

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021040678

PARENTS ON BEHALF OF STUDENT,

v.

VENTURA UNIFIED SCHOOL DISTRICT.

DECISION

SEPTEMBER 7, 2021

On April 21, 2021, Student filed a due process hearing request with the Office of Administrative Hearings, State of California, naming Ventura Unified School District. The Office of Administrative Hearings will be called OAH. Ventura Unified School District will be called Ventura. OAH granted continuances for good cause on June 7, 2021, and July 8, and 14, 2021.

Administrative Law Judge Tara Doss heard this matter via videoconference using the Microsoft Teams application, on July 7, 8, 13, 14, 22, and 23, 2021. Attorneys Lynda Williams and Jennifer Tanios represented Student. Parents attended on all days of

hearing. Attorney Melissa Hatch represented Ventura. Anthony Ramos, General Counsel, attended on July 7, and 8, 2021, on behalf of Ventura. Marcus Konantz, Executive Director of Special Education, attended on July 13, 14, 22, and 23, 2021, on behalf of Ventura.

At the parties' request, OAH granted a continuance to August 16, 2021, for written closing briefs. OAH closed the record and submitted the case for decision on August 16, 2021.

ISSUES

In this Decision, a free appropriate public education will be called a FAPE and an individualized education program will be called an IEP. At the start of the hearing, the parties agreed to the issues as stated in the June 28, 2021 Order Following Prehearing Conference. The issues have been reworded for clarity within the discretion of the Administrative Law Judge. (*M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189.) Specifically, the relevant time periods of the issues are clarified, and Issues 1, through 4, have been reworded to include sub-issues. The language in sub-issues 1(b), 1(d), 3(b), and 3(d) did not appear in the issues the parties agreed upon at hearing, but each of these sub-issues was alleged in the complaint, extensively litigated by Student and Ventura at hearing, and argued in the closing briefs.

1. Did Ventura deny Student a FAPE, from March 16, 2020, through the end of the 2019-2020 school year, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing:
 - a. in-person placement and services;
 - b. general education mainstreaming;

- c. specialized academic instruction;
 - d. one-to-one aide support;
 - e. occupational therapy; and
 - f. speech and language?
2. Did Ventura deny Student a FAPE, from March 16, 2020, through the end of the 2019-2020 school year, by assigning Student to distance learning without:
- a. conducting an assessment to determine what accommodations Student needed to access distance learning; and
 - b. offering accommodations to ensure Student received a FAPE through distance learning?
3. Did Ventura deny Student a FAPE during the 2020-2021 school year, through April 21, 2021, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing:
- a. in-person placement and services;
 - b. general education mainstreaming;
 - c. specialized academic instruction;
 - d. one-to-one aide support;
 - e. occupational therapy; and
 - f. speech and language?
4. Did Ventura deny Student a FAPE during the 2020-2021 school year, through April 21, 2021, by assigning Student to distance learning without:
- a. conducting an assessment to determine what accommodations Student needed to access distance learning; and
 - b. offering accommodations to ensure Student received a FAPE through distance learning?

5. Did Ventura deny Student a FAPE by failing to appropriately assess Student in all areas of suspected disability, specifically, academics, behavior, speech and language, and occupational therapy, before the annual IEP team meeting held on October 14, 2020?
6. Did Ventura deny Student a FAPE in the October 14, 2020 IEP, by failing to offer appropriate:
 - a. goals in the areas of
 - i. math,
 - ii. reading,
 - iii. writing,
 - iv. social emotional,
 - v. language communication, and
 - vi. motor skills development;
 - b. specialized academic instruction;
 - c. related services, including speech and language, occupational therapy, and behavioral services;
 - d. a full-time one-to-one aide; and
 - e. accommodations?
7. Did Ventura deny Student a FAPE, from March 16, 2020, through April 21, 2021, by failing to address the regression Student suffered as a result of being assigned to distance learning?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called IDEA, 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 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 related 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) and (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, 56-62; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student has the burden of proof on all issues. The factual statements below constitute the written findings of fact required by the IDEA

and California law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).) All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted.

Student was nine years old and entering third grade at the time of hearing. Student resided within Ventura's attendance boundaries at all relevant times. Student's primary eligibility for special education was intellectual disability and Student's secondary eligibility was speech or language impairment. Student has been diagnosed with Down Syndrome, a genetic disorder associated with mild to moderate developmental and intellectual delays.

THE COVID-19 PANDEMIC

The issues in this case stem from the global outbreak of a novel coronavirus, called COVID-19. According to the national Centers for Disease Control and Prevention, called the CDC, COVID-19 is a respiratory disease that spreads when an infected person breathes out droplets and very small particles that contain the virus, and another person breathes in those droplets or the droplets land on their eyes, nose, or mouth. Once a person contracts COVID-19, symptoms may range from no symptoms at all, up to and including death. On January 21, 2020, the CDC confirmed the first COVID-19 case in the United States. On January 26, 2020, the CDC confirmed the first COVID-19 case in California. On March 4, 2020, California public health officials confirmed the first reported death of a California resident from COVID-19. On the same date, Governor Gavin Newsom declared a state of emergency in California, in response to the rapid spread of COVID-19. On March 10, 2020, the CDC confirmed the first COVID-19 case in Ventura County, California, where the Ventura Unified School District is located.

ISSUES 1(A), (B), (C), (D), (E), AND (F): DID VENTURA FAIL TO IMPLEMENT STUDENT'S IEP FROM MARCH 16, 2020, THROUGH THE END OF THE 2019-2020 SCHOOL YEAR, BY ASSIGNING STUDENT TO DISTANCE LEARNING?

Student contends Ventura denied Student a FAPE when it assigned Student to distance learning following school closure due to COVID-19 on March 16, 2020. Specifically, Student contends Ventura did not provide Student with in-person placement or services as required by Student's October 16, 2019 IEP. Further, Student contends that once Ventura assigned Student to distance learning, it either did not provide, or dramatically reduced Student's general education instruction, specialized academic instruction, one-to-one aide support, occupational therapy, and speech and language services.

Ventura contends Student was not entitled to receive educational services from March 16, through April 3, 2020, because Ventura did not provide services to any students. Ventura contends Student was not entitled to receive educational services from April 6, through 10, 2020, because Ventura was closed for spring break. Ventura further contends that from April 13, 2020, when it began providing distance learning to students, through the end of the 2019-2020 school year, it implemented Student's IEP to the extent feasible using synchronous and asynchronous instruction, consistent with guidance from Governor Newsom, the California Department of Education, called CDE, and the United States Department of Education.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel

develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

STUDENT WAS NOT ENTITLED TO SERVICES FROM MARCH 16,
THROUGH APRIL 10, 2020

Student was not entitled to special education services from March 16, through April 10, 2020. On March 12, 2020, Ventura announced it would close all of its schools from March 16, through April 10, 2020, due to COVID-19. Ventura's spring break was April 6, through 10, 2020. Ventura's decision to close its schools was consistent with most of California's public school districts at the time, and was in response to directives from CDE, as well as state and local public health officials.

In March 2020, the United States Department of Education issued guidance that if a local educational agency closed its schools due to COVID-19 and did not provide any educational services to the general student population, then it would not be required to provide services to student with disabilities. (U.S. Dept. of Educ., Questions and Answers on Providing Services to Children with Disabilities During a COVID-19 Outbreak, Answer to Question A-1 (March 2020).) This guidance was consistent with the Ninth Circuit

ruling in *N.D. v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, which affirmed a district court's order denying a preliminary injunction by special education students to prevent the state from furloughing teachers and providing 17 fewer instructional days to all students. The students argued the school closure constituted a change in placement and, therefore, violated the IDEA's stay-put provision. The court disagreed, holding that "Congress did not intend for the IDEA to apply to system wide administrative decisions," and because the furloughs affected all students, "[a]n across the board reduction of school days ... does not conflict with Congress's intent of protecting disabled children from being singled out." (*N.D. v. Hawaii Dept. of Educ.*, *supra*, at p. 1116.) Further, the court held "[t]he IDEA did not intend to strip administrative powers away from local school boards and give them to parents of individual children ..." (*Id.* at p. 1117.)

Ventura's decision to close its schools was to protect the health and safety of its staff and students. There was no evidence Ventura had any motives to exclude students with disabilities or treat them differently from nondisabled students. Consistent with the ruling in *N.D.* and guidance from the United States Department of Education, Ventura's decision to close its schools in the face of a public health crisis and to halt educational instruction to all students was within its administrative powers and did not violate the IDEA.

Additionally, Student's IEPs in place at the time school closed, dated October 16, and 23, 2019, December 19, 2019, and February 26, 2020, stated that "[s]ervices will only be provided on regular school days ... unless otherwise specified." The days school was closed to all students, March 16 through April 3, 2020, due to COVID-19, and April 6 through 10, 2020, due to spring break, cannot be considered regular school days because no instruction was provided. Therefore, Ventura was not required to provide services to Student from March 16 through April 10, 2020.

VENTURA WAS NOT REQUIRED TO PROVIDE IN-PERSON PLACEMENT OR SERVICES

Student's argument that Ventura denied Student a FAPE by not providing in-person placement and services once schools closed due to COVID-19 was not persuasive. Student's closing brief failed to cite any legal authority that required Ventura to continue in-person services from when schools closed on March 16, 2020, through the end of the 2019-2020 school year. To the contrary, guidance and directives from Governor Newsom, CDE, and the United States Office of Education's Office of Special Education and Rehabilitative Services, called OSERS, urged local educational agencies to implement students' IEPs through a distance learning model.

On March 13, 2020, Governor Newsom issued Executive Order N-26-20, which allowed schools that closed due to COVID-19 to provide educational opportunities to the extent feasible, through distance learning or independent study. The Order also charged CDE and the Health and Human Services Agency to develop and issue guidance to ensure students with disabilities received a FAPE consistent with their IEP.

On March 20, 2020, CDE issued guidance urging local educational agencies to continue providing special education and related services as outlined in a student's IEP, through a distance learning model. (Cal. Dept. of Educ., Special Education Guidance for COVID-19 (March 20, 2020).) In addition to distance learning, CDE's guidance allowed local educational agencies to consider providing services at home, individually at school sites, or other appropriate locations. (*Ibid.*) The delivery of in-person services was discretionary and not required.

Also, in March 2020, CDE defined “distance learning” as instruction in which the student and instructor are in different locations, which could include

- delivering instruction and check-in time with the teacher,
- video or audio instruction,
- instructional television,
- telecourses, or other instruction that relies on computer or communications technology.

(Cal. Dept. of Educ., Distance Learning Considerations (March 18, 2020).) Distance learning could also include the use of print materials incorporating assignments that are the subject of written or oral feedback. (*Ibid.*)

On March 21, 2020, OSERS issued guidance addressing COVID-19 and schools serving children with disabilities, and confirmed that the provision of FAPE may include, as appropriate, special education and related services provided through virtual, online, or telephonic distance instruction. (Office of Special Education and Rehabilitative Services, Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities (March 21, 2020).) OSERS encouraged parents, educators, and administrators to work collaboratively and creatively to meet the needs of students with disabilities and emphasized that federal law did not require specific methodologies for instruction. (*Ibid.*)

On April 9, 2020, CDE issued further guidance about implementation of students’ IEPs during the COVID-19 pandemic. Specifically, CDE offered the opinion that

[u]nder this unique circumstance ... it is not necessary for [a local educational agency] to convene an IEP team meeting or propose an IEP

amendment ... solely for the purpose of discussing the need to provide services away from school, because that change must necessarily occur due to the COVID-19 pandemic.

CDE went on to say, “[t]he IEP that was in effect at the time of physical school closure remains in effect, and [local educational agencies] should, to the greatest extent possible, continue to provide the services called for in those IEPs in alternative ways.” (Cal. Dept. of Educ., Special Education Guidance for COVID-19 (April 9, 2020).)

Ventura’s decision to close its schools and offer special education placement and services to its students through a distance learning model, was consistent with the guidance from federal and state educational agencies in March, and April 2020. There was no evidence presented in this case that proved otherwise. Therefore, Ventura did not deny Student a FAPE by failing to implement Student’s IEP in-person, from April 13, 2020, through the end of 2019-2020 school year. Student did not prevail on Issue 1(a).

IMPLEMENTATION OF STUDENT’S OCTOBER 16, 2019 IEP

A school district violates the IDEA if it fails to provide special education and related services in conformity with a student’s IEP. (20 U.S.C. § 1401(9)(D).) When a school district does not conform exactly with the IEP, the district only violates the IDEA if it materially failed to implement the IEP. (*Van Duyn v. Baker Sch. Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 815, 822.) A material failure occurs when there is more than a minor discrepancy between the services provided and those required in the IEP. (*Id.* at p. 822.) However, the materiality standard does not require that the student suffer demonstrable educational harm in order to prevail. (*Ibid.*) The student’s educational progress, or lack thereof, may be indicative of whether there was more than a minor discrepancy in the

services provided. (*Ibid.*) There is no statutory requirement of perfect adherence to the IEP, nor is there any reason rooted in the statutory text to view minor implementation failures as denials of a FAPE. (*Id.* at p. 821.)

Student's operative IEP was dated October 16, and 23, 2019, and offered Student the following special education placement and related services:

- placement in a general education classroom for 73 percent of the school day;
- 420 minutes a week of specialized academic instruction in English language arts and math;
- 180 minutes a month of speech and language services; and
- 120 minutes a month of occupational therapy.

The specialized academic instruction was to occur in a self-contained special education classroom, using a functional skills curriculum. Additionally, Ventura offered additional adult support "throughout the school day" to assist Student with academics and to assist in implementing Student's behavior intervention plan. In this Decision, the terms "additional adult support" and "one-to-one aide" have the same meaning and are used interchangeably. The IEP did not specify the frequency, duration, or location of the adult support. Parents consented to the IEP.

Ventura held an amendment IEP team meeting on February 26, 2020, to review Student's placement. The IEP team developed a schedule to reflect Student's time in the general education and special education classes, and agreed Student's placement in both settings was successful, especially with consistent adult support. Ventura did not propose any changes to the placement or services in the IEP. Parent consented to the IEP.

On April 3, 2020, Ventura sent Parents a prior written notice letter explaining its reasons for closing schools and outlining what Student's educational program would look like during distance learning. Ventura offered the following services based on the October 2019 IEP:

- individual or small group specialized academic instruction, two times a week for 15 minutes each session;
- individual specialized academic instruction consultation at least one time a week for 30 minutes each session;
- occupational therapy through Google Classroom, where a therapist would recommend activities for Student to complete and monitor progress; and
- speech and language services through Google Classroom and three therapist-directed lessons for a total of 30 minutes.

Other than what is specified above, the specialized academic instruction, occupational therapy, and speech and language services were offered in an asynchronous learning model. "Asynchronous" means students worked independently at their own pace, without live or direct instruction from a teacher or therapist. The letter indicated that distance learning was not a "minute-for-minute" replacement of the regular school day, and that once students returned to school, Student's IEP would be implemented in its entirety. The letter did not mention Student's adult support services.

Federal and state guidance charged Ventura with implementing Student's IEP placement and related services to the "greatest extent possible" using alternative methods, such as distance learning, when it resumed providing instruction to students on April 13, 2020. Ventura's distance learning plan for Student did not meet this standard.

From April 13, 2020, through the end of the 2019-2020 school year, Student had limited contact with teachers and service providers. Ventura's expectation that Student would receive educational benefit from a program that, with the exception of 30 minutes a week of group and 30 minutes a week of individual specialized academic instruction, required Student to complete work independently or with the assistance of Parents, was unrealistic. Student had significant

- cognitive,
- academic,
- motor, and
- communication delays

that required a specially designed program, including direct support from

- a special education teacher,
- an adult assistant,
- an occupational therapist, and a
- speech and language pathologist.

While the effects of the COVID-19 pandemic were still uncertain in Spring 2020, the evidence showed Ventura fell short of implementing several components of Student's IEP to the "greatest extent possible" during distance learning.

VENTURA'S OFFER TO PROVIDE A GENERAL EDUCATION PROGRAM SATISFIED ITS IMPLEMENTATION REQUIREMENTS

Student did not prove Ventura failed to implement Student's general education mainstreaming. During the 2019-2020 school year, Student's general education teacher was Shannon Berry and Student's special education teacher and case manager was Erin Steele. Prior to the school closure, Student participated in the general education

classroom with the assistance of a dedicated adult assistant for the majority of the school day. Activities in the general education class included

- story time,
- physical education,
- social studies,
- science, and
- art.

Steele modified academic work for Student in the general education class. Steele provided Student's core academics in a special education classroom using a modified curriculum.

When distance learning began on April 13, 2020, Berry's class met on Tuesdays, via videoconference, for 30 to 45 minutes. Steele's class met via videoconference on Tuesdays and Thursdays, for 15 minutes. In addition, Berry and Steele assigned daily asynchronous work that students were expected to complete independently, or with parental assistance. Student was invited to participate in Berry's class during distance learning in the same way as the other students enrolled in that class.

Student participated in two of Berry's videoconferencing sessions at the start of distance learning but did not stay for the entire time. Mother communicated to Steele that participating in both the general education and special education videoconferencing sessions and doing the work for both classes was challenging. Videoconferencing was overwhelming for Student. Student had difficulty staying engaged with the computer screen and asynchronous assignments, and worked for a maximum of 30 minutes before refusing to continue. Ultimately, Parents decided it was

in Student's best interest to only participate in the special education distance learning program because it was too demanding to manage the online sessions and complete work from both Berry's and Steele's classes.

Student was never denied the ability to participate in Berry's distance learning program. Berry's videoconference sessions and asynchronous assignments remained available to Student throughout distance learning in the 2019-2020 school year. Parents chose not to participate for various reasons, including the need to balance the academic needs of other students in the household and Student's tolerance for online work. Ventura's offer to provide general education satisfied its implementation requirements. Therefore, Student did not prevail on Issue 1(b).

VENTURA MATERIALLY FAILED TO IMPLEMENT STUDENT'S SPECIALIZED ACADEMIC INSTRUCTION

While California law does not specifically define "specialized academic instruction," the understanding of that term in California is that it has the same meaning as "specially designed instruction" described in federal law. (See, e.g., Cal. Legislative Analyst, Overview of Special Education in California (Jan. 3, 2013)); Cal. Teachers' Assn., Special Education in California (2012).) The IDEA defines "specially designed instruction" as "adapting, as appropriate to the needs of an eligible child ... the content, methodology, or delivery of instruction" to meet the child's unique needs. (34 C.F.R. § 300.39(b)(3) (2006).) The services Steele provided to Student during distance learning, including consultation with Parents, asynchronous assignments, and direct videoconferencing sessions, met the definition of specialized academic instruction.

Student proved Ventura materially failed to implement Student's specialized academic instruction. Specifically, there was a significant shortfall in the amount of specialized academic instruction required by Student's IEP and the amount of specialized academic instruction Steele offered or provided.

Steele recorded the specialized academic instruction minutes provided to Student in a service log. The service log showed that between April 13, 2020, and June 11, 2020, which was the last day of the 2019-2020 school year, Steele provided the following services to Student:

- 13, 15-minute group videoconference sessions, totaling 195 minutes
- nine asynchronous, 30-minute assignments, totaling 270 minutes
- eight, 30-minute consultation sessions with Mother, totaling 240 minutes

Additionally, between April 27, 2020, and June 1, 2020, Steele offered six, weekly 30-minute individual videoconferencing sessions to work on students' IEP goals. Student did not participate in these sessions. Student did not offer evidence at hearing to challenge the accuracy of Steele's time in the log. Thus, the logs were an accurate reflection of the specialized academic instruction Student received during this time period.

Based on the logs and the evidence of the individual videoconference sessions Steele offered, the breakdown of specialized academic instruction Student should have received versus what was offered or provided is as follows:

Week	Minutes Owed	Minutes Provided	Individual Sessions Offered but Not Attended	Shortfall
April 13, 2020	420	60	0	360
April 20, 2020	420	90	0	330
April 27, 2020	420	90	30	300
May 4, 2020	420	75	30	315
May 11, 2020	420	90	30	300
May 18, 2020	420	75	30	315
May 25, 2020	336	45	30	261
June 1, 2020	420	90	30	300
June 8, 2020	336	90	0	246
Totals	3,612	705	180	2,727 minutes (45.45 hours)

The minutes owed to Student for the weeks of May 25, 2020, and June 8, 2020, were reduced by four fifths because there were only four school days in those weeks. Based on this calculation, Ventura failed to provide approximately 45 hours of specialized academic instruction to Student over a nine-week period. This represents a significant loss of learning opportunity for Student and was more than a minor

departure from the services offered in Student's IEP. Therefore, Ventura denied Student a FAPE from April 13, 2020, through the end of the 2019-2020 school year, by materially failing to implement specialized academic instruction. Student prevailed on Issue 1(c).

VENTURA MATERIALLY FAILED TO IMPLEMENT STUDENT'S ONE-TO-ONE AIDE

When a student's behavior impedes the student's learning or that of other students, the IEP team must consider the use of positive behavioral interventions and supports to address the behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.327(a)(2)(i).) Additional adult support or a one-to-one aide may be a required service if it is necessary "to assist a child with a disability to benefit from special education ..." (34 C.F.R. § 300.34(a); Ed. Code, § 56363, subd. (a).)

Student proved Ventura materially failed to implement the additional adult support services in Student's IEP, from April 13, 2020, through the end of the 2019-2020 school year. Student's October 2019 IEP required additional adult support throughout the school day to assist Student with academics and to help implement Student's behavior intervention plan. Student's behavior intervention plan identified elopement or escape, and attention seeking behaviors as Student's way to avoid non-preferred tasks. Completing academic work and transitions were non-preferred tasks for Student. The positive behavior interventions in the plan included praise and a reward system. Student's teacher and adult support were identified as the individuals responsible for implementing the plan.

The evidence showed Student required additional adult support to receive educational benefit. This need did not change when Ventura implemented Student's IEP

through distance learning. Mother persuasively testified regarding Student's difficulties remaining focused while completing asynchronous work and participating in videoconference sessions. In Mother's opinion, Student would have experienced more success with distance learning if Student's adult assistant were present in-person or on video. Mother's testimony was consistent with Student's needs as identified in the IEPs and the behavior intervention plan. Specifically, the February 26, 2020 IEP indicated Student's behaviors decreased with consistent adult support.

Student's adult assistant did not attend the two general education videoconference sessions Student attended. Student's adult assistant attended no more than five of the 13 group videoconference sessions with Steele. Additionally, Ventura did not offer to provide the assistant during asynchronous work. With no aide support, Mother had to sit next to Student to prevent Student from running away and to redirect Student's attention to the screen or instructional materials. Thus, consistent with Student's IEP, Student required adult support to benefit from special education.

Ventura's failure to provide additional adult support during Berry's videoconference sessions, the majority of Steele's videoconference sessions, and asynchronous learning was a material failure to implement Student's IEP and resulted in a denial of FAPE. Student prevailed on Issue 1(d).

VENTURA IMPLEMENTED STUDENT'S OCCUPATIONAL THERAPY

Student did not prove Ventura failed to implement Student's occupational therapy services from April 13, 2020, through the end of the 2019-2020 school year. Maritza Mireles provided occupational therapy to Student from November 2019, through the 2020-2021 school year. Prior to school closure, Mireles pulled Student out of the classroom and provided services in a separate room. From April 13, 2020,

through the end of the 2019-2020 school year, Mireles provided occupational therapy through an asynchronous and consultation model. Mireles inputted the activities uploaded to Google Classroom and communications with Mother in a detailed service log. Based on the service log, Mireles provided a total of 395 minutes of occupational therapy services. These services included fine motor activities specific to Student's occupational therapy IEP goals, phone calls to Mother to ensure Student had access to Google Classroom, and responses to Mother's messages with feedback about the activities. Activities included instructional videos, handouts, and other fine motor exercises. Parents were responsible for completing the activities with Student.

Mireles could not effectively assess Student's progress in occupational therapy during distance learning because there was no direct contact with Student. Mireles relied on work samples and communication with Mother to determine Student's progress. Mother did her best to complete the assigned activities but was unsure if her instructions to Student were in-line with how Mireles would instruct Student. Parents hired a private occupational therapist to work on Student's fine motor skills for one hour a week via videoconferencing.

In Mother's opinion, Student's motor skills regressed throughout the period of distance learning. Specifically, Student's ability to grasp a writing utensil declined. At the time of school closure, Student was working on two occupational therapy goals, a handwriting/copying goal and a cutting goal. According to Student's progress report on IEP goals dated June 11, 2020, Student made 83 percent progress towards meeting the copying goal and met the cutting goal. The goals were not scheduled to be met until Student's next annual IEP in October 2020. It is unclear whether Student's progress was attributed to Mother implementing the fine motor activities or Student's time with the private occupational therapist, but Student made progress, nonetheless.

Mireles actively ensured Student had access to the lessons through Google Classroom and that Student was working on activities to make progress towards the occupational therapy goals. Prorating the number of services owed in April and June 2020, because Student was not entitled to services before April 13, 2020, or after June 11, 2020, Ventura should have provided a total of 253 minutes for this time period. Instead, Mireles provided 142 more minutes than required. Accordingly, Ventura successfully implemented Student's occupational therapy through distance learning. Student did not prevail on Issue 1(e).

VENTURA MATERIALLY FAILED TO IMPLEMENT STUDENT'S SPEECH AND LANGUAGE SERVICES

Student proved Ventura materially failed to implement speech and language services from April 13, 2020, through the end of the 2019-2020 school year. Stephanie Lowe-Steiger provided speech and language services to Student during the 2019-2020 school year. Prior to school closure, Lowe-Steiger pushed into Student's classroom twice a week for small group sessions and pulled Student out of the classroom once a week for an individual session in the speech room. Lowe-Steiger's and Mother's recollections of how speech and language services were delivered during distance learning differed. According to Lowe-Steiger, services were delivered in an asynchronous model, beginning on or around April 14, 2020, and included videos and other activities posted to Google Classroom.

Lowe-Steiger input entries into a service log that indicated the activities assigned in Google Classroom. Based on the logs, Lowe-Steiger provided ten, 15-minute asynchronous assignments between April 14, 2020, through the end of the 2019-2020 school year, and an additional 30 minutes of asynchronous work on June 30, 2020,

labeled as “make-up,” for a total of 180 minutes. Lowe-Steiger did not remember why the duration of the assignments was 15 minutes or if Google Classroom notified parents once new assignments were uploaded. Lowe-Steiger did not attempt to contact Parents or collect any data on Student’s progress during this time period.

According to Mother, Student did not receive any speech and language services or supports from the time schools closed through the end of the 2019-2020 school year. Mother did not remember receiving any emails or phone calls from Lowe-Steiger or being provided access to any speech and language activities through Google Classroom.

Mother’s testimony regarding speech and language services was more persuasive than Lowe-Steiger’s. The evidence showed Mother played an active role in Student’s distance learning program. Mother diligently worked with Student to complete assigned activities and communicated with Student’s teachers and the occupational therapist throughout distance learning. Thus, it is unlikely Mother would intentionally choose not to communicate with Lowe-Steiger or complete any speech and language activities if provided. Further, although Lowe-Steiger recorded weekly entries in a service log with speech and language activities, the entries were not detailed and Lowe-Steiger never attempted to contact Parents to confirm receipt of the assigned activities. Also, Lowe-Steiger did not have a clear recollection of how the speech and language services were implemented through distance learning. For these reasons, Lowe-Steiger’s testimony was unreliable.

The evidence showed Ventura did not provide any speech and language services to Student from April 13, 2020, through the end of the 2019-2020 school year. Student’s IEP called for 180 minutes a month of speech and language services. Prorating the number of services owed in April, and June 2020, because Student was not

entitled to services before April 13, 2020, or after June 11, 2020, Ventura should have provided a total of 380 minutes for this time period. Ventura's failure to provide these services was a material failure to implement Student's speech and language services and denied Student a FAPE. Student prevailed on Issue 1(f).

ISSUE 2(A): DID VENTURA HAVE A DUTY TO ASSESS STUDENT DURING THE 2019-2020 SCHOOL YEAR, TO DETERMINE WHAT ACCOMMODATIONS STUDENT NEEDED TO ACCESS DISTANCE LEARNING?

Student contends Ventura should have assessed how the provision of a full-time one-to-one aide could have best supported Student during distance learning in the 2019-2020 school year. Ventura contends it had no duty to assess Student to determine what accommodations Student needed during distance learning.

School district evaluations of students with disabilities under the IDEA serve two purposes: identifying students who need specialized instruction and related services because of an IDEA-eligible disability, and helping IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.) Once a school district identifies a student as a child with a disability in need of special education and related services, and a parent consents to services, the school district has an ongoing duty to evaluate the needs of that student. Specifically, school districts must conduct a reevaluation if the student's educational or related service needs, including improved academic achievement and functional performance, warrant a reevaluation, or if the student's parents or teacher request a reevaluation. (20 U.S.C. § 1414(a)(2)(A); 34 C.F.R. § 300.303(a).) Absent an agreement between a school district

and a student's parents, reassessments must not occur more than once a year, or more than three years apart. (20 U.S.C. § 1414 (a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).)

Student did not prove Ventura had a duty to assess before implementing a distance learning program on April 13, 2020. Ventura conducted a reevaluation of Student in preparation for the October 16, 2019 IEP. Ventura assessed Student in the areas of

- health and development,
- cognitive abilities,
- academic skills,
- occupational therapy,
- speech and language,
- social emotional functioning,
- behavior, and
- the need for an additional adult assistant.

Ventura also conducted an assistive technology assessment of Student in December 2019. These assessments occurred less than one year before March 2020, when Student argues Ventura should have reassessed Student for distance learning. Further, Student did not challenge the appropriateness of any of the 2019 assessments.

Parents did not request an assessment when schools closed due to COVID-19, and there was no evidence that Student's educational or related services needs changed simply because Ventura implemented a distance learning program. Further, Student's

closing brief did not cite to any legal authority that required Ventura to assess Student to determine what accommodations Student required during distance learning.

Therefore, Student did not prevail on Issue 2(a).

ISSUE 2(B): DID VENTURA OFFER THE ACCOMMODATIONS STUDENT REQUIRED TO RECEIVE A FAPE DURING DISTANCE LEARNING IN THE 2019-2020 SCHOOL YEAR?

Student contends Ventura should have provided a one-to-one aide during live online instruction, called synchronous learning, and during asynchronous learning, to accommodate Student's distance learning program. Student contends Ventura's failure to provide a full-time one-to-one aide resulted in a material failure to implement Student's IEP and was a denial of FAPE.

Ventura contends it satisfied its FAPE obligations to Student during the 2019-2020 school year, through synchronous and asynchronous instruction, including offering appropriate accommodations.

An IEP must contain a statement of the program modifications or supports that will be provided for the student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the regular education curriculum, and a statement of any individual accommodations that are necessary to measure the student's academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VI)(aa); Ed. Code, § 56345, subds. (a)(4), (6)(A).) As a result of the COVID-19 pandemic, CDE issued guidance on March 20, 2020 that stated when providing instruction through a distance learning model, local educational agencies must create access to the instruction for students with disabilities, including planning for

appropriate modifications or accommodations based on the individualized needs of each student and the differences created by the change in modality. (Cal. Dept. of Educ., Special Education Guidance for COVID-19, COVID-19 School Closures and Services to Students with Disabilities (March 20, 2020).)

To the extent Student argues Ventura had a duty to offer a one-to-one aide in-person, Issue 1(a) determined Ventura had no duty to provide in-person services during the 2019-2020 school year once schools closed on March 16, 2020.

As determined in Issue 1(d), Student's need for additional adult support did not change when Ventura started distance learning, and Ventura materially failed to provide this support. While Ventura was not required to provide an adult assistant in-person, it failed to offer a credible explanation for why it could not offer the support through videoconference, during synchronous and asynchronous instruction. Ventura's failure to plan for appropriate accommodations based on Student's need for adult support during distance learning resulted in a denial of FAPE. Student prevailed on Issue 2(b).

ISSUE 3: DID VENTURA FAIL TO IMPLEMENT STUDENT'S IEP, FROM THE BEGINNING OF THE 2020-2021 SCHOOL YEAR, THROUGH APRIL 21, 2021, WHEN THE COMPLAINT WAS FILED?

Student contends Ventura failed to implement Student's IEP during the 2020-2021 school year, when distance learning continued, by failing to provide in-person placement and services, general education mainstreaming, specialized academic instruction, one-to-one aide support, occupational therapy, and speech and language services. Student further contends that Student's academic and functional skills

regressed due to Ventura's failure to implement these services. Ventura contends it fully implemented Student's IEP, and offered Student a FAPE through synchronous, asynchronous, and in-person services.

STUDENT WAS NOT ENTITLED TO IN-PERSON SERVICES

California Senate Bill No. 98, which amended several provisions in California Education Code section 43503 in response to COVID-19, became law on June 29, 2020. Section 43500 defined "distance learning" generally as instruction in which the student and instructor are in different locations, to include computer, video, audio, and written instruction. Section 43503 provided that distance learning should include computer access, grade-level content, and academic supports. It should also include daily live interaction with certificated employees and peers for instructional purposes, that might take the form of internet or telephonic communication, or other means permissible under public health orders, if feasible. These provisions were generally applicable to all public education beginning June 29, 2020.

With respect to special education, Section 43503, subdivision (b), stated that distance learning must include "special education, related services, and any other services required by a [student's] individualized education program ... with accommodations necessary to ensure that individualized education program can be executed in a distance learning environment."

Based on Governor Newsom's Executive Orders, guidance from CDE and OSERS, and the new California law, Ventura was not required to provide Student with in-person placement or services during the portions of the 2020-2021 school year when it provided distance or hybrid learning. Student did not prevail on Issue 3(a).

VENTURA'S ENHANCED DISTANCE LEARNING PROGRAM AND HYBRID LEARNING

August 18, 2020 was the first day of the 2020-2021 school year. On August 21, 2020, Ventura sent Parents a letter entitled "Individualized COVID-19 Distance Learning Plan." The letter indicated Ventura would continue the distance learning model because it was not authorized to resume in-person instruction under Governor Newsom's school reopening plan. The service minutes in Ventura's distance learning plan were consistent with Student's October 2019 IEP and were as follows:

- 420 minutes a week of specialized academic instruction in English language arts and math, using a combination of synchronous and asynchronous instruction;
- three, 15-minute group or individual speech and language sessions a week, using a teletherapy model;
- four, 30-minute small group or individual occupational therapy sessions a month via videoconference and asynchronous work; and
- 1,425 minutes a week of intensive individualized services provided by a paraeducator via videoconference, during synchronous and asynchronous instruction.

On October 14, 2020, Ventura held Student's annual IEP via videoconference, which will be discussed in more detail as part of Issue 5. The IEP team did not recommend any changes to the amount of

- general education,
- specialized academic instruction,
- adult support,

- occupational therapy, or
- speech and language services Student received.

Mother consented to the IEP.

On or around December 7, 2020, Ventura reopened its schools and offered students the opportunity to return to campus using a hybrid learning model. This model included a combination of in-person instruction, synchronous instruction via videoconference, and asynchronous work that students completed independently at home. In January 2021, due to rising COVID-19 positive rates, Ventura returned to a complete distance learning model, but resumed hybrid learning in February 2021.

On February 10, 2021, Ventura sent Parents an updated distance learning plan to reflect Student's services through a hybrid learning model. The plan indicated Student's services would be delivered as follows:

- 420 minutes a week of specialized academic instruction in English language arts and math, using a combination of videoconference and in-person instruction, and asynchronous work;
- three, 15-minute speech and language sessions, provided in-person through small group or individual instruction;
- 120 minutes a month of occupational therapy, delivered in four 30-minute sessions, in-person through small group or individual instruction; and
- 1,425 minutes a week of intensive individualized instruction, delivered by a paraeducator in-person and virtually, during synchronous and asynchronous learning.

On April 12, 2021, Ventura resumed a full day school schedule using a cohort model, where students were placed in a small learning group and were not allowed to interact with students in other groups.

VENTURA'S OFFER TO PROVIDE GENERAL EDUCATION INSTRUCTION TO STUDENT SATISFIED ITS IMPLEMENTATION REQUIREMENTS

Student did not prove Ventura failed to implement Student's general education mainstreaming from the beginning of the 2020-2021 school year, through April 21, 2021. Deanna Baczek was the principal of Student's school. Baczek communicated with Mother regarding Student's mainstreaming options throughout the 2020-2021 school year. Student was assigned to Julianne Portera's general education classroom for second grade. At the start of the 2020-2021 school year, during distance learning, Portera's class met via videoconference for one hour each day, other than on Wednesdays, when they met for an additional 30 minutes for social emotional learning. Additionally, Portera assigned asynchronous work that students were expected to complete independently at home.

Baczek offered Parents the option of participating in Portera's class, but Parents believed doing the work from general education and special education would overwhelm Student. Instead, Parents decided Student would participate in the synchronous and asynchronous instruction for special education and participate with Portera's class for 30 minutes a week during social emotional learning.

When Ventura began the hybrid learning model in December 2020, students were placed in cohorts, or small learning groups. The purpose of the cohorts was to limit the in-person interactions students had with other students and staff in an effort to eliminate the spread of COVID-19. Mother requested that Student and Student's sibling

be placed in the same classroom so that their schedules aligned. Because Student's sibling, who also had an IEP, did not participate in general education, that meant Student's IEP would be implemented in a special education classroom during hybrid learning. Student continued to participate in general education for social emotional learning for 30 minutes a week via videoconference.

Although Student's IEP called for placement in a general education classroom for 73 percent of the school day, the evidence showed Ventura's staff communicated with Parents and together, Parents and Ventura decided that being assigned to the special education classroom during distance and hybrid learning was in Student's best interest and in the best interest of the family. Moreover, Student participated in general education during social emotional learning. Accordingly, Ventura did not materially fail to implement Student's mainstreaming. Student did not prevail on Issue 3(b).

VENTURA IMPLEMENTED STUDENT'S SPECIALIZED ACADEMIC INSTRUCTION

VENTURA IMPLEMENTED STUDENT'S SPECIALIZED ACADEMIC INSTRUCTION DURING DISTANCE LEARNING

Student did not prove Ventura failed to implement Student's specialized academic instruction from the beginning of the 2020-2021 school year, through November 2020, during distance learning. Tomalyn Carey was Student's special education teacher and case manager during this time period. Carey provided Student's specialized academic instruction. Carey held two, one-hour videoconference sessions each school day, one in the morning and one in the afternoon. Approximately five students attended the whole group sessions, along with two adult assistants, one who was assigned to Student. The adult assistants would sometimes lead breakout sessions

with two to three students. Also, Carey offered one, 30-minute individual session each week via videoconference. In addition to the synchronous instruction via videoconference, Carey assigned asynchronous work each week that Student was expected to complete independently with Parents' assistance.

Carey input the asynchronous assignments in a service log but did not input the synchronous instruction provided via videoconference. Mother confirmed the accuracy of the synchronous schedule Carey described. Student was entitled to receive 420 minutes a week of specialized academic instruction. Carey's schedule offered 600 minutes a week of group specialized academic instruction and 30 minutes a week of individual specialized academic instruction. Thus, Ventura offered more specialized academic instruction than Student's IEP called for and implemented Student's specialized academic instruction for this time period.

VENTURA IMPLEMENTED STUDENT'S SPECIALIZED ACADEMIC INSTRUCTION DURING HYBRID AND IN-PERSON LEARNING

Student did not prove Ventura failed to implement specialized academic instruction from December 2020, through April 21, 2021, during hybrid and in-person learning. Alyssa Baarstad was Student's special education teacher and case manager during this time period. During hybrid learning, in December 2020, and February, through March 2021, Baarstad offered in-person instruction to students two days a week, for three hours each day. Students also received their related services during this time, so instruction was not necessarily dedicated to specialized academic instruction. Students could attend either on Mondays and Tuesdays, or Thursdays and Fridays.

Student attended on Thursdays and Fridays. Baarstad offered one hour of instruction via videoconference and asynchronous work on the three days students were at home. In total, Baarstad offered 480 minutes a week of direct specialized academic instruction, less any related services Student received, as well as asynchronous assignments.

Baarstad input the asynchronous assignments in a service log but did not input the synchronous instruction provided via videoconference. Student did not dispute the amount of in-person instruction Baarstad provided in December 2020. In January 2021, when Ventura returned to distance learning, Mother informed Baczek and Baarstad that Student would not participate in the synchronous videoconference sessions and that Mother would homeschool Student instead. Baarstad continued to provide Student with asynchronous assignments and Mother turned completed work into Baarstad. Once hybrid instruction resumed in February 2021, Parents decided to continue homeschooling instead of attending Baarstad's videoconference sessions on Mondays and Tuesdays. Student attended the 30-minute social emotional learning videoconference on Wednesdays, and in-person on Thursdays and Fridays, with the exception of approximately three weeks in March 2021, when Student was absent due to COVID-19 exposure and a family trip. Student began attending Baarstad's class in-person for a full school day schedule on or around April 12, 2021.

The evidence showed that at all times between December 2020, and April 21, 2021, Ventura offered at least 420 minutes a week of specialized academic instruction to Student using a combination of synchronous instruction via videoconference, asynchronous assignments, and in-person learning. Accordingly, Ventura implemented Student's specialized academic instruction throughout the 2020-2021 school year, up to April 21, 2021. Student did not prevail on Issue 3(c).

VENTURA MATERIALLY FAILED TO IMPLEMENT STUDENT'S ADDITIONAL ADULT SUPPORT

Student proved Ventura materially failed to implement Student's additional adult support during the 2020-2021 school year, through April 21, 2021, with respect to asynchronous learning. Both Student's October 2019, and October 2020 IEPs offered additional adult support throughout the school day. Additionally, the August 2020, and February 2021 distance learning plans further clarified that Student would receive 1,425 minutes a week of intensive individualized instruction from a paraeducator during both synchronous and asynchronous learning. This breaks down to four hours, 45 minutes each school day.

The evidence showed Ventura implemented Student's

- adult support during synchronous learning with Carey,
- social emotional learning with Portera,
- synchronous and in-person instruction with Baarstad, and
- social emotional learning with Small.

However, Ventura did not provide Student with any adult support during asynchronous learning. Ventura did not offer a credible explanation for why it failed to provide the support. While the distance learning plans indicated a parent must initiate the request for adult support during asynchronous learning, this requirement is inconsistent with the IDEA. School districts have an affirmative duty to make FAPE available for eligible students and to implement a student's IEP. (20 U.S.C. § 1412(a)(1)(A); 20 U.S.C. § 1401(9)(D).) Thus, Ventura had a duty to implement this service.

During the 2020-2021 school year, Student continued to struggle with focus during asynchronous learning. Mother persuasively testified that having a

paraprofessional available via videoconference would have helped Student get more excited about doing the work. Student responded to praise from the paraprofessionals during synchronous instruction and likely would have done the same if adult support were provided during asynchronous learning.

By not providing adult support during asynchronous learning, Ventura fell significantly short of implementing 1,425 minutes a week, or 23 hours, 45 minutes of intensive individualized services. Specifically, during distance learning, from August, through November 2020, and in January 2021, assuming Ventura provided a paraprofessional during 100 percent of the offered synchronous instruction, it provided adult support for 11 hours a week. This is a shortfall of 12 hours, 45 minutes each week. The shortfall increased during the hybrid learning model in December 2020, and February, through March 2021. Assuming Ventura provided a paraprofessional during 100 percent of the offered synchronous and in-person instruction, it provided adult support for nine hours, 30 minutes a week. This is a shortfall of 14 hours, 15 minutes each week. Failing to implement more than half of the offered additional adult support is material and resulted in a denial of FAPE. Student prevailed on Issue 3(d).

VENTURA IMPLEMENTED STUDENT'S OCCUPATIONAL THERAPY

Student did not prove Ventura failed to implement Student's occupational therapy services from the start of the 2020-2021 school year, through April 21, 2021. Mireles continued to provide Student's occupational therapy throughout the 2020-2021 school year. Pursuant to the October 2019 and October 2020 IEPs, Student was entitled to receive 120 minutes a month of occupational therapy.

From the beginning of the school year, through November 2020, Mireles delivered occupational therapy to Student via videoconference for 30 minutes each

week on an individual basis. Mireles provided the materials Student needed during therapy sessions, including

- dry erase markers,
- sheet protectors,
- scoopers to work on scissor skills, and
- a variety of fine motor manipulatives.

Student participated well during the sessions and Mireles offered breaks when needed.

In December 2020, when Student returned to school on a hybrid schedule, Mireles provided occupational therapy in Student's classroom in a small group. In January 2021, when Ventura only provided distance learning instruction, Parents decided it was not in Student's best interest to transition back to receiving instruction through videoconference. At Mother's request, Mireles provided 30 minutes a week of asynchronous fine motor activities for Student to complete at home. In February 2021, when Ventura resumed the hybrid schedule, Mireles provided 30 minutes a week of occupational therapy, either in Student's classroom or in a separate room.

Student did not attend school in-person for most of March 2021 due to COVID-19 exposure and a family trip. At Mother's request, Mireles provided services via videoconference. Student attended school in-person from April 12, 2021, through the end of the 2020-2021 school year. During this time period, Mireles provided 30 minutes a week of occupational therapy at school.

Mireles inputted all occupational therapy services offered or provided to Student in a service log. All entries were detailed and included the date, length, and delivery model of the services, as well as what activities Mireles and Student worked on during the sessions. Student did not challenge the accuracy of Mireles's entries in the service

log and there was no other evidence in the record to dispute their accuracy. Therefore, the evidence showed Ventura offered or provided all occupational therapy Student was entitled to receive. Student did not prevail on Issue 3(e).

VENTURA IMPLEMENTED STUDENT'S SPEECH AND LANGUAGE SERVICES

Student did not prove Ventura failed to implement Student's speech and language services, from the beginning of the 2020-2021 school year, through April 21, 2021. Kelli Mora provided speech and language services to Student during the 2020-2021 school year. Pursuant to Student's October 2019 and October 2020 IEPs, Student was entitled to receive 180 minutes a month of speech and language services.

Similar to occupational therapy, Mora provided speech and language services to Student via videoconference, from September, through November 2020, while Ventura was only providing distance learning to students. During December 2020, Mora provided mostly in-person services at school, but at least one session was via videoconference. Student was absent for several sessions in January 2021 because Mother was not interested in videoconference sessions. In February 2021, when Student returned to school, Mora provided in-person services. In March 2021, Mora provided some in-person services, but Student was absent for several scheduled sessions due to COVID-19 exposure and a family trip. In April 2021, when Student returned to school full time, Mora provided services in-person.

Mora input the speech and language services offered and provided to Student into a service log. The entries included the date, length, and delivery model of the services, as well as what Mora and Student worked on during the sessions. There were some months, like in August 2020, and January 2021, where there was a 90-minute and 60-minute shortfall, respectively, in the number of services provided and the amount

owed. But there were other months, like in December 2020, and February 2021, when Mora provided 15 minutes and 30 minutes, respectively, more than Student was entitled to receive. Additionally, in November 2020, January 2021, and March 2021, Student had multiple absences. Mora was consistently available to provide Student's speech and language services and a complete review of the logs showed that Student received all, or almost all of the services owed. Student did not challenge the accuracy of Mora's entries in the logs and there was no other evidence in the record to challenge their accuracy. Therefore, the evidence showed Ventura provided substantially all the speech and language services Student was entitled to receive. Student did not prevail on Issue 3(f).

ISSUES 4(A) AND 5: DID VENTURA HAVE A DUTY TO ASSESS STUDENT DURING THE 2020-2021 SCHOOL YEAR, THROUGH APRIL 21, 2021?

In Issue 4(a), Student contends Ventura had a duty to assess Student at the beginning of the 2020-2021 school year, to determine what effect distance learning had on Student's educational needs. Specifically, Student contends Ventura should have assessed

- how distance learning and the lack of occupational therapy and speech and language services affected Student's ability to learn,
- whether Student regressed,
- whether the scores from Student's 2019 evaluations changed, and
- whether Student was ready for second grade.

Student contends that without new assessment data, Ventura could not credibly determine how to accommodate Student.

In Issue 5, Student contends Ventura should have assessed Student in preparation for the October 14, 2020 annual IEP because the change in Student's educational environment to distance learning warranted the need for a formal assessment. Further, Student's closing brief alleged for the first time that Ventura predetermined Student's offer of FAPE when it held the October 14, 2020 IEP team meeting without first assessing Student. However, the complaint did not allege, and Student did not raise at the prehearing conference, any issue related to predetermination. Ventura did not consent at any time to amending the issues for hearing. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i) [the party requesting the hearing may not raise issues at the due process hearing that were not raised in the complaint unless the other party agrees].) Therefore, this Decision will not address whether Ventura predetermined Student's offer of FAPE in the October 14, 2020 IEP.

Ventura contends no further assessments were required to determine Student's accommodations. Further, Ventura contends its October 2019 assessments of Student were appropriate and assessed in all areas of suspected disability. Finally, Ventura contends additional assessments were not required to develop Student's October 14, 2020 IEP because the IEP team had the information it needed to update Student's present levels of performance, develop new goals, and make an offer of placement and services.

Student did not prove Ventura had a duty to reassess Student at the beginning of the 2020-2021 school year, or in preparation for the October 14, 2020 IEP team meeting. Student did not prove that any of the three circumstances requiring reevaluation existed. Specifically, Student did not prove Student's educational or related service needs warranted a reevaluation, that Parents or one of Student's teachers requested a reevaluation, or that three years had passed since Student's last evaluation. Student did

not prove Ventura had a duty to assess Student solely because it implemented Student's IEP through distance learning. Similarly, Student did not prove Ventura needed to reevaluate Student to make an offer of FAPE at the October 14, 2020 IEP team meeting. The IDEA does not require school districts to reassess Students in preparation for IEP team meetings unless the three circumstances described above exist.

Several members of Student's IEP team testified Student did not require reassessment in preparation for the October 2020 IEP. Brian Godina was the school psychologist who conducted the psychoeducational portion of Student's October 2019 multidisciplinary assessment. Godina attended the October 14, 2020 IEP team meeting. In Godina's opinion, Student did not require reassessment because Ventura conducted a three-year reevaluation in 2019, and the team had enough data to make recommendations. Godina's testimony was credible and persuasive. Godina held bachelor's and master's degrees in school psychology and a credential to work as a school psychologist. Godina had personal knowledge of Student's academic and functional skills and was trained in the assessment process.

Similarly, Carey, Mireles, and Mora credibly testified they collected data regarding Student's progress on academic, occupational therapy, and speech and language goals, respectively. They used the data to update Student's present levels of performance, develop new goals, and recommend services and accommodations for Student at the October 14, 2020 IEP team meeting. Like Godina, these IEP team members had personal knowledge of Student and Student's educational needs. Therefore, their testimony was persuasive.

Because Student failed to prove Ventura had a duty to reassess Student at the start of the 2020-2021 school year, or in preparation for the October 14, 2020 IEP team meeting, Student did not prevail on Issues 4(a) or 5.

ISSUE 4(B): DID VENTURA OFFER THE ACCOMMODATIONS STUDENT REQUIRED TO RECEIVE A FAPE DURING DISTANCE LEARNING IN THE 2020-2021 SCHOOL YEAR?

Student contends Ventura failed to provide additional adult support during distance learning in the 2020-2021 school year, and that Student needed that support to receive a FAPE. Ventura contends it offered appropriate accommodations throughout distance learning.

As determined in Issue 3(d), Ventura failed to provide additional adult support during asynchronous learning throughout the 2020-2021 school year. Student's October 2019 and October 2020 IEPs required Ventura to provide additional adult support as an accommodation to support Student's behavior and academics. Failure to provide this support significantly impacted Student's ability to access special education instruction and resulted in a denial of FAPE. Student prevailed on Issue 4(b).

ISSUES 6(A), (B), (C), AND (D): DID VENTURA OFFER APPROPRIATE GOALS, SPECIALIZED ACADEMIC INSTRUCTION, RELATED SERVICES, ONE-TO-ONE AIDE SUPPORT, AND ACCOMMODATIONS IN THE OCTOBER 14, 2020 IEP?

Student contends the October 14, 2020 IEP was not reasonably calculated to enable Student to receive educational benefit as a result of Ventura's failure to reassess

Student. Specifically, Student contends the goals developed could not be implemented during distance learning, and that Ventura offered insufficient

- specialized academic instruction,
- occupational therapy,
- speech and language services,
- behavioral services, one-to-one aide support, and
- accommodations.

Ventura contends the October 14, 2020 IEP offered appropriate goals, services, and accommodations.

An IEP describes a student's needs, and academic and functional goals related to those needs. It also provides a statement of the special education, related services, and program modifications and accommodations that will be provided for the student to:

- advance in attaining the goals,
- make progress in the general education curriculum, and
- participate in education with disabled and nondisabled peers. (20 U.S.C. §§1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

The IEP must show a direct relationship between the present levels of performance, the goals, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

The student's needs must be described through a statement of present levels of academic achievement and functional performance, including how the student's disability affects the 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).) The goals must be measurable and designed to meet the student's needs so that the student can be involved in and make progress in the general education curriculum, and meet each of the other educational

needs. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i).) The IEP must also describe how progress towards the goals developed will be measured and reported. (20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3).) Annual goals should describe what a student with a disability can reasonably be expected to accomplish within a 12-month period of the special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); *Notice of Interpretation*, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to constitute a FAPE under the IDEA, it must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with educational benefit appropriate in light of the student's circumstances, in the least restrictive environment. (*Ibid.*; *Endrew F.*, *supra*, 580 U.S. ____ [137 S.Ct. at p. 1000].)

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

Student did not prove the October 14, 2020 IEP failed to offer Student a FAPE. Due to COVID-19, Ventura held Student's annual IEP via videoconference on October 14, 2020. Mother, Portera, Godina, Mireles, Mora, and Carey attended the meeting. Student continued to qualify for special education as a student with an intellectual disability and a speech or language impairment.

THE IEP TEAM DEVELOPED APPROPRIATE PRESENT LEVELS AND GOALS

The team updated Student's present levels of performance and developed new goals. Carey updated the academic and social emotional/behavioral present levels based on observations of Student during distance learning. Mireles updated the motor abilities present level based on a combination of observations, review of work samples, and collaboration with Mother and Carey. Mora updated the communication present level based on working with Student and collaborating with Student's previous speech pathologist. The present levels described Student's current academic and functional performance and discussed how Student's delayed language and motor skills impacted access to the general education environment. The present levels were appropriate.

The team developed nine annual goals. Carey assisted in the development of Student's math, reading, and writing goals. The math goal focused on basic subtraction, the two reading goals focused on answering "wh" questions and continued development of sight words, and the writing goal focused on writing a three-word sentence. These goals were based on Student's current abilities and academic needs. Carey could measure progress through observation and work samples. Carey could implement the reading and math goals through distance learning; however, the writing goal was more difficult to implement because Carey could not give hand-over-hand assistance if needed. Mora proposed two new speech and language goals in

sequencing pictures and retelling the sequence; and producing initial /s/ blend words. Mora proposed these goals based on Student's current abilities and needs in language development. Mora could measure the progress on the goals through observation. Mora could implement the goals during distance, hybrid, or in-person learning.

Mireles proposed two new motor skills goals in copying letters with motor control and typing a three-word sentence. These goals related to Student's writing goals and were based on Student's current handwriting and typing abilities and needs. In proposing these goals, Mireles measured Student's progress on previous goals and collaborated with Mother. Mireles could measure the goals through observation and work samples. Mireles could implement the goals during distance learning. Student's social emotional goal remained the same because Student's behavioral needs had not changed. Student did not prove this goal was inappropriate. There was a direct relationship between Student's present levels of performance and the goals the team developed. Therefore, the goals were appropriate, and Student did not prevail on Issue 6(a).

THE IEP TEAM OFFERED APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION, RELATED SERVICES, AND ADULT SUPPORT

The team reviewed Student's placement and related services with Mother. The team did not recommend any changes to Student's specialized academic instruction, occupational therapy, speech and language services, or additional adult support. The team continued to recommend the following:

- 420 minutes a week of specialized academic instruction in English language arts and math;
- 180 minutes a month of speech and language services;

- 120 minutes a month of occupational therapy; and
- additional adult support all day to support Student's behavior and academics.

The team recommended the same level of services as in Student's October 2019 IEP because Student was making progress towards the goals. Carey, Mora, and Mireles credibly testified Student made progress on the October 2019 goals. Student's progress report issued before schools closed in March 2020, showed Student made progress in all goal areas. The present levels of performance in the October 2020 IEP also showed Student was making progress. Mother disagreed. In Mother's opinion, Student showed skill regression by the beginning of the 2020-2021 school year. For example, Student lost sight words, stopped pronouncing ending sounds of words, and had a weakened pencil grasp. Mother's testimony was credible but not as persuasive as the Ventura service providers because the documentary evidence supported their opinions.

The offered

- specialized academic instruction,
- occupational therapy,
- speech and language services, and
- adult support

had a direct connection to Student's present levels of performance and the proposed annual goals. The services were designed to meet Student's academic and functional needs and were reasonably calculated to provide Student with educational benefit in light of Student's circumstances. Therefore, Student did not prevail on Issues 6(b), (c), and (d).

THE IEP TEAM OFFERED APPROPRIATE ACCOMMODATIONS

In addition to the IDEA's accommodation requirements, the new California law requires a local educational agency to include accommodations necessary to ensure a student's IEP can be implemented through distance learning. (Ed. Code, § 43503, subd. (b).)

Student did not prove Ventura failed to offer Student appropriate accommodations. The October 14, 2020 IEP included 25 accommodations for Student and staff to utilize during instruction. The accommodations were identical to those in the October 2019 IEP, except that Mireles removed adaptive scissors because Student no longer required them. Baarstad credibly testified the accommodations were appropriate and used as needed. Ventura's service providers sent many of the materials on the accommodations list home so that Student could use them during instruction.

Materials sent home included

- pencil grips,
- adaptive writing tools,
- hands-on manipulatives,
- fidget objects,
- highlighters, and
- picture supports.

Other accommodations, like verbal feedback, visual prompts, and single directions, were used by Ventura's service providers.

The October 14, 2020 IEP included an extensive list of accommodations. The accommodations were based on Student's needs and offered to help Student access the curriculum and make progress towards the IEP goals. Student did not offer any

evidence that showed the accommodations were inappropriate or not offered for the purpose of helping Student participate in distance learning. Therefore, Student did not prevail on Issue 6(e).

ISSUE 7: DID VENTURA DENY STUDENT A FAPE, FROM MARCH 16, 2020, THROUGH APRIL 21, 2021, BY FAILING TO ADDRESS THE REGRESSION STUDENT SUFFERED AS A RESULT OF DISTANCE LEARNING?

Student contends Student regressed academically, socially, and therapeutically since schools closed in March 2020, and that Ventura should provide compensatory education to address the regression. Ventura contends Student did not suffer regression during distance learning and that any learning loss was remediated by implementation of the October 14, 2020 IEP. Alternatively, Ventura contends the issue of Student's regression is not yet ripe for hearing because pursuant to the United States Department of Education's guidance, Ventura had not resumed normal school operations as of April 21, 2021.

On March 12, 2020, OSERS issued guidance that IEP teams would be required to make an individualized determination as to whether compensatory services were needed to make up for any skills that may have been lost during school closure due to the COVID-19 pandemic. (Office of Special Education and Rehabilitative Services, Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, Answer to Questions A-1, A-2, and A-3 (March 12, 2020).) OSERS reiterated this in additional guidance on March 16, 2020. (Office of Special Education and Rehabilitative Services, Fact Sheet Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students (March 16, 2020).)

On March 20, 2020, CDE issued guidance that stated: “[o]nce the regular school session resumes, local educational agencies should plan to make individualized determinations, in collaboration with the IEP team, regarding whether or not compensatory services may be needed for a student.” (Cal. Dept. of Educ., Special Education Guidance for COVID-19, COVID-19 School Closures and Services to Students with Disabilities, Answer to Question 3 (March 20, 2020).) On March 21, 2020, OSERS issued further guidance that stated:

[w]here, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services ... IEP teams ... must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.” (Office of Special Education and Rehabilitative Services, Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities, pp. 2-3 (March 21, 2020).)

This issue is not yet ripe for hearing. As of April 21, 2021, when Student filed its complaint, Ventura had not fully resumed its regular school operations. Student began attending school on a full-time basis on or around April 12, 2021, but it was in a cohort model where students from different cohorts were not allowed to interact with each other. Ventura is scheduled to resume regular school operations for the 2021-2022 school year. Therefore, this Decision does not address whether the IEP team has a duty to determine whether Student is owed compensatory education, and if so, what amount of compensatory education Student is owed.

To the extent that this Decision awards Student compensatory education, such award is to compensate Student for a denial of FAPE, as determined in this Decision, and must not be substituted for any compensatory services Student's IEP team determines Student is owed as a result of any learning loss Student experienced as a result of the COVID-19 pandemic. Accordingly, Issue 7 will not be decided and neither party prevailed on the issue.

CONCLUSIONS AND PREVAILING PARTY

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

Issue 1(a): Ventura did not deny Student a FAPE, from March 16, 2020, through the end of the 2019-2020 school year, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing in-person placement and services. Ventura prevailed on Issue 1(a).

Issue 1(b): Ventura did not deny Student a FAPE, from March 16, 2020, through the end of the 2019-2020 school year, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing general education mainstreaming. Ventura prevailed on Issue 1(b).

Issue 1(c): Ventura denied Student a FAPE, from March 16, 2020, through the end of the 2019-2020 school year, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing specialized academic instruction. Student prevailed on Issue 1(c).

Issue 1(d): Ventura denied Student a FAPE, from March 16, 2020, through the end of the 2019-2020 school year, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing additional adult support. Student prevailed on Issue 1(d).

Issue 1(e): Ventura did not deny Student a FAPE, from March 16, 2020, through the end of the 2019-2020 school year, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing occupational therapy. Ventura prevailed on Issue 1(e).

Issue 1(f): Ventura denied Student a FAPE, from March 16, 2020, through the end of the 2019-2020 school year, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing speech and language services. Student prevailed on Issue 1(f).

Issue 2(a): Ventura did not deny Student a FAPE, from March 16, 2020, through the end of the 2019-2020 school year, by assigning Student to distance learning without conducting an assessment to determine what accommodations Student needed to access distance learning. Ventura prevailed on Issue 2(a).

Issue 2(b): Ventura denied Student a FAPE, from March 16, 2020, through the end of the 2019-2020 school year, by assigning Student to distance learning without offering accommodations to ensure Student received a FAPE through distance learning. Student prevailed on Issue 2(b).

Issue 3(a): Ventura did not deny Student a FAPE, during the 2020-2021 school year, through April 21, 2021, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing in-person placement and services. Ventura prevailed on Issue 3(a).

Issue 3(b): Ventura did not deny Student a FAPE, during the 2020-2021 school year, through April 21, 2021, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing general education mainstreaming. Ventura prevailed on Issue 3(b).

Issue 3(c): Ventura did not deny Student a FAPE, during the 2020-2021 school year, through April 21, 2021, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing specialized academic instruction. Ventura prevailed on Issue 3(c).

Issue 3(d): Ventura denied Student a FAPE, during the 2020-2021 school year, through April 21, 2021, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing additional adult support. Student prevailed on Issue 3(d).

Issue 3(e): Ventura did not deny Student a FAPE, during the 2020-2021 school year, through April 21, 2021, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing occupational therapy. Ventura prevailed on Issue 3(e).

Issue 3(f): Ventura did not deny Student a FAPE, during the 2020-2021 school year, through April 21, 2021, by failing to implement Student's IEP, and specifically, by assigning Student to distance learning and not providing speech and language services. Ventura prevailed on Issue 3(f).

Issue 4(a): Ventura did not deny Student a FAPE during the 2020-2021 school year, through April 21, 2021, by assigning Student to distance learning without conducting an assessment to determine what accommodations Student needed to access distance learning. Ventura prevailed on Issue 4(a).

Issue 4(b): Ventura denied Student a FAPE during the 2020-2021 school year, through April 21, 2021, by assigning Student to distance learning without offering accommodations to ensure Student received a FAPE through distance learning. Student prevailed on Issue 4(b).

Issue 5: Ventura did not deny Student a FAPE by failing to appropriately assess Student in all areas of suspected disability, specifically, academics, behavior, speech and language, and occupational therapy, before the annual IEP team meeting held on October 14, 2020. Ventura prevailed on Issue 5.

Issue 6(a): Ventura did not deny Student a FAPE in the October 14, 2020 IEP, by failing to offer appropriate goals in the areas of math, reading, writing, social emotional, language communication, and motor skills development. Ventura prevailed on Issue 6(a).

Issue 6(b): Ventura did not deny Student a FAPE in the October 14, 2020 IEP, by failing to offer appropriate specialized academic instruction. Ventura prevailed on Issue 6(b).

Issue 6(c): Ventura did not deny Student a FAPE in the October 14, 2020 IEP, by failing to offer appropriate related services, including speech and language, occupational therapy, and behavioral services. Ventura prevailed on Issue 6(c).

Issue 6(d): Ventura did not deny Student a FAPE in the October 14, 2020 IEP, by failing to offer a full-time one-to-one aide. Ventura prevailed on Issue 6(d).

Issue 6(e): Ventura did not deny Student a FAPE in the October 14, 2020 IEP, by failing to offer appropriate accommodations. Ventura prevailed on Issue 6(e).

Issue 7: The issue of whether Ventura denied Student a FAPE, from March 16, 2020, through April 21, 2021, by failing to address the regression Student suffered as a result of being assigned to distance learning, is not ripe for hearing. Neither party prevailed on Issue 7.

REMEDIES

Student prevailed on Issues 1(c), 1(d), 1(f), 2(b), 3(d), and 4(b), and is entitled to a remedy for the denial of FAPE.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359.) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process case. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

In remedying a FAPE denial, the student is entitled to relief that is appropriate in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3).) Appropriate relief means relief designed to ensure that the student is appropriately educated within the meaning of the IDEA. (Student W. v. Puyallup School Dist. (9th Cir. 1994) 31 F.3d 1489, 1497.) The award must be fact-specific and be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. (Reid ex rel. Reid v. District of Columbia (D.C. Cir. 2005) 401 F.3d 516, 524.)

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (Puyallup, *supra*, at p. 1496.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (Brennan v. Regional School Dist. No. 1 (D.Conn. 2008) 531 F.Supp.2d 245, 265; Orange Unified School Dist. v. C.K. (C.D.Cal. June 4, 2012, No. SACV 11-1253 JVS(MLGx)) 2012 WL 2478389, *12.) An award of compensatory education need not provide a day-for-day compensation. (Puyallup, *supra*, at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (Id. at p. 1496.)

As compensatory education for services not provided during the 2019-2020 school year, Student requests 58 hours of specialized academic instruction, approximately 238 hours of one-to-one paraeducator support, 20 hours of direct occupational therapy, and approximately 22 hours of speech and language services. As compensatory education for services not provided during the 2020-2021 school year, Student requests 245 hours of specialized academic instruction, approximately 830 hours of one-to-one paraeducator support, 70 hours of direct occupational therapy,

approximately 76 hours of speech and language services, and 819 hours of general education instruction. Student also requests an Order that Ventura conduct a new assessment of Student and make a new offer of FAPE. Student's calculations incorrectly assume Ventura did not implement any of Student's special education or related services.

Student did not offer any expert testimony regarding the type or amount of compensatory services Student required to catch up to where he would have been absent a denial of FAPE. Parents testified generally about what they believed Student needed to get ready for third grade. In Mother's opinion, it would take Student one to two years to make up for the learning loss experienced. Most important to Mother was for Student to receive consistent support from a one-to-one paraprofessional. In Father's opinion, Student requires speech therapy, occupational therapy, and academic tutoring to catch up.

This Decision finds that from April 13, 2020, through the end of the 2019-2020 school year, Ventura failed to provide approximately 45 hours of specialized academic instruction and six hours of speech and language services to Student. For the same time period, Ventura failed to provide at least 45 hours of adult support because Student was entitled to receive adult support during the 45 hours of specialized academic instruction Ventura failed to provide.

This Decision also finds that from the start of the 2020-2021 school year, on August 18, 2020, through April 21, 2021, Ventura failed to provide additional adult support during all asynchronous instructional times. As discussed in Issue 3(d), Student did not receive approximately 12 hours, 45 minutes of additional adult support each week from August 18, 2020, through December 4, 2020, and in January 2021, during

distance learning. Also, as discussed in Issue 3(d), Student did not receive approximately 14 hours, 15 minutes of additional adult support each week in December 2020, February 2021, and March 2021, during hybrid learning.

Relying on Ventura's 2020-2021 school calendar, as well as Carey's and Baarstad's service log entries, Student spent approximately 17 weeks in distance learning and 10 weeks in hybrid learning. The calculations do not include school holidays or breaks, or other non-instructional days. Accordingly, Ventura failed to provide approximately 217 hours of adult support during distance learning and approximately 142 hours during hybrid learning, for a total of 359 hours.

Several factors must be considered when awarding compensatory relief, including the conduct of both parties and whether the relief granted is reasonably calculated to achieve the educational benefit Student would have received had Ventura implemented the specialized academic instruction, speech and language services, and additional adult support Student was entitled to. There was no evidence Ventura acted in bad faith when it failed to implement Student's services. Ventura, like many other school districts in California, was faced with changing its instructional model almost overnight. Nevertheless, Ventura still had an obligation to implement Student's IEP to the greatest extent feasible. This Decision finds it fell significantly short of that obligation.

Accordingly, as a result of Ventura's failure to implement Student's IEP during the 2019-2020 school year, Student is awarded six hours of speech and language services, 45 hours of specialized academic instruction, and 45 hours of individual behavioral and/or academic support. As a result of Ventura's failure to implement Student's IEP

during the 2020-2021 school year, Student is awarded 359 hours of individual behavioral and/or academic support. In total, Student is awarded 455 hours of educationally related compensatory services.

ORDER

1. Within 45 days of this Order, Ventura must establish a contract with a certified nonpublic agency or agencies of Parents' choice, to directly fund 455 hours of educationally related compensatory services. At Parents' discretion, the services may be used for speech and language therapy, academic instruction, and/or behavioral support for Student. Within 15 days of this Order, Ventura must send Parents a list of certified nonpublic agencies in Ventura County that can provide the services described herein.
2. The 455 hours are compensatory services, awarded to make up for Ventura's denial of FAPE. Ventura cannot use the compensatory services to replace any services Student requires to receive a FAPE, or any additional compensatory services the IEP team determines Student requires to make up for the learning loss caused by the COVID-19 pandemic.
3. Once a contract is established with a certified nonpublic agency or agencies, Parents must coordinate the dates, times, and location of the educationally related services directly with the selected agency. The services may be provided at home, school, or another location determined by the nonpublic agency and Parents.

4. Student has until December 31, 2024, to use the services. Any services not used by that date will be forfeited.
5. All other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

/s/

Tara Doss

Administrative Law Judge

Office of Administrative Hearings