2020-2021 school year by failing to assess in all areas of need, specifically social emotional functioning and orientation and mobility. Student prevailed on issue 2, subsection e.

Issue 2, subsection f: Compton Unified denied Student a FAPE during the 2020-2021 school year by failing to offer assistive technology and adaptive and augmentative communication systems. Student prevailed on issue 2, subsection f.

Issue 2, subsection g: Compton Unified denied Student a FAPE during the 2020-2021 school year by failing to provide agreed upon equipment during remote learning, specifically a laptop or tablet, magnification device or visual assistance device, adapted toileting system, gait trainer, and adapted stander. Student prevailed on issue 2, subsection g.

Issue 2, subsection h: Compton Unified denied Student a FAPE during the 2020-2021 school year by failing to implement the October 29, 2019 IEP, based upon Student's inability to access services in the virtual format. Student prevailed on issue 2, subsection h.

Issue 2, subsection i: Compton Unified did not deny Student a FAPE during the 2020-2021 school year by failing to implement the in-person in-home aide service during remote learning resulting in a failure to materially implement the October 29, 2019 IEP. Compton Unified prevailed on issue 2, subsection i.

Issue 2, subsection j: Compton Unified denied Student a FAPE during the 2020-2021 school year by failing to offer appropriate placement in the June 8, 2020 IEP. Student prevailed on issue 2, subsection j.

Issue 2, subsection k: Compton Unified denied Student a FAPE during the 2020-2021 school year by reporting inaccurate present levels of performance in the June 8, 2020 IEP. Student prevailed on issue 2, subsection k.

Issue 2, subsection l: Compton Unified denied Student a FAPE during the 2020-2021 school year by offering inappropriate goals in the June 8, 2020 IEP, specifically in the areas of reading, math, speech and language, and occupational therapy. Student prevailed on issue 2, subsection l.

Issue 2, subsection m: Compton Unified denied Student a FAPE during the 2020-2021 school year by offering an inappropriate individual transition plan in the June 8, 2020 IEP. Student prevailed on issue 2, subsection m.

Issue 2, subsection n: Compton Unified denied Student a FAPE during the 2020-2021 school year by denying Parent's right to meaningfully participate in the IEP process by failing to timely provide Parent with a copy of the June 8, 2020 IEP. Student prevailed on issue 2, subsection n.

Issue 2, subsection o: Compton Unified did not deny Student a FAPE during the 2020-2021 school year by denying Parent's right to meaningfully participate in the IEP process by implementing the June 8, 2020 IEP without parental consent. Compton Unified prevailed on issue 2, subsection o.

Issue 2, subsection p: Compton Unified did not deny Student a FAPE during the 2020-2021 school year by denying Parent's right to meaningfully participate in the IEP process by failing to provide prior written notice in response to a request for in-person services, or in-home aide at the February 22, 2021 IEP team meeting. Compton Unified prevailed on issue 2, subsection p.

Issue 2, subsection q: Compton Unified did not deny Student a FAPE during the 2020-2021 school year by failing to timely hold an annual IEP team meeting. Compton Unified prevailed on issue 2, subsection q.

REMEDIES

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*); *Puyallup, supra*, 31 F.3d at p. 1496.) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" considering the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3) (2006).) "[Equitable] considerations are relevant in fashioning relief." (*Burlington, supra*, 471 U.S. at p. 374.) 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.* (9th Cir. 2011) 631 F.3d 1117, 1125.)

SPEECH AND LANGUAGE

Student partially prevailed on Issue 1(a) and prevailed on Issue 2(a) based on Compton Unified's failure to consider the January 2020 speech and language independent educational evaluation until February 2021. By the time the speech and language independent educational evaluation was presented to the IEP team, the

information was stale and did not reflect Student's current functioning. As a result, Compton Unified shall fund additional observations by Student's independent evaluator for the purpose of updating and supplementing Student's existing independent educational evaluation in speech and language.

Student partially prevailed on Issue 1(g). The speech and language services agreed to in the August 22, 2019 settlement agreement, 30 minutes, three times per week, were not implemented until February 4, 2020. Compton Unified's failure to memorialize the terms of the settlement agreement in an IEP hindered the implementation of it.

Student prevailed on Issues 1(j), 1(k), and 2(h) because she was unable to access services in the virtual format during distance learning based on her vision impairment and lack of equipment. Student prevailed on Issue 2(l) because the speech and language goals in the June 8, 2020 IEP were inappropriate, which resulted in a denial of FAPE during the 2020-2021 school year.

Student demonstrated that she was owed speech and language services from October 2, 2019, through February 4, 2020, and March 30, 2020 through the end of the 2020-2021 school year. However, many witnesses, including Parent, testified that Student would often miss classes and services based upon Student not getting enough sleep, other personal difficulties she experienced, or based upon medical appointments. As a result, the compensatory education awarded takes into consideration her tendency to miss scheduled services.

There were a total of 27 weeks of inappropriate services for the 2019-2020 school year, including extended school year. Student was supposed to receive a combination of group and individual speech and language services for 90 minutes per week, but taking into consideration her absences, is being compensated for 60 minutes of direct individual services. This amounts to a total of 27 hours of compensatory speech services for the 2019-2020 school year.

In addition, for the 2020-2021 school year, including extended school year, Student was unable to access distance learning. Student is therefore entitled to 40 hours of services, comprising 40 weeks for 60 minutes per week as direct individual services.

Compton Unified shall fund a total amount of 67 hours of direct individual speech and language services as compensatory education.

Consultation services of one hour per month was imbedded in the services offered. Based upon the 67 weeks of inappropriate services, reduced by 15 percent based upon Student's absences, Compton Unified shall fund 15 hours of speech and language consultation services as part of compensatory education.

PHYSICAL THERAPY

Student prevailed on Issue 1(g) based upon Compton Unified's failure to materially implement the physical therapy services in the settlement agreement. Student was entitled to 30 minutes, three times per week, two sessions of direct and one session of consultative physical therapy throughout the statutory period. Student prevailed on Issue 1(i) because Wayfinder did not receive Student's October 29, 2019 IEP until February 4, 2020.

Dr. Lowe began delivering physical therapy for the correct frequency and duration in May 2020. However, when Dr. Lowe began delivering the services, Student did not have the equipment required to work on her goals. Student prevailed on Issues 1(j) and 2(g) because she did not receive physical therapy equipment until January 7, 2021.

Student prevailed on Issues 1(j), 1(k), and 1(h) because she could not access services during distance learning. Student demonstrated that she did not receive appropriate physical therapy services from September 2, 2020, through the end of the 2020-2021 school year, a total of 77 weeks.

Accordingly, Compton Unified shall fund 77 hours for direct physical therapy services, for the 77 weeks as described above, and 33 hours of consultation services for physical therapy as compensatory education which reflects 30 minutes per week for 77 weeks, reduced by 15 percent.

OCCUPATIONAL THERAPY

Student partially prevailed on Issue 1(g) and prevailed on Issue 1(i) based upon Compton Unified's failure to materially implement the occupational therapy services in the settlement agreement and October 29, 2019 IEP, respectively. Wayfinder did not implement the occupational therapy services until February 4, 2020. Student prevailed on Issues 1(j), 1(k), and 2(h) because she could not access occupational therapy services during distance learning based upon her physical and visual impairments. Student prevailed on Issue 2(l) based upon the inappropriate occupational therapy goal in the June 8, 2020 IEP during the 2020-2021 school year.

Student established that she was denied consistent occupational therapy services from October 2, 2019, through the end of the statutory period, a total of 73 weeks. Student was supposed to receive 90 minutes of services weekly, including 10 minutes of consultation. Compton Unified shall fund 73 hours of direct occupational therapy services as compensatory education. Compton Unified shall fund 11 hours of consultation occupational therapy services as compensatory education which reflects 10 minutes for 73 weeks and reduced by 15 percent.

Student prevailed on Issue 2(d) for Compton Unified's failure to consider the occupational therapy independent educational evaluation. As a result, Compton Unified shall fund an occupational therapy independent educational evaluation.

ADULTHOOD TRANSITION

Student prevailed on Issues 1(c) and 2(c) based upon Compton Unified's failure to consider the transition independent educational evaluation report. Student prevailed on Issue 2(m) for Compton Unified's failure to offer an appropriate transition plan in the June 8, 2020 IEP. Student's transition plan was not individualized to her needs, personal goals, and abilities. Student was without an appropriate transition plan from January 2020, through the end of the 2020-2021 school year, a total of 63 weeks.

The evidence established that a new transition assessment should be conducted because the information in the current report is outdated. Dr. Greene recommended a functional vocational evaluation to determine what Student is capable of doing for work, as this assessment is focused primarily on employment. Dr. Ann Simun opined that adult transition compensatory education for Student, based upon what is normally given, should be 30 to 60 minutes per week when delivered individually.

Compton Unified shall provide 32 hours of adult transition compensatory education, which reflects 30 minutes for 63 weeks. No consultation services are being ordered because the evidence did not support it. Compton Unified shall provide independent educational evaluations in the areas of adult transition and functional vocational evaluation.

ADAPTED PHYSICAL EDUCATION

Student prevailed on Issues 1(i), 1(k), 2(g), and 2(h) because Compton Unified failed to provide the adapted physical education services the parties agreed to in the settlement agreement. Student should have received services for 30 minutes, three times weekly. Cardona testified that he was providing services six times per month prior to COVID-19. The evidence established that Student could not access adapted physical education services once distance learning began. Student did not receive the appropriate adaptive physical education services during the time period alleged by Student from November 21, 2019, through the end of the 2020-2021 school year, a total of 62 weeks. Compton Unified shall provide 53 hours of adapted physical education compensatory education hours, one hour for each week, reduced by 15 percent.

VISION SERVICES

Student prevailed on Issue 1(g) based upon Compton Unified's failure to materially implement vision services. Student prevailed on Issues 1(j), 1(k), 2(g), and 2(h) based upon her inability to access her vision services based on her visual impairment and Compton Unified's failure to provide a visual assistance device. The settlement agreement and Student's October 29, 2020 IEP offered Student 30 minutes of vision services weekly. The evidence established that Student did not receive the correct amount of vision services from Wayfinder until February 4, 2020. Once distance learning

began, Student was unable to access the vision services provided because she did not have a device with a large enough screen or a magnification device. Student was without appropriate vision services from October 2, 2019, through February 4, 2020, and March 30, 2020 through the end of the 2020-2021 school year, a total of 67 weeks.

Compton Unified shall provide Student 29 hours of vision services as compensatory education; this is compensation for 30 minutes per week for 67 weeks and reduced by 15 percent. Dr. Simun established that based upon Student's visual impairments, vision consultation services are very important because many assessors have limited experience with individuals with visual impairments. Compton Unified shall fund 29 hours of consultation vision services as compensatory education.

AUGMENTATIVE OR ALTERNATIVE COMMUNICATION AND ASSISTIVE TECHNOLOGY

Student partially prevailed on Issue 1(b) based upon Compton Unified's failure to consider the augmentative or alternative communication and assistive technology report during 2020 extended school year. Student prevailed on Issues 1(h), 2(b), and 2(f) based upon Compton Unified's failure to review the report during the 2020-2021 school year or provide services during the statutory period. The parties did not agree to an amount of augmentative or alternative communication and assistive technology services in the settlement agreement or in the October 29, 2019 IEP.

The evidence established that at the time of the assessment, Student did not have a need for an augmentative and alternative communication system, but could have benefitted from the use of the recommended assistive technology equipment including a tray for her wheelchair, and a stand for a tablet or laptop.

The evidence also demonstrated that the August 2019 evaluation would not be useful if Student's educational environment changed. At present, Student is attending a new school and went without in-person instruction or services during the COVID-19 pandemic; she has experienced significant changes in her educational environment since the last assessment. Additionally, the evidence demonstrated that there are significant technological advances each year in assistive technology so newly developed devices may address Student's current needs.

Compton Unified shall provide Student a tray for her wheelchair and tablet or computer stand for all devices she uses to access her educational materials. Compton Unified shall fund an independent educational evaluation in the area of augmentative or alternative communication and assistive technology.

The evidence did not establish a need for direct services, but it did establish that consultation services were required to monitor and the upkeep of assistive technology devices used by Student. As a result, Compton Unified shall fund 38 hours of augmentative or alternative communication and assistive technology consultation compensatory education; this reflects 30 minutes per week for 77 weeks.

ACADEMIC INSTRUCTION

Student prevailed on Issues 1(j), 1(k), 2(g), and 2(h) because the evidence established that she could not access the distance learning instruction based upon her vision impairment and Compton Unified's failure to provide necessary equipment. As a result, Student was unable to access the instruction provided during distance learning, from March 30, 2020, through the end of the 2020-2021 school year, 53 weeks.

Compton Unified shall fund 80 hours of academic instruction compensatory education. In her closing brief, Student requested compensation at the rate of 90 minutes per week, this amount is reasonable since Student was receiving between 15 and 40 minutes of virtual instruction during distance learning each day.

Student's request for 592 hours of academic instruction in her closing brief is denied. The statutory period at issue is only 77 weeks; if Student would have proved a failure to implement academic instruction for the entire time, which she did not, the compensatory education would have been 116 hours. It is unclear how Student arrived at the amount requested; it is unreasonable based upon the evidence presented at hearing.

SOCIAL SKILLS TRAINING AND ORIENTATION AND MOBILITY

Student prevailed on Issues 1(d) and 2(e) based upon Compton Unified's failure to assess Student in the areas of social emotional functioning and orientation and mobility. In her closing brief, Student requested that she be compensated for 30 minutes of each service per week, that is a reasonable amount based on the evidence. Had Compton Unified timely conducted these assessments, they would have been considered by the IEP team by November 2019. Student was without these services from November 2019, through the end of the 2020-2021 school year, a total of 69 weeks.

As a result, Compton Unified shall fund 35 hours of direct or consultation social skills training compensatory education. Compton Unified shall fund 35 hours of direct or consultation orientation and mobility as compensatory education. The evidence did

not demonstrate a need for separate consultation services for social skills or orientation and mobility. As a result, Student may utilize the 35 hours for either direct or consultation services.

Compton Unified shall fund independent educational evaluations in the areas of social emotional functioning and orientation and mobility.

All compensatory education shall be from a nonpublic agency of Parent's choice, to be used at Parent's discretion within three years of the date of this order. The consultation services may be delivered by Student's independent assessors or a nonpublic agency of Parent's choice, or both, within three years of the date of this order. The independent educational evaluations shall be by a nonpublic agency selected by Parent; the nonpublic agency shall meet Compton Unified's criteria.

ORDER

1. Compton Unified shall fund 67 hours of direct speech and language services and 15 hours of consultation speech and language services by a nonpublic agency of Parent's choice. Compton Unified shall fund additional observations by Student's speech and language independent evaluator by a nonpublic agency of Parent's choice.
2. Compton Unified shall fund 77 hours of direct physical therapy services and 33 hours of consultation physical therapy services by a nonpublic agency of Parent's choice.
3. Compton Unified shall fund 73 hours of direct occupational therapy services and 11 hours of consultation occupational therapy services by a nonpublic agency of Parent's choice. Compton Unified shall fund an

occupational therapy independent educational evaluation by a nonpublic agency of Parent's choice.

4. Compton Unified shall fund 32 hours of direct adulthood transition services. Compton Unified shall fund an adulthood transition independent educational evaluation and a functional vocational independent educational evaluation by a nonpublic agency of Parent's choice.
5. Compton Unified shall fund 53 hours of direct adapted physical education services by a nonpublic agency of Parent's choice.
6. Compton Unified shall fund 29 hours of direct specialized vision services and 29 hours of consultation specialized vision services by a nonpublic agency of Parent's choice.
7. Compton Unified shall fund 38 hours of augmentative and alternative communication and assistive technology consultation services by a nonpublic agency of Parent's choice. Compton Unified shall fund an augmentative or alternative communication and assistive technology independent educational evaluation by a nonpublic agency of Parent's choice. Compton Unified shall provide Student the following assistive technology within 30 days of this Decision: tray for Student's wheelchair and laptop or tablet stand for any device that Student uses to access her education. The tray and stand are described in Salisbury's report dated August 26, 2019.
8. Compton Unified shall fund 80 hours of direct academic instruction services by a nonpublic agency of Parent's choice.
9. Compton Unified shall fund 35 hours of direct or consultation social skills services by a nonpublic agency of Parent's choice. Compton Unified shall

fund a social skills independent educational evaluation by a nonpublic agency of Parent's choice.

10. Compton Unified shall fund 35 hours of direct or consultation orientation and mobility services by a nonpublic agency of Parent's choice. Compton Unified shall fund an orientation and mobility independent educational evaluation by a nonpublic agency of Parent's choice.
11. If Student is absent from any scheduled session of services without 24-hours' notice, Compton Unified may subtract that session from the total hours of services ordered here.
12. Any services not used by December 31, 2024 shall be forfeited.
13. All of 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/

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings