

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021120214

PARENTS ON BEHALF OF STUDENT,

v.

MONROVIA UNIFIED SCHOOL DISTRICT.

DECISION

December 30, 2022

On December 6, 2021, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Monrovia Unified School District. On April 8, 2022, OAH granted Student's motion to amend his complaint, and on May 6, 2022, the parties' joint request for continuance. Administrative Law Judge Cararea Lucier heard this matter by videoconference on

August 30 and 31, September 1, 6, 26, 27, 28, and 29, October 18, 19, 20, 21, 25, 26, and 27, 2022, and in person at the OAH Regional Office in Los Angeles, California on October 17, 2022.

Rhonda Krietemeyer, Matthew Zerby, and Cordelia Martinez represented Parents and Student. Mother attended all hearing days on Student's behalf. Father attended all hearing days on Student's behalf except for October 19, 2022.

Vivian Billups Randolph represented Monrovia Unified School District. Jennifer Johnson, Director of Special Education, attended hearing days on Monrovia's behalf on August 30, 31, and September 1, 2022. Megan Esquer, Assistant Principal at Santa Fe Computer Science Magnet School, attended hearing days on Monrovia's behalf on September 6, 26, and 27, 2022. A. Tod Overton, Program Specialist, attended hearing days on Monrovia's behalf on September 28, 29, and October 17, 18, 20, 21, and 26, 2022. Kimberly Cabrera, Director of Student Support Services, attended a hearing day on Monrovia's behalf on October 19, 2022. Vonni Cummings, Program Specialist, attended hearing days on Monrovia's behalf on October 25 and 27, 2022.

OAH provided a qualified Spanish-language interpreter on all days through Interpreters Unlimited and a Communication Access Realtime Translation, referred to as CART, interpreter on October 26 and 27, 2022, through eCaptions.

The matter was continued to December 5, 2022, for written closing briefs. Both parties timely filed written briefs. The record was closed, and the matter submitted on December 5, 2022.

On December 6, 2022, Student filed a corrected closing brief. This document was not timely submitted and was not reviewed or considered as part of this Decision.

ISSUES

1. From December 6, 2019, through September 6, 2021, did Monrovia Unified School District fail to appropriately assess Student in all areas of suspected disability, including but not limited to:
 - a. social-emotional functioning, including educationally related mental health service needs;
 - b. psychoeducational functioning;
 - c. speech and language;
 - d. health needs;
 - e. occupational therapy;
 - f. assistive technology;
 - g. behavior; or
 - h. auditory processing?
2. From December 6, 2019, through September 6, 2021, did Monrovia deny Student a free appropriate public education, referred to as FAPE, by failing to adequately address Student's learning disability in reading and writing, including but not limited to providing appropriate services, goals, and accommodations?
3. From December 6, 2019, through September 6, 2021, did Monrovia deny Student a FAPE by failing to provide appropriate services, goals, and accommodations for mathematics?

4. From December 6, 2019, through September 6, 2021, did Monrovia deny Student a FAPE by failing to provide appropriate behavioral and social-emotional services, goals, or accommodations to address Student's mental health needs, including those caused by bullying?
5. From December 6, 2019, through September 6, 2021, did Monrovia fail to provide appropriate speech and language, including but not limited to services, goals, and accommodations?
6. From December 6, 2019, through September 6, 2021, did Monrovia fail to provide appropriate occupational therapy, including but not limited to services, goals, and accommodations?
7. From December 6, 2019, through September 6, 2021, did Monrovia fail to provide appropriate assistive technology, including but not limited to services, goals, and accommodations?
8. From December 6, 2019, through September 6, 2021, did Monrovia deny Student a FAPE by failing to address Student's social skills needs?
9. From December 6, 2019, through September 6, 2021, did Monrovia deny Student a FAPE by failing to draft a health services plan or have a school nurse attend his IEP team meetings?
10. From December 6, 2019, through September 6, 2021, did Monrovia deny Student a FAPE by failing to provide transportation services to and from his school of attendance as a related service?

11. From March 13, 2020, through July 31, 2021, did Monrovia deny Student a FAPE during the period of distance learning by failing to:
 - a) Implement his individualized education program, referred to as an IEP, services;
 - b) Conduct a triennial assessment;
 - c) Provide assistive technology so that Student could access distance learning; or
 - d) Adjust Student's IEP services, goals, and accommodation?
12. From September 7, 2021, through August 26, 2022, did Monrovia fail to coordinate with the California Virtual Academy as necessary and as expeditiously as possible, as required under California Education Code section 56320, subdivision (i) and 20 United States Code section 1414(b)(3)(D), in providing assessment records and protocols, thereby denying Student a FAPE and denying his parents meaningful participation in the planning of Student's educational program?
13. From December 6, 2019, through August 29, 2022, did Monrovia deny Parents meaningful participation by:
 - a. notifying Parents that they would take action against Parents if they did not withdraw their due process complaint;
 - b. failing, from December 6, 2019, through September 6, 2021, to completely translate Student's IEPs and assessment reports into Spanish; and
 - c. failing to provide prior written notices for Parents' requests?

Issue 13 was corrected to reflect the issue pled in Student's amended complaint, as raised by Student's September 6, 2022 motion to add or reinstate issues, and October 20, 2022 motion to correct Issue 13, which were both granted on the record.

The issues have been re-numbered but otherwise remain written as pled. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as the IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

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 (2006).) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. § 300.501.)

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. 386 [137 S.Ct. 988, 1000].)

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

Student, 14-years-old at the time of hearing, resided within Monrovia Unified School District with his Parents at all times relevant to this matter. On August 24, 2021, Parents disenrolled Student from Monrovia. From August 25, 2021, through September 6, 2021, Student resided within Monrovia but was not enrolled in any local educational

agency. On or around September 7, 2021, he began attending K12 California Virtual Academy, referred to as CAVA, a charter school not affiliated with Monrovia. Throughout the period in controversy, Student qualified for special education and related services under the eligibility categories of specific learning disability and speech or language impairment.

ASSESSMENTS: ISSUES 1 AND 11(b)

ISSUE 1: FROM DECEMBER 6, 2019, THROUGH SEPTEMBER 6, 2021, DID MONROVIA UNIFIED SCHOOL DISTRICT FAIL TO APPROPRIATELY ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY, INCLUDING BUT NOT LIMITED TO: SOCIAL-EMOTIONAL FUNCTIONING, INCLUDING EDUCATIONALLY RELATED MENTAL HEALTH SERVICE NEEDS; PSYCHOEDUCATIONAL FUNCTIONING; SPEECH AND LANGUAGE; HEALTH NEEDS; OCCUPATIONAL THERAPY; ASSISTIVE TECHNOLOGY; BEHAVIOR; OR AUDITORY PROCESSING?

ISSUE 11(b): FROM MARCH 13, 2020, THROUGH JULY 31, 2021, DID MONROVIA DENY STUDENT A FAPE DURING THE PERIOD OF DISTANCE LEARNING BY FAILING TO CONDUCT A TRIENNIAL ASSESSMENT?

Student contends that Monrovia abandoned its obligations under the IDEA to assess Student and failed to complete triennial assessments of Student. Additionally,

Student contends that his lack of progress, Parents' concerns, and letters from Student's private therapists triggered Monrovia's obligation to assess him throughout the time period in controversy. Student argues that Monrovia failed to conduct a comprehensive social-emotional evaluation in February 2020.

Monrovia contends that circumstances did not trigger the need for assessments before triennial reviews. Monrovia also contends that Mother only requested a social emotional assessment, which it conducted. Monrovia contends that it timely began Student's triennial assessments but paused the testing process at Parents' request during a surge of Covid-19 cases.

A school district must ensure that a child is assessed in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code § 56320, subd. (f).) The assessment must be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the child is classified. (34 C.F.R. § 300.304(c)(6).) A student's unique educational needs are to be broadly construed to include

- academic,
- social,
- health,
- emotional,
- communicative,
- physical, and
- vocational needs. (*Seattle School Dist., No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1501, reversed in part on other grounds by *Schaffer, supra*, 546 U.S. at pp. 56-58.)

A disability is "suspected," and a student must be assessed, when the district is on notice that the student has shown symptoms of that particular disability or disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1119, cert. den. (Apr. 17, 2017) 137 S.Ct. 1578.) Notice may come in the form of concerns expressed by parents about the student's symptoms, opinions expressed by informed outside experts, or other less formal indicators, such as the student's behavior. (*Id.* at pp. 1120-1121 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796 and *N.B., supra*, 541 F.3d at 1202.]) The threshold for suspecting that a child has a disability is relatively low. (*Dept. of Educ. v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp.2d. 1190, 1195.)

Once a school district is on notice that a student may have a qualifying disability, it must formally assess the student in all areas of the disability "using the thorough and reliable procedures specified in the [IDEA]." (*Timothy O., supra*, 822 F.3d 1105, 1119.) "A school district cannot disregard a non-frivolous suspicion of which it becomes aware simply because of the subjective views of its staff, nor can it dispel this suspicion through informal observation." (*Id.* at p.1121.)

A school district must reassess each eligible student at least once every three years unless the parent and the district agree, in writing, that a reassessment is unnecessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) This is commonly referred to as a triennial assessment. A school district may not assess a student more frequently than once a year unless the parent and the district agree otherwise. (*Id.*) The school district must complete the triennial assessment and hold an IEP team meeting within 60 days of receiving parental consent, exclusive of

school vacations in excess of five school days and other specified days. (20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c); Ed. Code, §§ 56043, subd. (f)(1), 56302.1, subd. (a), & 56344, subd. (a).)

The U.S. Department of Education did not waive legal requirements relating to triennial assessments during school closures for Covid-19 and distance learning. (California Department of Education Special Education Guidance for Covid-19, September 30, 2020.) California enacted emergency legislation in Statutes 2020, chapter 3, section 8, effective March 17, 2020, that suspended timelines regarding the commencement of the assessment process in developing an assessment plan in Education Code section 56043, subdivision (a), and section 56321, subdivision (a), while a student's school was closed. This exception lasted only through July 1, 2020, pursuant to Statutes 2020, chapter 110, section 56. However, while California provided school districts with protection regarding the start of the assessment process as to developing and presenting parents with an assessment plan, California law made no changes to Education Code section 56043, subdivision (c), which governs the timeline for school districts to complete the assessment after parents' consent and to present the assessment findings at an IEP team meeting.

The United States Supreme Court noted that "[a]n IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." (Endrew F. v. Douglas County School Dist. RE-1 (2017) 580 U.S. 386 [137 S.Ct. 988, 999.]) The failure to obtain critical assessment information about a student "render[s] the accomplishment of the IDEA's

goals - and the achievement of a FAPE - impossible." (N.B. v. Hellgate Elementary School Dist. (9th Cir. 2008) 541 F.3d 1202, 1210 [quoting *Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 894].) "School districts cannot circumvent [their assessment] responsibility by way of informal observations." (Id. at p. 1119; see *S. P. by and through Palacios v. East Whittier City School Dist.* (9th Cir. 2018) 735 Fed.Appx. 320 [an auditory skills assessment that consisted solely of observation and record review was insufficient to satisfy district's evaluation obligation].)

In analyzing a failure to assess claim, the actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability constitutes a procedural violation that may result in a substantive denial of FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032-1033; *Timothy O., supra*, 822 F.3d 1105, 1118.) A procedural error results in a denial of a FAPE only if the violation:

- impeded the student's right to a FAPE;
- significantly impeded the parent's opportunity to participate in the decision-making process; or

- caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subds. (f)(2) & (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484, superseded on other grounds by statute; *L.M. v. Capistrano Unified School Dist.* (9th Cir. 2009) 556 F.3d 900, 910.)

In California, the term "assessment" has the same meaning as the term "evaluation" in the IDEA. (Ed. Code, § 56302.5.) These terms are used interchangeably in this Decision. The term "educationally related mental health services," also sometimes referred to as ERMHS, is not defined by law. This Decision uses the terms "educationally related mental health services assessment" and "mental health assessment" interchangeably.

FROM DECEMBER 6, 2019, THROUGH SEPTEMBER 6, 2021, MONROVIA FAILED TO ASSESS STUDENT IN THE AREAS OF SOCIAL-EMOTIONAL FUNCTIONING AND MENTAL HEALTH.

Student contends that his educational history is relevant to the issues in this matter because it shows Monrovia had long-standing knowledge of Student's disabilities and educational needs throughout the time-period at issue. Student argues that Monrovia's failure to educate Student was so egregious that it left him functionally illiterate and scarred with trauma.

Student was diagnosed with autism on June 20, 2011, shortly before his third birthday. Monrovia conducted an initial assessment of Student in November and December of 2011. Student presented as shy, friendly, and compliant. On December 18, 2011, Monrovia found Student eligible for special education and related services under

the category of speech or language impairment. Student then attended a Monrovia special education preschool program at Canyon Early Learning Center for the 2011-2012, 2012-2013, and 2013-2014 school years.

Student attended a special day class at Mayflower Elementary School for his kindergarten through fourth-grade years. Student made slow progress academically in elementary school at Mayflower. Additionally, when Student was in second grade, Mother began telling his IEP team that she was concerned about Student having anxiety. However, teachers and staff did not see Student as displaying signs of anxiety at school. He was happy to come to school and enjoyed his classes. Speech Pathologist Melissa Stenzel was aware Student was diagnosed with autism but did not observe Student displaying behaviors typically associated with autism.

On December 13, 2017, Mother provided the IEP team with a letter from Student's private therapist, Pacific Clinics. They informed Monrovia that Student had been receiving services since November 23, 2015, his first-grade year. He attended family therapy for one hour per week. Student's private therapist described Student as making minimal progress, being forgetful, and needing constant redirection. Parent also told the IEP team that she was concerned that Student's participation in general education mathematics was making him anxious.

During Student's fourth-grade year, Parents reported to Monrovia that Student's teacher bullied and mistreated him by grabbing his face to force him to make eye contact with her. Monrovia's staff are mandated reporters. As such, they contacted the police and Child Protective Services to conduct investigations of the teacher. Monrovia asserts that the result of the investigation revealed the claims were

unfounded. Parents admitted to the police that Mother falsely accused the teacher of bullying Student. Mother told the police she made up the story to get help for her child and the attention of the school district. The superintendent met with Mother and told her it was discouraging to staff that she made false allegations and that she should come to them if she needed help for Student.

Parents also felt Student was bullied by peers at Mayflower. In April 2019, Student was involved in an altercation with peers that became highly significant to Student and Parents. Student reported to the school nurse that two boys had jumped him, grabbed him by the neck and slapped him over the right eye area five times. The school nurse did not discern any marks from this event. She gave him water and allowed him to rest.

Upon picking Student up from school, Parents took Student to the hospital emergency department because they perceived him as scared and in pain. Parents told the emergency department doctor that Student was assaulted at school. Parents told the doctors that multiple students put Student in a choke hold and hit and kicked him in his head, arms, and legs. Parents told the doctors this was not the first time such an assault had happened and asked to speak to a social worker. Medical examination and x-rays did not show any damage to Student's bones or muscles. At hearing, several of Mother's statements about this incident were contradicted by the medical records. Mother did not report this event to the police because she believed the other boys involved were from families associated with gangs.

Parents described this event as bullying. Monrovia investigated the incident. In Monrovia's view, on the day of the event, Student was involved in a fight with two other boys at the Boys and Girls Club afterschool program at Mayflower. They did not believe the event met the criteria for bullying, although school administrators were aware of the event and decided to monitor the boys in the future. The event at Mayflower was extremely alarming to Student and Parents, and a subject upon which Student ruminated extensively.

At an IEP team meeting on May 9, 2019, Mother raised numerous concerns. She believed Student's autism was impacting his education and that his eligibility category should be changed to autism. She told the IEP team that Student did not recognize danger, forgot what he learned, worried, and did not achieve what he wanted to learn. She reported that he was intimidated by talking to other people, could not eat at the cafeteria, was stressed because he could not learn, was bullied, and that he lost self-confidence and self-esteem.

The IEP team saw a different picture of Student at school. They told Mother that Student was almost always happy at school. He ate at the cafeteria without problem. Student enjoyed working with peers and stated that he liked school and had friends. Student did not show signs of anxiety at school.

On August 8, 2019, prior to the beginning of his fifth-grade year, Mother requested an intra-district transfer from Mayflower Elementary School to Wildrose Elementary School. She prepared the request using a Spanish-language form, Mother's native language.

Mother included a written explanation for her request stating she believed Student had been bullied at school for the prior two school years. She insisted Monrovia should prioritize Student's transfer out of Mayflower under California laws applying to students who had been bullied on school sites. Monrovia approved the intra-district transfer.

Mother asked Student's private therapist at the time, Pacific Clinics, to write a letter to Wild Rose about his therapy, treatment, and need for accommodations. Katima Lindsey, School Psychologist at Wild Rose, reviewed the letter from Pacific Clinic dated September 13, 2019. The letter included information that he was diagnosed with acute post-traumatic stress disorder, referred to as PTSD. Ms. Lindsey did not contact Pacific Clinics to discuss the letter. She did not see any evidence of previous trauma impacting Student at Wild Rose.

On September 24, 2019, Monrovia convened an annual IEP team meeting for Student. Parent shared many concerns with the IEP team. She was worried that Student might refuse to come to school at Wild Rose because of his previous experiences at Mayflower. She was concerned that Student was anxious and would become lost at school or hide in a bathroom. She shared that he was diagnosed with attention deficit hyperactivity disorder, or ADHD, autism, acute PTSD, gastritis, and asthma. She believed Student required substantial supports at school. She told the IEP team that Student was bullied at Mayflower and it still affected him. She requested school-based counseling for Student. Monrovia offered to conduct a social-emotional assessment of Student to determine if he required school-based counseling. Mother agreed.

Katima Lindsey, School Psychologist, conducted the social-emotional evaluation of Student solely to determine Student's need for school-based counseling. Ms. Lindsey reviewed some of Student's educational records, observed Student in his mild moderate special day class and at recess, interviewed Student, Mother, and his teacher, Ms. Joanna Prather, and administered the Behavior Assessment System for Children, 3rd edition, referred to as the BASC-3.

Ms. Prather and Mother expressed numerous concerns in their interviews, which Monrovia did not adequately probe in its social-emotional evaluation. For example, Ms. Prather reported that Student had a hard time paying attention in class, became frustrated, gave up quickly, and could shut down. Mother reported that Student

- frustrated easily,
- paced the floor,
- chewed his nails,
- could not fall asleep without his Mother,
- did not like loud noises,
- needed reminders, and
- did not focus or remember information.

She believed he had been bullied at Mayflower, which she said impacted his learning ability. She stated that at home he would become anxious and put bags on his face. Mother was extremely concerned for Student and sought to take good care of him. She reported that she worried and hugged him a lot.

Ms. Prather and Mother both completed the BASC-3 rating scale, which identified some areas of social-emotional concern for Student. Both raters found his behavior to be clinically significant in the area of attention problems and flagged potential issues in the areas of hyperactivity and depression. Student displayed several symptoms of depression at school, including being sad sometimes and discussing what happened at Mayflower.

Student's expert witnesses persuasively demonstrated that Monrovia failed to appropriately assess Student in the areas of social-emotional and mental health. They took a dim view of Ms. Lindsey's assessment. Dr. Scott Larson found the assessment insufficient in that Ms. Lindsey failed to administer testing instruments to solicit information directly from Student about his experiences at school. Dr. Caroline Bailey opined that Monrovia failed to assess for 20 symptoms of PTSD or the extent of Student's alleged trauma related to the incidents at Mayflower. She believed that the interplay between Student's autism and trauma might have led him to disassociate and not pay attention at school.

Dr. Bailey also opined that Student was dyslexic, which Monrovia should have identified but failed to do so. She believed the assessment should have considered the link between dyslexia and social-emotional health. Dr. Bailey explained that the California Guidelines on dyslexia discusses the relationship between dyslexia and social-emotional health. Students with dyslexia can have low self-esteem and question their own competence and value. Dyslexia has been found to cause students to become shy, bullied, and unable to participate in school. Dr. Bailey opined this happened to

Student. Dr. Bailey concluded that Ms. Lindsey's assessment failed to consider the impact of Student's specific learning disabilities on his social-emotional health. Dr. Bailey's critique of the assessment was persuasive. Given the information available to it regarding Student's PTSD and learning disability, Monrovia was obligated to conduct a comprehensive social-emotional assessment of Student. (See Timothy O., *supra*, 822 F.3d 1105, 1119.)

Monrovia's February 25, 2020, social-emotional evaluation of Student was not appropriate because it was not sufficiently comprehensive to identify all of Student's special education and related service needs. A district's reassessment of a child with special needs must include a review of existing data, including information provided by parents. (Ed. Code, § 56381, subd. (b)(1).)

Here, Monrovia failed to conduct an adequate review of records. Ms. Lindsey considered previous psychoeducational reports from Monrovia, the letter from Pacific Clinics, and Student's grades and attendance for his current school year. Ms. Lindsey did not review Student's

- IEPs, progress on goals,
- speech and language assessments,
- medical information or nurse's logs,
- results of state standardized testing, or
- attendance from past years.

She did not believe it was important to look at his IEPs or progress on goals because his teacher did not mention him not keeping up in class. She did not consider the September 24, 2019, IEP in her evaluation and failed to read the IEP before signing for attendance. She supported her limited review of records by admitting that she merely investigated Mother's concerns, not concerns raised by Ms. Prather.

Monrovia also failed to use appropriate assessment tools. When conducting a reassessment, a district must, on the basis of the record review and input from Parents, identify what additional data is needed to determine whether the student continues to have a disability, the student's present levels of performance and educational needs, and whether any additions or modifications need to be made to the student's IEP to enable the student to meet measurable annual goals and to participate in the general education. (Ed. Code, § 56381, subd. (b).)

Here, Ms. Lindsey used only one testing instrument, the BASC-3 rating scale, in addition to a short observation, a limited record review, and interviews. Dr. Larson persuasively testified that Monrovia should have used more assessment tools and instruments to complete a full social-emotional and mental health assessment of Student, such as the Beck Youth Inventory and the Three Wishes Test.

Additionally, the social-emotional evaluation was not appropriate because the analysis was shallow and neglected important social-emotional factors specific to Student, including his PTSD and specific learning disability. Ms. Lindsey did not consider whether Student internalized anxiety or PTSD related to school by shutting down in class, a behavior reported by his class teacher, which warranted further investigation.

Ms. Lindsey knew Student struggled academically based upon her interview of Ms. Prather, but assumed it stemmed solely from his specific learning disability. She failed to investigate other known potential causes of Student's educational struggles. Monrovia did not approach the social-emotional assessment of Student with an open-minded curiosity as to Student's functioning. Overall, the assessment suffered from confirmation bias, as shown by Ms. Lindsey's testimony. The school felt he was fine, and the assessment served to validate this assumption.

In summary, Monrovia failed to appropriately

- review Student records,
- consider Parent and Ms. Prather's input regarding Student's educational needs, and
- administer testing instruments in all areas of suspected disability relating to Student's social-emotional and mental health functioning.

Monrovia's failure to conduct an appropriate social-emotional assessment resulted in a failure to determine Student's present levels of performance and educational needs, and whether any additions or modifications needed to be made to Student's IEP, thereby impeding his right to a FAPE.

Accordingly, Monrovia's procedural violation resulted in a denial of FAPE. Student prevailed on Issue 1, subdivision (a).

FROM DECEMBER 6, 2019, THROUGH OCTOBER 22, 2020, MONROVIA DID NOT FAIL TO ASSESS STUDENT IN THE AREAS OF PSYCHOEDUCATIONAL FUNCTIONING, SPEECH AND LANGUAGE, OR HEALTH.

Prior to the date Student's triennial assessments were due, October 23, 2020, Monrovia did not fail to assess Student in the areas of psychoeducational functioning, speech and language, or health. For the purpose of this Decision, psychoeducational functioning refers to cognitive aptitude and processing, and academic functioning, but does not include social-emotional functioning or mental health, because those are addressed separately above.

Although Mother signed an assessment plan for an early triennial on May 7, 2019, while Student attended fourth grade at Mayflower, that assessment plan was beyond the statute of limitations. Student did not raise any contentions that Monrovia was obligated to assess Student because of the May 7, 2019 assessment plan, or introduce the document into evidence.

From December 6, 2019, through October 22, 2020, Student did not show deficits in the areas of psychoeducational functioning, speech and language, or health, that would have prompted an assessment outside the regular schedule of triennial assessments, which were due on October 23, 2020. Furthermore, during this time period neither school staff nor Parents requested assessment in these areas.

As such, Student did not meet his burden of proof on this issue for this time period.

FROM OCTOBER 23, 2020, THROUGH SEPTEMBER 6, 2021, MONROVIA FAILED TO ASSESS STUDENT IN THE AREAS PSYCHOEDUCATIONAL FUNCTIONING, SPEECH AND LANGUAGE, AND HEALTH.

On October 23, 2020, Student's triennial assessments and IEP team meeting were due. Monrovia was required to assess Student in the areas of

- psychoeducational functioning,
- social emotional and mental health,
- speech and language, and
- health needs.

Mother signed an assessment plan consenting to the triennial assessments.

On or around October 8, 2020, Mother took Student to Santa Fe Computer Science Magnet School for one day of in-person assessment. Student attended online sixth grade at Santa Fe for the 2020-2021 school year. However, Monrovia provided in-person assessments during the 2020-2021 school year, after receiving permission from the Los Angeles County Department of Health. School Psychologist Tracy Graham Rice assessed Student's nonverbal cognitive abilities using the Kaufman Assessment Battery for Children, Second Edition, referred to as KABC-II, began the Comprehensive Test of Phonological Processing, Second Edition, and interviewed him.

On November 9, 2020, Monrovia sent Parents a prior written notice letter explaining that it was declining to move forward with Student's triennial assessment until school fully resumed in-person. Monrovia believed that testing under the

current circumstances would not yield valid and accurate test results. It unilaterally paused the 60-day legal timeline for conducting assessments. Parents did not respond to Monrovia's letter.

Monrovia did not complete Student's triennial assessments. Ms. Graham Rice did not provide Parents with the results of the KABC-II because she considered this one piece of her assessment that needed to be synthesized with her other testing. She did not conduct any further assessments because she mistakenly believed Parents asked to pause the in-person assessment process due to a surge in Covid-19 cases. Because Monrovia failed to complete Student's triennial assessments, from October 23, 2020, through September 6, 2021, it failed to assess Student in the areas of psychoeducation, speech and language, and health needs.

Monrovia's failure to conduct triennial assessments resulted in Student's IEP team not having comprehensive, current, data about his educational needs to develop an appropriate triennial IEP, which impeded his right to a FAPE. (See *Doug. C. v. Hawaii Department of Education* (9th Cir. 2013) 720 F.3d 1038, 1047.) Therefore, Monrovia's failure to assess Student is a procedural error that arises to a substantive denial of FAPE.

Student prevailed on Issue 1, subdivisions (a) through (d) and Issue 11, subdivision (b).

FROM DECEMBER 6, 2019, THROUGH SEPTEMBER 6, 2021, MONROVIA DID NOT FAIL TO ASSESS STUDENT IN THE AREAS OF OCCUPATIONAL THERAPY, ASSISTIVE TECHNOLOGY, BEHAVIOR, OR AUDITORY PROCESSING.

From December 6, 2019, through September 6, 2021, Monrovia was not required to assess Student in the areas of occupational therapy, assistive technology, behavior, or auditory processing. Student did not show symptoms of a disability in any of these areas such as to trigger an assessment, including as part of the triennial reassessment process.

Mother testified that she requested assessments in the area of autism and behavior, but this testimony was not persuasive. Mother could not recall the dates she requested assessments or the individuals she spoke with, other than generalized statements that the individuals were American. Additionally, testimony from Student's experts that Student required assessment in these areas were refuted by the bulk of the evidence that he did not show symptoms of a disability in these areas.

Student did not meet his burden of proof and Monrovia prevailed on Issues 1, subdivision (e) through (h).

ISSUE 2: FROM DECEMBER 6, 2019, THROUGH SEPTEMBER 6, 2021, DID MONROVIA DENY STUDENT A FAPE BY FAILING TO ADEQUATELY ADDRESS STUDENT'S LEARNING DISABILITY IN READING AND WRITING, INCLUDING BUT NOT LIMITED TO PROVIDING APPROPRIATE SERVICES, GOALS, AND ACCOMMODATIONS?

Student contends that Monrovia gave up on teaching Student to read and write. Student argues that Monrovia failed to offer Student reading and writing goals in all areas of need and adequate reading interventions.

Monrovia contends that it adequately addressed Student's learning disability in reading and writing through the academic interventions provided by Student's special education teachers, Ms. Prather and Ms. Magana. Monrovia further contends it offered Student appropriate reading and writing goals and accommodations.

Students eligible for IEPs are entitled to special education and related services to address the child's unique needs resulting from the disability. (34 C.F.R. § 300.39 (b)(3).) The "educational benefit" to be provided to a student requiring special education is not limited to addressing the student's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (County of San Diego v. California Special Education Hearing Office (9th Cir. 1996) 93 F.3d 1458, 1467.)

The IDEA requires States to provide a FAPE to all eligible students. (Endrew F. v. Douglas County School Dist. RE-1 (2017) 580 U.S. 386 [137 S.Ct. 988, 993].) States are required to provide instruction calculated to "confer some educational benefit" by offering an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (Id. at 998.)

A focus on the particular child is at the core of the IDEA. (Endrew F. v. Douglas County School Dist., *supra*, 137 S.Ct. 988, 992.) The IEP team addresses a student's unique needs by

- assessing the child in all areas of suspected disability,
- documenting the needs in the present levels of performance sections of the IEP, and
- offering the child appropriate goals, services, accommodations, and special factors to meet the child's needs.

"In determining what it means to 'meet the unique needs' of a child with a disability, the provisions governing the IEP development process are a natural source of guidance: It is through the IEP that '[t]he free appropriate public education required by the Act is tailored to the unique needs of' a particular child." (Id. at 1000.)

APPROPRIATE GOALS UNDER THE IDEA

For each area in which a special education student has an identified need, the IEP must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable change of attaining within a year. (Ed. Code, § 56345; Letter to Butler (OSERS March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) An IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code

Regs., tit. 5, § 3040(c).) However, an "IEP is not required to contain every goal from which a student might benefit." (Capistrano Unified Sch. Dist. V. S. W. (9th Cir. 2021) 21 F.4th 1125, 1133.)

APPROPRIATE SERVICES AND ACCOMMODATIONS UNDER THE IDEA

An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

- to advance appropriately toward attaining the annual goals;
- to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
- to be educated and participate with other children with disabilities and nondisabled children in the activities described in federal regulations. (34 C.F.R. § 300.320(a)(4).)

"Related services" are supportive services that a disabled student requires to benefit from special education. (34 C.F.R. § 300.34.) Related services include developmental, corrective, and supportive services, including transportation. (*Ibid.*)

The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit. (R.P. v. Prescott Unified Sch. Dist. (9th Cir. 2011) 631 F.3d 1117, 1122.)

Although the actions of a school system cannot be judged exclusively in hindsight, subsequent additional data and evaluation reports may shed some light on a child's condition and the reasonableness of a school district's actions at an earlier date. (E.M. v. Pajaro Valley Unified Sch. Dist. (9th Cir. 2011) 652 F.3d 999.)

A "specific learning disability" is a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as

- perceptual disabilities,
- brain injury,
- minimal brain dysfunction,
- dyslexia, and
- developmental aphasia. (34 C.F.R. § 300.8(c)(10).)

In kindergarten, Student's specific learning disability became apparent. At that time, Monrovia conducted a non-verbal assessment of his cognitive ability using five subtests of the Kaufman Assessment Battery for Children, Second Edition. Student scored in the average range in non-verbal cognitive ability, with a standard score of 96, placing him in the 39th percentile. However, he could not complete academic work commensurate with his cognitive abilities. Additionally, Student had severe challenges with phonological awareness and memory. This meant he had difficulty identifying and remembering the sounds in spoken language. These skills are important for decoding words, blending sounds, and ultimately, reading. Monrovia determined that Student had a specific learning disability in the areas of oral expression, basic reading skills, math calculation, and written expression.

Academically, Student's kindergarten teacher reported that he had difficulty retaining academic information and could only focus for a short period of time. He could write his first name but not spell it. He only knew one letter, the letter "I."

In October and December of 2017, during his third-grade year, Monrovia conducted a triennial reassessment of Student. He continued to have severe deficits in receptive and expressive language and to be significantly behind grade level expectations in most academic areas. He could read a first-grade passage at three words per minute. When asked to read words in isolation, he could only consistently read three words: "a," "is," and "on." He could write his first name and copy his last name. His phonological awareness and memory remained severely impaired.

Student began the 2019-2020 school year at Wild Rose Elementary School in a mild-moderate special day class taught by Joanna Prather. The class consisted of 14 students, supported by Ms. Prather and two aides. Student attended general education physical education and art. The September 24, 2019 IEP was the operative IEP at the time the period in controversy began for this due process matter, December 6, 2019.

MONROVIA APPROPRIATELY ADDRESSED STUDENT'S LEARNING DISABILITY IN READING AND WRITING DURING IN-PERSON LEARNING FOR THE 2019-2020 SCHOOL YEAR

From December 6, 2019, through March 12, 2020, while Student attended in-person instruction in fifth grade at Wild Rose, Monrovia appropriately addressed Student's learning disability in reading and writing, including but not limited to providing appropriate services, goals, and accommodations.

Student's primary eligibility was for a specific learning disability in the areas of

- listening comprehension,
- oral expression,
- math reasoning,
- written expression,
- basic reading skills, and
- reading comprehension.

At the September 24, 2019 IEP team meeting, the team discussed his present levels of performance in writing, reading, and spelling. Mother shared her concerns that Student could not read or write even small amounts and that he struggled writing his name. In the area of writing, he could verbally tell his teacher how to write a one paragraph essay on a given topic with three supporting sentences.

However, he had many challenges. He struggled with reading grade level literature. He had difficulty recalling letters and their sounds which negatively impacted his ability to read, write, and spell. The team developed goals in the areas of reading comprehension, spelling, language, writing, and reading fluency, directly related to Student's present levels of performance. Monrovia offered Student 1,380 minutes of specialized academic instruction per week, which included special education support in reading and writing.

Ms. Prather ran a very structured classroom. She used a visual schedule and kept a consistent routine in her class, with reading and math before recess. She used Journeys and Reading Mastery reading curriculum. Journeys provided instruction at

Student's fifth-grade level. Reading Mastery matched Student's instructional level of first grade, the level of reading Student achieved at the time. Reading Mastery is a scripted, organized and highly structured program. The curriculum supported spelling, phonetics, vocabulary, reading comprehension, and phonemic awareness.

Each day Ms. Prather provided around 30 minutes of instruction using Reading Mastery, and 25 minutes of grade level reading instruction. The 14 students in her class were at different levels in reading, so she divided them up in small groups with the three adults in the classroom assisting and providing individualized attention. Student had two other students in his reading group. When providing grade level reading instruction Ms. Prather used visual supports, hands-on manipulatives, workbooks, and spelling resources. She assessed her students' reading levels at the beginning, middle, and end of the year, and did informal assessments each school day.

Student could read first-grade level books independently, such as the *Cat in the Hat* by Dr. Suess. Student could also read single syllable words but needed help with larger words. He had some ability to identify letters and sounds and to decode words, but he struggled in those areas. He could read 50 sight words from a third-grade level list. Ms. Prather provided repetition and support to help him gain confidence in his reading.

For writing, Student could dictate three sentences to Ms. Prather, which she would write down so he could see the capitalization and punctuation. He would then copy the three sentences he devised. Ms. Prather used dictation to support Student's writing because it showed him the structure and flow of the language and helped him

learn and build upon those skills. He wrote with pen and paper or sometimes using a computer. When working on pen and paper writing tasks Student used sentence frames, writing maps, graphic organizers, and word banks to write complete sentences. He received a lot of individualized attention to support his writing.

Andriana Gutierrez oversaw mild-moderate classrooms in Monrovia at the time Student was in Ms. Prather's fifth-grade class. At the time of the hearing, Ms. Gutierrez was the Associate Director at West Moreland, the non-public school Student attended from August 24, 2022, through the date of the hearing. Ms. Gutierrez was familiar with the academic interventions Ms. Prather used with Student. She observed that Ms. Prather used the academic interventions with fidelity and that they were effective for Student.

From December 6, 2019, through March 12, 2020, Monrovia adequately addressed Student's learning disability in reading and writing, including providing appropriate services, goals, and accommodations.

MONROVIA FAILED TO APPROPRIATELY ADDRESS STUDENT'S LEARNING DISABILITY NEEDS IN READING AND WRITING DURING DISTANCE LEARNING FOR THE SPRING OF THE 2019-2020 SCHOOL YEAR

On March 18, 2020, Monrovia sent Parents a prior written notice letter regarding the closure of in-person schooling due to the Covid-19 outbreak. Beginning March 13, 2020, students began distance learning at home.

From March 13, 2020, through June 3, 2020, while Student attended distance learning in fifth grade at Wild Rose, Monrovia failed to appropriately address Student's learning disability in reading and writing.

Ms. Prather taught Student via distance learning from her physical classroom, so she continued to have all the resources available that she used with the students when in person. She continued the same class schedule with a normal school day. Her class day involved 75 percent synchronous learning, which was direct instruction from the teacher, and 25 percent asynchronous learning, which was independent work, at the end of the day, from 2:25 p.m. to 2:45 p.m. She also dropped off packets of work, positive reinforcement items, and Fun Friday packets with fun social activities to her students.

Ms. Prather continued to use the same reading curriculums during distance learning, Reading Mastery and Journeys. She continued to provide 30 minutes per day of Reading Mastery. The students were directed to virtual break out rooms for reading instruction. Student was in a group of three and frequently received individualized attention for reading. Ms. Prather used the embedded supports in the Chromebooks to support reading including having the text read aloud or highlighted. Additionally, Ms. Prather provided numerous ways for students to demonstrate work completion, including packets of papers, Google Classroom, and Flipgrid. She attempted to make the process as easy as possible for her students. However, she did not receive completed work from Student.

Ms. Prather did not know why he was not completing work, but did not believe it was due to technology problems. Student had difficulty reading at his instructional level over Zoom. When asked to read in Ms. Prather's virtual classroom he would reply "I can't read."

In contrast to Student's slow but steady progress before distance learning, Student regressed in reading and writing during distance learning. Student completed between five and 15 percent of his English language arts lessons and submitted little to no work. Even with full support from family members, Ms. Prather, and classroom aides, he could not complete reading and writing assignments over Zoom. His IEP team candidly documented his struggles by noting that without the proper level of support he required, which at that time was the physical support of his teacher, he could not complete reading or writing work.

Due to his lack of work completion his grades in language arts dropped to all 1's, the lowest grades possible. He made no growth in grade-level work. His ability to read dropped from a first-grade level to a kindergarten beginning reader level.

From March 13, 2020, through June 3, 2020, Monrovia denied Student a FAPE by failing to appropriately address Student's learning disability in reading and writing. Because of the school closures and switch to virtual instruction Student's educational circumstances changed such that the reading and writing services and accommodations Monrovia provided to him no longer provided him with some educational benefit, as shown by his regression in this area. (See *Endrew F. v. Douglas County School Dist.*, supra, 137 S.Ct. 988, 998: States are required to provide instruction calculated to "confer some educational benefit" by offering an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.)

Monrovia offered Student extended school year services for the summer of 2020 but Student did not attend.

MONROVIA FAILED TO OFFER STUDENT APPROPRIATE GOALS TO ADDRESS STUDENT'S LEARNING DISABILITY IN READING AND WRITING DURING DISTANCE LEARNING FOR THE 2020-2021 SCHOOL YEAR, AND IN-PERSON LEARNING FOR THE 2021-2022 SCHOOL YEAR

Student transitioned to middle school in sixth grade at Santa Fe Computer Science Magnet School for the 2020-2021 school year. Santa Fe serves approximately 430 students in grades six, seven, and eight. Student's math, language arts, social studies, and science class consisted of six to 12 students. General education electives had 30 students, and physical education included 30 to 45 students.

Student remained in distance learning for the entire 2020-2021 school year. Student attended a regular school day, from around 8:00 a.m. to 2:00 p.m. For middle school, Student had classes via Zoom presented period by period with breaks in between. The school offered six one-hour periods. The students alternated classes with three periods per school day. Teachers provided synchronous instruction, direct instruction from the teacher, until noon. Students were expected to complete and turn in work. Office hours were offered at the end of the school day, from 1:00 to 3:00 p.m. Office hours were voluntary.

From August 19, 2020, through October 20, 2020, while Student attended distance learning in sixth grade at Santa Fe, Monrovia appropriately addressed Student's learning disability in reading and writing, including but not limited to providing appropriate services, by way of the academic interventions provided by special education teacher Jennifer Wiley Magana, and the goals, and accommodations from the September 24,

2019 IEP, which were appropriate to meet Student's needs. However, from Student's annual IEP team meeting on October 21, 2020, through June 9, 2021, Monrovia failed to offer Student appropriate annual IEP goals in the areas of reading and writing.

Monrovia convened a virtual IEP team meeting for Student on September 3, 2020, to address Parents' concerns with his placement and to conduct a 30-day review. During registration Mother expressed concern about Student's placement in a mild to moderate special day class program. She believed he required a moderate to severe special day class program with a functional skills curriculum. Mother, Father, Student's sister, Student's private therapist, and Student's service coordinator from San Gabriel Pomona Regional Center attended the meeting, in addition to staff from Santa Fe. Monrovia provided a Spanish-speaking interpreter for Parents and a copy of Parents' procedural safeguards in Spanish. Monrovia team members agreed Student was appropriately placed in a mild to moderate program.

Jennifer Wiley Magana taught Student's sixth grade English class. The class consisted of 10 students, the teacher, and two aides. At hearing, Ms. Magana presented as a careful witness who took time to answer questions accurately.

Ms. Magana used a variety of reading curriculums, including a modified version of Houghton Mifflin, Read 180, and various online supports. She also implemented Orton-Gillingham strategies. She provided multisensory reading supports, which included auditory and visual lessons and opportunities for kinesthetic learning. She provided sequential lessons that built from one reading area to the next. She used explicit teaching, which involved explaining the language rules and the reasoning behind the rules. For example, she told Student "When two vowels go walking the first one does the talking" and that each syllable needs a vowel. Ms. Magana used frequent

diagnostics to assess students' baselines and reading progress via the San Diego Quick assessment. She addressed phonological awareness, including Student's understanding of letters and letter sounds. She provided individualized support by pulling Student into a virtual break out room to work on identifying sounds and letters and putting them together in words and sentences. She used daily practice and repetition of reading skills. Student received 25 to 40 minutes per day, four days per week, of individualized reading support.

Student was a beginning reader when he entered sixth grade. He always needed adult support to read short passages and answer questions. He was shy about reading aloud in small groups but after prompting always did his best. He required sentence frames to write sentences. He could write four words. Student could spell his first and last name. Ms. Magana used the Google platform to see what he was doing and to ensure he was correctly writing his first and last name on the right-hand side of the paper. He was also able to type his name with correct spelling.

At the September 3, 2020 IEP team meeting, Mother told the team several times that Student could not read or write. She asked how the school could help. She asked if the school could provide a tutor. Megan Esquer, Assistant Principal, asked Mother to stop saying that Student could not read because Student had some basic reading skills. She believed the team should encourage Student to use a growth mindset by saying that Student could read, but not at grade level yet. Repeating to Student that he could not read was an example of a fixed mind-set that would impair his self-esteem and self confidence in reading. Ms. Esquer was especially concerned because in her experience, students with IEPs in middle school were especially self-conscious and compared themselves to peers. She believed it was her role to advocate for Student.

Monrovia convened an annual IEP team meeting for Student on October 21, 2020. The IEP states the date of the document is September 24, 2020. Mother had told the district she was unable to attend a meeting on that date. Monrovia staff entered that date September 24, 2020, on the document because they believed that by opening the IEP, they were compliant with legal timelines for convening Student's annual IEP. Student's previous annual IEP was on September 24, 2019.

Mother, Father, Student's sister, and Student's private therapist attended the October 21, 2020 IEP team meeting, in addition to staff from Santa Fe. No speech and language pathologist from Monrovia attended the meeting. Monrovia provided a Spanish-speaking interpreter for Parents and a copy of Parents' procedural safeguards in Spanish. Mother signed her consent to the IEP on November 3, 2020.

At the time of the October 21, 2020 annual IEP, Student continued to have difficulty recalling letters and letter-sounds. Monrovia offered Student one reading goal. The goal required Student to orally describe the theme or central idea of a text by September 22, 2020. Dr. Caroline Bailey, Student's expert witness, opined that this reading goal was not appropriate because he did not have sufficient oral expression skills to provide the summary of a text. She also believed the goal was far too ambitious and would be unattainable for Student given his baseline abilities.

Student struggled with the writing process because he could not use his phonemic awareness to write and sound out words while writing sentences. He became frustrated and complained when sounding out and writing words. At the October 21, 2020 IEP team meeting, Monrovia offered Student one writing goal. This goal required Student to independently organize three or more sentences in an event sequence. It did not specify whether Student was expected to generate the sentences or if they were to

be provided. Expert witnesses Dr. Bailey and Dr. Scott Larson both opined that this was not a reasonable writing goal for Student because he lacked the underlying skills to be successful with it. Dr. Larson also opined that the writing goal failed to address phonemic awareness.

Ms. Magana implemented Student's academic goals for the 2020-2021 school year. At the end of his sixth-grade year, Student's Lexile reading score was 305L, approximately at the first-grade level. Parent believed Student did not improve in reading or writing during the 2020-2021 school year. However, Ms. Magana credibly testified that Student did make progress in reading, going from a beginning reader level to a first-grade level. By the end of that school year Student knew around 10 sight words. Independently, Student could do basic blending of sounds, including consonant-vowel-consonant words, like "cat."

Dr. Larson credibly opined that the academic goals in the October 21, 2020 IEP were not appropriate for Student because they failed to address his core deficit of phonemic awareness. He also persuasively explained that the goals required tasks Student could not perform independently and skills he could not demonstrate. Dr. Bailey opined that the IEP should have had additional goals in the areas of reading and writing.

From August 19, 2020, through October 20, 2020, Monrovia adequately addressed Student's learning disability in reading and writing, including providing appropriate services, goals, and accommodations. However, from Student's annual IEP on October 21, 2020, through June 9, 2021, Monrovia denied Student a FAPE by failing to offer Student measurable annual goals in the areas of reading and writing to address his deficits in phonemic awareness and processing.

Monrovia offered Student extended school year services for summer 2021, but Student did not attend.

Student returned to in-person learning in seventh grade at Santa Fe on August 18, 2021. Student attended Santa Fe for three days. His last date of attendance was Friday, August 20, 2021. On August 24, 2021, Parents disenrolled Student from Monrovia.

Monrovia continued to deny Student a FAPE for these three days of attendance by failing to adequately address Student's learning disability in reading and writing because it did not offer him appropriate goals in the areas of reading and writing. Monrovia implemented Student's October 21, 2020, IEP, which lacked sufficient goals, as discussed above.

On April 11, 2022, and August 18, 2022, Dr. Scott Larson conducted a neuropsychological assessment of Student. Student's verbal cognitive ability was significantly lower than his nonverbal cognitive ability. When required to use language, Student's cognitive ability was extremely impaired with a standard score of 65, in the first percentile. In contrast, when language demands were removed, Student demonstrated average cognitive ability, with a standard score of 95, in the 37th percentile. As such, educational tasks involving language were extremely challenging for Student.

Student presented with extreme deficits in phonological processing and memory. He could not connect the sounds of letters with the alphabetic symbols. Additionally, he had trouble holding letter sounds in his working memory and retrieving the phonological information. This made it difficult for him to decode words when reading and to write his name or the alphabet. For example, during

Dr. Larson's 2022 assessment Student could not spell his last name. Additionally, when asked to write the alphabet it took Student two and a half minutes to finish the task and he could only produce 15 letters.

Dr. Larson's findings as to Student's innate neuropsychological functioning such as his cognitive functioning, memory, and phonemic processing, shed some light as to Student's condition and the reasonableness of Monrovia's actions, especially as the information is consistent with previous assessments of Student. (See *E.M. v. Pajaro Valley Unified Sch. Dist.* (9th Cir. 2011) 652 F.3d 999.)

However, his finding as to Student's academic skills in 2022 did not reliably reflect Student's academic skills from December 6, 2019, through September 6, 2021. The IDEA recognizes that discrete academic skills may wax and wane based upon circumstances, which is why, for example, school districts provide additional special education services during the summer months for students who are likely to regress academically and cannot recoup those losses without additional support.

After disenrolling from Monrovia, Student attended CAVA, which Dr. Larson concluded in his report was not appropriate for Student. Student's placement for the 2021-2022 school year was an intervening variable that interrupted the causal link between the educational services Student received in Monrovia and his academic functioning in April and August of 2022. As such, Dr. Larson's opinion that Monrovia did not provide appropriate reading interventions to Student, based upon his academic testing in 2022, was considered but ultimately given little weight.

Dr. Caroline Bailey observed and interviewed Student on March 21, 2022, April 13, 2022, and August 20, 2022. Dr. Bailey did not assess Student using any testing instruments, however she reviewed and summarized educational records provided to her and made

recommendations in a report. She did not know Student during the time at issue or speak to any Monrovia staff. Dr. Bailey concluded that Student did not receive appropriate reading interventions from Monrovia.

Unfortunately, the educational records Dr. Bailey reviewed to form her opinion were incomplete and unreliable. Additionally, Dr. Bailey made sweeping assumptions regarding the educational services Student received based upon vague or incomplete IEP documents. For example, her testimony that Student had “never been given true intervention for reading” is an example of a factually erroneous conclusion based upon the incomplete data she received. She was not aware of the reading methodologies Ms. Prather and Ms. Magana used with Student.

Dr. Bailey opined that Student did not receive appropriate reading interventions from Monrovia because the IEP documents did not describe the methodologies and because at the end of the 2021-2022 school year, Student’s reading scores were extremely low. However, absence of evidence is not always evidence of absence. In other words, the fact that Monrovia did not name the reading intervention in the IEP document does not prove that no reading intervention was provided to Student. Monrovia was not obligated to describe in the IEP document the reading intervention methodology it provided to Student.

Dr. Bailey’s August 23, 2022 report was insightful as to Student’s educational needs for the 2022-2023 school year, and helped him obtain a placement at an in person non-public school by CAVA. However, her report did not provide reliable evidence as to Student’s educational needs from December 6, 2019, through

September 6, 2021, and the reasonableness of Monrovia's actions. As such, Dr. Bailey's report was given little weight with respect to whether Monrovia offered Student appropriate reading interventions for the time period at issue.

Overall, Monrovia made two errors with respect to reading and writing that denied Student a FAPE. First, from March 13, 2020, through June 3, 2020, Monrovia failed to offer Student appropriate services and accommodations during distance learning at Wild Rose, and Student regressed. Second, from Student's annual IEP on October 21, 2020, through August 20, 2021, Monrovia failed to offer appropriate goals in the area of reading and writing to address his deficits in phonemic awareness and processing.

Student prevailed on Issue 2.

ISSUE 3: FROM DECEMBER 6, 2019, THROUGH SEPTEMBER 6, 2021, DID MONROVIA DENY STUDENT A FAPE BY FAILING TO PROVIDE APPROPRIATE SERVICES, GOALS, AND ACCOMMODATIONS FOR MATHEMATICS?

Student contends that Monrovia failed to offer appropriate goals, services, and accommodations in the area of mathematics. Student argues Monrovia failed to offer Student goals relating to money and time. Student argues that the mathematics goal in his October 21, 2020, IEP was not appropriate.

Monrovia contends that it offered appropriate services, goals, and accommodations for mathematics.

MONROVIA OFFERED STUDENT APPROPRIATE MATHEMATICS SERVICES, GOALS, AND ACCOMMODATIONS DURING IN-PERSON LEARNING FOR THE 2019-2020 SCHOOL YEAR

From December 6, 2019, through March 12, 2020, while Student attended in-person instruction in fifth grade at Wild Rose, Monrovia offered Student appropriate services, goals, and accommodations for mathematics.

Student had a specific learning disability in the area of math reasoning. At the September 24, 2019 IEP team meeting, the team discussed his present levels in math. He could independently add and subtract numbers up to 1,000 using borrowing and regrouping. He struggled with multiplication and division. Student was at a second-grade level for mathematics. However, he was more confident in mathematics than reading.

From December 6, 2019, through March 12, 2020, Ms. Prather addressed Student's mathematics needs on a daily basis as part of the 1,380 minutes per week of specialized academic instruction in Student's IEP. Student worked on two goals in math: one involved solving basic multiplication and division problems, and the other solving addition and subtraction problems with regrouping and borrowing.

Student did not enjoy multiplication tasks, but he made progress on his goal during this time period, such as learning to use a multiplication chart. He also progressed with working on adding and subtracting numbers from 10,000 to 100,000 with high accuracy. Monrovia offered Student accommodations to support his math needs, including a calculator and number line. Math was his strength, and he progressed while learning in person at Wild Rose.

MONROVIA FAILED TO PROVIDE STUDENT APPROPRIATE MATHEMATICS SERVICES DURING DISTANCE LEARNING IN THE 2019- 2020 SCHOOL YEAR

From March 13, 2020, through June 3, 2020, while Student attended distance learning in fifth grade at Wild Rose, Monrovia failed to provide Student appropriate services for mathematics, although his goals and accommodations remained appropriate.

Student only completed between five and 15 percent of his mathematics lessons during distance learning. He could show some of his work in mathematics on Flipgrid, a video discussion and sharing application designed for classrooms. He completed work samples for multiplication problems and showed some progress, however he struggled with division problems and did not complete any division problems during this period of school closures from March 13, 2020, through June 3, 2020. He did not complete his assignments in adding and subtracting.

His mathematics grades dropped from mostly 2's, partial progress, to all 1's, minimal proficiency, showing a regression in mathematic skills. Student required more support in mathematics during this time to make progress on his goals of adding, subtracting, and dividing numbers.

Monrovia did not provide appropriate services in mathematics because Student could not make progress in mathematics in the distance learning format during this time period.

MONROVIA OFFERED STUDENT APPROPRIATE MATHEMATICS SERVICES, GOALS, AND ACCOMMODATIONS DURING DISTANCE LEARNING FOR THE 2020-2021 SCHOOL YEAR, AND DURING IN-PERSON LEARNING FOR THE 2021-2022 SCHOOL YEAR

From August 19, 2020, through June 9, 2021, while Student attended distance learning in sixth grade at Santa Fe, and from August 18, through 20, 2021, when Student returned to in-person instruction for seventh grade, Monrovia offered Student appropriate services, goals, and accommodations for mathematics.

At the beginning of the 2020-2021 school year, Student could add and subtract numbers but continued to struggle with multiplication and division. At the October 21, 2020 IEP team meeting, Monrovia offered Student one math goal. The math goal required Student to use addition, subtraction, multiplication, and division to generate expressions. For example, to express that $3(2+x)$ was equivalent to $6+3x$. At the end of his sixth-grade year, Student's Quantile math score was 480Q, approximately at the second-grade level.

Dr. Bailey and Dr. Larson opined that this goal was outside of his functioning level. On April 11, 2022, and August 18, 2022, Dr. Larson assessed Student's math functioning using the Kaufman Test of Educational Achievement, third edition. Student's math scores fell in the late first grade, early second grade levels. Dr. Bailey reviewed an assessment of Student from Stowell Learning Center, dated April 14, 2022. Student's math computation scores were at the first-grade level, based on a subtest of the Wide Range Achievement Test-4. At the time Dr. Bailey interviewed Student in 2022,

he used his fingers to count. As such, she believed he did not have the math skills to generate the expressions required by the goal. Dr. Bailey opined that Student required additional goals in mathematics to address money concepts on paper and in practice.

Student did not meet his burden of proof that Monrovia failed to meet Student's needs in the area of mathematics during distance learning at Santa Fe. Dr. Bailey's and Dr. Larson's opinions on this topic were given minimal weight because they did not know Student during this time period or have any reliable data to establish that his needs were not being met. Between this time and the experts' assessments, Student attended a full year of virtual school through CAVA. Mother confirmed that the school year went badly for Student. As such, his mathematics scores in April and August 2022, did not reliably reflect his mathematics functioning while at Monrovia. Student's mathematics goal addressed his deficits in math reflected in the present levels from the October 21, 2020 IEP.

From August 18, 2021, through August 20, 2021, while Student attended in-person instruction in seventh grade at Santa Fe, Monrovia did not fail to provide Student appropriate services, goals, and accommodations for mathematics. Student did not offer evidence about Student's mathematics needs, services, goals, or accommodations during this time period. As such, Student did not meet his burden of proof.

Overall, Monrovia made one error with respect to mathematics that denied Student a FAPE: from March 13, 2020, through June 3, 2020, Student regressed because he did not receive sufficient support in math.

Student prevailed on Issue 3.

ISSUE 4: FROM DECEMBER 6, 2019, THROUGH SEPTEMBER 6, 2021,
DID MONROVIA DENY STUDENT A FAPE BY FAILING TO PROVIDE
APPROPRIATE BEHAVIORAL AND SOCIAL-EMOTIONAL SERVICES, GOALS,
OR ACCOMMODATIONS TO ADDRESS STUDENT'S MENTAL HEALTH
NEEDS, INCLUDING THOSE CAUSED BY BULLYING?

Student contends that Monrovia did not adequately address Student's needs in the area of social-emotional functioning, behavior, and mental health. Student contends that he was bullied by teachers and peers at Mayflower, resulting in cascading symptoms of anxiety, PTSD, and school aversion, which Monrovia failed to address.

Monrovia contends that it offered appropriate behavioral and social-emotional services, goals, and accommodations to address Student's mental health needs.

A student's unique needs that must be addressed under the IDEA may include behavior, social-emotional functioning, and mental health. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.)

Local educational agencies are responsible for providing social emotional and educationally related mental health services which include

- counseling and guidance services,
- parental counseling and training,
- psychological services,
- social work services, and
- behavior interventions. (Ed. Code, §§ 56836.07 and 56363.)

MONROVIA APPROPRIATELY ADDRESSED STUDENT'S BEHAVIORAL, SOCIAL-EMOTIONAL, AND MENTAL HEALTH NEEDS DURING IN-PERSON LEARNING FOR THE 2019-2020 SCHOOL YEAR

From December 6, 2019, through March 12, 2020, while Student attended in-person instruction in fifth grade at Wild Rose, Monrovia offered appropriate behavioral and social-emotional services, goals, and accommodations to address Student's mental health needs, including those caused by bullying.

Socially, emotionally, and behaviorally, Student had a wonderful year while attending school in person at Wild Rose during the 2019-2020 school year. Student later reflected that he wished he could have stayed at Wild Rose forever because he had a lot of friends and there were no bullies at Wild Rose. As a fifth grader at Wild Rose, Student was kind and considerate and got along with peers. He tried hard and was not afraid to ask for help when needed. At times he became frustrated with writing and language tasks, which were difficult for him. When he became frustrated, he struggled with expressing his feelings and shut down.

Mother worried about Student. She asked Student's private therapist to write a letter to Wild Rose explaining his private therapy, treatment, and need for accommodations. Mother felt it was important that his new school have this information. She worried that Student would refuse to go to school.

Ms. Lindsey reviewed the September 13, 2019 letter from Student's private therapist at Pacific Clinics. The letter explained that from November 2015, through May 2018, Student received individual and family therapy from Pacific Clinics. Student resumed therapy in May 2019 to address new symptoms. He received medication

support. His diagnoses at the time were ADHD combined type, autistic disorder, and acute PTSD. Pacific Clinics did not suggest that Student needed any assessments, goals, services, or accommodations at school. Ms. Lindsey understood that he was diagnosed with PTSD and that his private therapists were working on past trauma. However, she saw no evidence of any past trauma affecting him at school at Wild Rose.

At the September 24, 2019 IEP team meeting, the school did not offer Student any goals or services in the areas of social-emotional, counseling, or mental health. The team indicated Student's behavior impeded his learning due to his short attention span and distractibility. The IEP stated that a behavior goal was part of the IEP, although that was not correct. However, Wild Rose offered Student accommodations that supported his social-emotional and behavioral needs, including the use of verbal encouragement/coaching, prompts to stay on task, breaks as needed, checking for understanding, step by step directions, preferential seating, and reinforcements for on-task behavior.

Mother told the IEP team of her concerns with Student's social-emotional and mental health status. She believed that in a school setting Student was scared, easily frustrated, and had no confidence. She believed he had been abused and bullied at Mayflower, suffered trauma, and that he was afraid that kids at school would hit him. She told the team he lost interest in going to school after the incident at Mayflower and might not want to do schoolwork at Wild Rose as a result. Even though he was in private therapy the event still affected him. She was concerned with his behavior and felt he might cry or get under his desk and chew his toenails. She believed that due to his diagnoses from Pacific Clinics of ADHD combined type, autistic disorder, and acute PTSD, he required a lot of support at school. She requested school-based counseling.

Wild Rose responded to Mother's concerns by describing their approach to addressing bullying on the school site and offering Mother an assessment plan to assess whether Student required school-based counseling. As discussed above in Issue 1, the social-emotional evaluation of Student was inadequate. However, information from the assessment is relevant to whether Monrovia adequately addressed Student's social emotional issues for this time period.

Ms. Lindsey observed Student for around 10 minutes as part of her assessment. In class, he participated and followed instructions. At lunch recess he ate his lunch without issue and then walked around with peers from his class, talking and playing. Ms. Lindsey also was familiar with Student on the Wild Rose campus. She was frequently in his classroom helping other students. Every time she saw Student he appeared to be doing fine. He did not display any troubling behaviors.

Ms. Lindsey interviewed Student. Student reported he liked school and felt his teachers were nice and helped him. He had friends at school and enjoyed playing tag, talking with friends, and swinging on the playground. He reported he was not good at reading or math and that he hated homework. When he got nervous at school he would stare at the lights in the room, shake his leg, or use fidgets.

Ms. Lindsey concluded that Mother's concerns with Student's social-emotional well-being were not present at school. Student had a good year at Wild Rose. He liked school. His teacher supported him academically and he had positive interactions with peers. He did not display symptom of PTSD at school. Ms. Lindsey did not recommend counseling. Ms. Lindsey understood that Mother was nervous about Student attending middle school for sixth grade. She believed that any need for school-based counseling could be re-evaluated if he had problems in the middle school setting for sixth grade.

On February 26, 2020, the IEP team at Wildrose met to discuss Ms. Lindsey's social-emotional evaluation report. The IEP team determined Student did not meet the criteria for school-based counseling. Mother, Father, Student's private therapist, and Student's service coordinator from San Gabriel Pomona Regional Center attended the meeting. A Spanish-language interpreter attended the meeting and interpreted for Mother. Mother signed consent to the IEP amendment. However, at hearing, Mother testified that she did not agree with the recommendation because she still believed Student required school-based counseling. She signed the document because she was worried the school would not provide supports if she did not sign.

In March 2020, Mother requested that Student's therapist provide a letter to Wild Rose. Student ceased receiving services from Pacific Clinics in August 2019. On November 7, 2019, Five Acres began providing Student with individual counseling as well as family sessions. Five Acres used trauma-focused cognitive behavior therapy to help Student work through past trauma. They believed he would continue to benefit from ongoing services through Five Acres. Five Acres did not make any recommendations regarding Student's need for assessments, goals, services, or accommodations at school.

Parent believed Student's behavior reflected trauma he had experienced, and that he believed he would be attacked everywhere he went. However, Student did not show this behavior at school at Wild Rose. Ms. Dionisio, Student's speech pathologist, saw Student as very happy at Wild Rose, always with a big smile. He got along with everybody. She did not see him as sad, depressed, or anxious. In speech group and exercises Student did not talk about bullying or other students being mean to him. He did not have behavior problem, was kind and polite and followed instructions.

MONROVIA APPROPRIATELY ADDRESSED STUDENT'S BEHAVIORAL, SOCIAL-EMOTIONAL, AND MENTAL HEALTH NEEDS DURING DISTANCE LEARNING IN THE 2019-2020 SCHOOL YEAR

From March 13, 2020, through June 3, 2020, while Student attended distance learning in fifth grade at Wild Rose, Monrovia offered appropriate behavior and social-emotional services, goals, and accommodations to address Student's mental health needs, including those caused by bullying. In fact, Mother believed that Student was happy learning from home during distance learning at Wild Rose.

MONROVIA APPROPRIATELY ADDRESSED STUDENT'S BEHAVIORAL, SOCIAL-EMOTIONAL, AND MENTAL HEALTH NEEDS DURING DISTANCE LEARNING FOR THE 2020-2021 SCHOOL YEAR

From August 19, 2020, through June 9, 2021, while Student attended distance learning in sixth grade at Santa Fe, Monrovia offered appropriate behavior and social-emotional services, goals, or accommodations to address Student's mental health needs, including those caused by bullying.

Mother, at hearing, opined that Student exhibited frustration with distance learning at Santa Fe, did not know how to use the computer, and that sometimes the computer did not work. She alleged requesting evaluations in the areas of emotional, behavior, and autism at least 10 times during the 2020-2021 school year. She claimed she requested an autism assessment at every opportunity, and with multiple individuals including the counselor, principal, and IEP case manager. None of these requests were in writing, and Mother did not recall the names of the individuals or the dates she made the requests.

She wanted the assessments because she believed the school did not understand what Student needed and that he was not learning. She testified Student took off his shoes and bit his toenails while at school. He didn't eat lunch with others. He constantly ran away from the classroom. However, Mother frequently exaggerated, had a poor memory for events, and contradicted herself while testifying. For these reasons, Mother's testimony was not credible and was given little weight as to Student's social-emotional functioning at school.

Ms. Esquer was the assistant principal tasked with restorative practices when students had conflicts. During the 2020-2021 school year, there were no incidences in which Student was bullied. Teachers and staff did not report to administration that Student had anxiety or mental health issues. No teacher said he needed more support than what the IEP offered. Ms. Esquer does not recall any individual requesting assessments, including Mother. Ms. Esquer was a careful witness and highly credible.

Monrovia offered Student school-based counseling during the 2020-2021 school year. At the September 3, 2020 IEP team meeting, School Psychologist Tracy Graham Rice believed that counseling was warranted for Student given Parents' concerns with his anxiety levels and the stresses of the pandemic and school closures. She was aware of Ms. Lindsey's February 2020 social-emotional assessment. She did not feel the need to conduct a new assessment as she saw many students with counseling needs due to the pandemic school closures causing social isolation. Monrovia offered Student school-based counseling for two 20-minute sessions per month, for a total of 40 minutes per month. She developed a counseling goal for Student and began providing counseling sessions to Student every other Friday, beginning October 2, 2020.

Ms. Graham Rice provided 30 minutes of counseling per session, more than the 20 minutes the IEP required. She found that in counseling sessions Student had quite a bit of self-awareness and insight. He could identify feelings and triggers. He could express when he felt uncomfortable and say what he needed to feel better. Student discussed many topics with Ms. Graham Rice. He told her that when attending Mayflower, he was jumped by some kids and that he still worried about that. Ms. Graham Rice also spoke with Student's private therapists. Her understanding was that the private therapists were working on Student's rumination of the events at Mayflower.

At the September 3, 2020, IEP team meeting Mother told the team that Student was anxious about the number of students in his classes and moving from class to class. Ms. Magana assured her that he was attending her class and participating. Mother asked the team how they would address Student's anxiety about moving from class to class when in-person school resumed. Ms. Esquer assured Mother that the school site had a plan for transitioning Student and other sixth graders to the middle school campus when in-person instruction resumed. Mother told the Santa Fe team about the incident at Mayflower.

Parent requested a one-to-one aide to support Student. Ms. Esquer believed the team could not offer a one-to-one aide without first conducting an assessment. The school psychologist encouraged Student to attend the office hours with his teachers if he needed extra support, and suggested the team revisit the idea of assessing Student for a one-to-one aide when in-person school resumed. Mother agreed.

At the October 21, 2020 annual IEP team meeting, Mother again shared concerns with Student's anxiety about moving from class to class on the middle school campus when in-person school resumed. She asked what supports he would receive. The IEP

team told Mother that Student would be supported in the transition from elementary school to middle school just like all other sixth grade students. Ms. Esquer explained that Student would have access to his case carrier, Ms. Magana, and School Psychologist Ms. Graham Rice, as well as school staff. Additionally, teachers and a classroom instructional assistant would support him getting from class to class. The IEP team believed that Santa Fe staff was experienced in helping all incoming students, including special education students, with transitioning to a middle school campus. They did not believe Student required additional supports for this transition.

In her counseling sessions with Student, Ms. Graham Rice also addressed Student's concerns with moving from class to class on the middle school campus. He was worried about finding his classes. They discussed what it would look like and how he would be supported. She offered to walk the campus with him and go from class to class on an afternoon when other students were not present due to short hybrid days. The family declined her offer.

In English class, Student presented as a sweet young man who worked well with others. He was pleasant and compliant. He enjoyed sharing his interest in Legos. He followed directions and was not disruptive. Ms. Magana saw Student forming a friendship with two other students, and he had conversations with them over Zoom in her class.

Mother requested that Student not be required to read aloud in class. The IEP team believed that reading aloud was a method of developing his reading skills, but agreed to ask his teachers to avoid reading in front of the class. Dr. Bailey opined that this response was inappropriate. She believed Student would have been embarrassed and traumatized by reading aloud.

Student was friendly and had many friends. Mother reported to the IEP team Student wanted to return to Wild Rose and did not want to attend different classes in middle school. The team agreed that when he became frustrated and upset with situations he would shut down and had difficulty expressing his feelings.

At the October 21, 2020 IEP team meeting, Monrovia offered Student a counseling goal. When feeling overwhelmed or anxious, Student would use a visual tool to identify his emotional state and use a coping strategy. Ms. Graham Rice used a zones of regulation visual tool with Student every counseling session. She began by checking in with him. Even if he was in the green zone, they would practice coping skills because he benefitted from learning them when he was emotionally regulated. She helped him identify physiological symptoms of anxiety and dysregulation. They used visual imagery, breathing techniques, and working with the five senses to regulate emotions. They discussed complex emotions such as being embarrassed or proud. Sometimes they discussed issues in Student's life that he was thinking about that particular day. Student was engaged in his counseling sessions and responded to the strategies and interventions.

Dr. Bailey opined that Student lacked the underlying skills to use coping strategies and was unable to identify his emotions when he was anxious or overwhelmed. He would need significant prompting. Additionally, she believed the goal was inadequate because it failed to describe the visual tool Student was expected to use. She opined that the visual tool should have been sent home, where Student was attending school virtually. She also opined that the IEP lacked goals in the areas of attention and autism. Dr. Bailey believed the October 21, 2020 annual IEP failed to offer sufficient social-emotional accommodations. Dr. Bailey's testimony as to Student's social-emotional and mental health needs for the period in controversy was not persuasive because she did

not know him at the time and relied on incomplete educational records to form her opinion. Additionally, the bulk of the documentary evidence and testimony contradicted Dr. Bailey's opinions as to Student's social-emotional and mental health functioning for the time period at issue.

On June 7, 2021, in the last week of Student's sixth-grade year, he began seeing a new private therapist, Jacquelyn Najera, through McKinley. Ms. Najera assessed Student and developed a client treatment plan. Ms. Najera's assessment is based upon interviews and information provided by Mother and Student. Mother articulated Student's long-term goals, which included getting support from school and a one-to-one aide. Mother reported Student had been bullied by peers throughout his entire school age years and that in April 2019 he had to go to the hospital after being beat up by bullies. Mother reported Student was "scarred" from this trauma and did not see school as a safe place. She told Ms. Najera that Student was abused by teachers who treated him unfairly. Student reported school made him feel frustrated, afraid, and concerned his peers would judge him because of his reading and writing abilities. He also reported passive suicidal ideation in the past.

Ms. Najera completed a risk assessment and determined he was not a danger to himself. Based upon the reports by Mother and Student, Ms. Najera diagnosed Student with PTSD. In her professional opinion, trauma caused by bullying at school led to Student's PTSD. Dr. Larson relied on this document to opine that Monrovia did not address Student's social-emotional needs for the period in controversy. However, neither Ms. Najera nor Parents shared the assessment and client treatment plan with Monrovia. Monrovia did not have knowledge of the contents of these documents for the time period at issue.

Ms. Najera assisted Mother with writing a letter to Monrovia about Student's needs. Ms. Najera also wrote a separate but similar letter, in her role as a mental health therapist at McKinley. These letters dated July 28, 2021, were addressed to Ms. Johnson, although they used the wrong email address for her.

Mother and Ms. Najera wrote that Student was diagnosed with PTSD due to severe bullying at school. They requested a one-to-one aide for Student and a hybrid schedule in which he attended school virtually three days per week and in person two days per week. Ms. Najera wrote the letter to support Student and Mother in obtaining services at school. At hearing, Ms. Najera testified that at the time she wrote the letter she was outside the scope of her practice to recommend a one-to-one aide or hybrid school schedule.

Ms. Johnson was out of the office due to a personal procedure and did not receive the letter until September 2021. Upon receipt,, Ms. Johnson emailed Mother and contacted the CEO of McKinley, although Student was no longer enrolled in Monrovia.

MONROVIA APPROPRIATELY ADDRESSED STUDENT'S BEHAVIORAL, SOCIAL-EMOTIONAL, AND MENTAL HEALTH NEEDS DURING IN-PERSON LEARNING FOR THE 2021-2022 SCHOOL YEAR

From August 18, 2021, through August 20, 2021, while Student attended in-person instruction in seventh grade at Santa Fe, Monrovia offered appropriate behavioral and social-emotional services, goals, or accommodations to address Student's mental health needs, including those caused by bullying.

Mother was extremely concerned with Student attending middle school in person. Prior to the first day of school, Mother called the principal of Santa Fe, with support from Ms. Najera. Ms. Najera told the principal that Student was receiving private counseling and that he had been bullied at school in the past.

Student was also anxious, which he discussed in his counseling session with Ms. Graham Rice. Ms. Graham Rice believed Student needed tools and supports to navigate his anxiety upon returning to campus. He might need a safe place or safe person to help him with the anxiety, and that the school site would provide him with those supports.

Student attended three days of seventh grade at Santa Fe for the beginning of the 2021-2022 school year. Upon arriving at school his first and second days, his case manager, Ms. Magana, greeted Student. She was also his classroom teacher for English and social studies. He was shy and compliant. He did not cry or appear anxious. School staff helped him get from class to class. He did not wander off or get lost on campus.

On his third and last day of school, Student was greeted by Ms. Graham Rice. Parents explained that Student was anxious. She checked in with him and then took him to her office for a counseling session. For over an hour Ms. Graham Rice and Student worked through his anxiety and coping strategies. Student was calm and emotionally regulated. Ms. Graham Rice planned to transition Student to class, but first stopped at the office to help him get a copy of his schedule. Parents had not left the office because they were worried about Student. Upon seeing Student back at the office, they decided to take him home.

Overall, from December 6, 2019, through September 6, 2021, Monrovia offered appropriate behavior and social-emotional services, goals, or accommodations to address Student's mental health needs, including those caused by bullying.

Student failed to meet his burden of proof and Monrovia prevailed on Issue 4.

ISSUE 5: FROM DECEMBER 6, 2019, THROUGH SEPTEMBER 6, 2021, DID MONROVIA FAIL TO PROVIDE APPROPRIATE SPEECH AND LANGUAGE, INCLUDING BUT NOT LIMITED TO SERVICES, GOALS, AND ACCOMMODATIONS?

Student contends that Monrovia ignored Student's severe needs in the areas of expressive, receptive, and pragmatic language, and articulation, with the exception of working on Student's articulation of the "th" sound. Student argues that during the period in controversy Student required additional speech goals, services, and accommodations.

Monrovia contends Parents and their expert witnesses were not knowledgeable about the interventions used in the Student's classes while he was enrolled in Monrovia. It further contends that it offered appropriate speech goals, services, and accommodations to address Student's needs for the time period at issue.

A speech or language impairment is a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. (34 C.F.R. § 300.8(c)(10).) Speech and language services are related services under the IDEA. (34 C.F.R. § 300.34.)

There is no dispute that Student had a speech and language impairment throughout the entire period at issue. The relevant question is whether Monrovia offered Student speech services, goals, and accommodations reasonably calculated to enable Student to make progress appropriate in light of his circumstances.

Student did not meet his burden of proof that Monrovia failed to offer Student appropriate speech goals, services, and accommodations.

MONROVIA APPROPRIATELY ADDRESSED STUDENT'S SPEECH NEEDS DURING IN-PERSON LEARNING FOR THE 2019-2020 SCHOOL YEAR

From December 6, 2019, through March 12, 2020, while Student attended in-person instruction in fifth grade at Wild Rose, Monrovia offered Student appropriate speech and language, including but not limited to services, goals, and accommodations.

At the September 24, 2019 IEP, Student was eligible for special education under the secondary category of speech or language impairment. However, he had functional communication skills at school. He could hold conversations with teachers and peers. He could participate in large and small group settings. He could communicate his needs with the teacher and aide. He was not afraid to ask for help when needed. Student met all three of his speech goals from the previous year.

Despite his communication strengths, Student had articulation deficits that interfered with his speech intelligibility. His classroom teacher, Joanna Prather, reported that he was communicating well in her class. Her only concern was that he was occasionally unintelligible due to articulation. Monrovia offered Student one goal in the area of speech and language: an articulation goal working on the sound "th."

Ms. Dionisio, speech and language pathologist at Wild Rose, developed the new goal based upon his present levels of performance and his classroom functioning. She chose to work on the "th" sound, voiced, such as in the word "the" and voiceless, such as in the word "thing."

He had difficulty knowing what to do with his mouth when forming the "th" sound. She believed that his inability to articulate the "th" sound impaired his intelligibility in class as well as his ability to communicate with peers and his social skills. Ms. Dionisio believed the articulation goal was appropriate for the entire year and that he made progress on this goal. The team discussed Student's speech goals and services with Mother at the September 24, 2019 IEP, and she consented on the date of the meeting.

From December 6, 2019, through March 12, 2020, Student received 30 minutes per week of speech services in a small group setting of two to three students. All the students in his small speech group were working on articulation. In his group speech services, Student was communicative and interacted well with peers and adults. He smiled when he came into a room and greeted others. He could say what happened in the classroom. He did not show anxiety or reticence to speak to his peers. His overall language levels were lower than same age peers. Although he could have conversations, they were at a lower level than typically developing fifth-grade students.

In addition to his speech services, Student attended a language enriched classroom for fifth grade. For at least one hour per week, Ms. Prather, his classroom teacher, and Ms. Dionisio collaborated and consulted to plan activities to support the language development of the students in the class. Ms. Dionisio gave Ms. Prather suggestions on encouraging Student's grammar, regular and irregular nouns and pronouns, and his ability to retell stories.

As part of the language enriched class, Ms. Dionisio and Ms. Prather had a cooking session one time per month to work on social skills and communication. They came up with a recipe, described the steps, and reviewed and asked questions. They cooked the recipe, then discussed whether they liked what they had cooked, and took turns making polite comments. From December 6, 2019, through March 12, 2020, Monrovia did not deny Student a FAPE by failing to provide appropriate speech and language services, goals, and accommodations.

MONROVIA APPROPRIATELY ADDRESSED STUDENT'S SPEECH NEEDS DURING DISTANCE LEARNING IN THE 2019-2020 SCHOOL YEAR

From March 13, 2020, through June 3, 2020, Monrovia offered Student appropriate speech and language, including but not limited to services, goals, and accommodations. When Wild Rose moved to distance learning, Ms. Dionisio offered speech sessions via Zoom. Student did not attend any virtual speech sessions with Ms. Dionisio, which is discussed further in Issue 11, subsection (a). However, Monrovia continued to offer the same speech services, goals, and accommodations Student received prior to schools closing in March 2020. Specifically, Student continued to receive 120 minutes per month of speech services, a speech goal to address his articulation needs, and a language enriched classroom.

MONROVIA APPROPRIATELY ADDRESSED STUDENT'S SPEECH NEEDS DURING DISTANCE LEARNING FOR THE 2020-2021 SCHOOL YEAR

From August 19, 2020, through June 9, 2021, while Student attended distance learning in sixth grade at Santa Fe, Monrovia offered Student appropriate speech and language, including but not limited to services, goals, and accommodations. Mackenzie

Hunt provided 120 minutes per month of speech services to Student for the 2020-2021 school year. She texted Mother before every speech session to make sure Student was logged on. The weight of the evidence showed Student attended most speech sessions and received all the speech minutes in his IEP.

Ms. Hunt did not attend Student's annual IEP on October 21, 2020, because she was attending an IEP for a different student on her caseload. As such, the IEP team did not develop an annual speech goal or make a new formal offer of speech services at the meeting. However, Ms. Hunt continued implementing Student's services and working on his goal from the September 24, 2019 IEP. Student continued to make progress and benefit from speech services at the beginning of the 2020-2021 school year.

In January 2021, Monrovia convened an IEP team meeting to discuss speech. Ms. Hunt attended the meeting and developed two new speech goals for Student, one for grammar and the other for articulating phonemes. Monrovia continued to offer Student 120 minutes per month of speech services in a group setting. Parents emailed their consent, and Hunt continued to implement Student's speech services for the 2020-2021 school year.

MONROVIA APPROPRIATELY ADDRESSED STUDENT'S SPEECH NEEDS DURING IN-PERSON LEARNING FOR THE 2021-2022 SCHOOL YEAR

Student only attended three school days for the 2021-2022 school year. He did not present any evidence as to speech services for these days. From August 19, 2020, through August 20, 2021, Monrovia did not deny Student a FAPE by failing to provide appropriate speech and language services, goals, and accommodations.

Susan Hollar, Student's speech expert, assessed him on May 23, 2022, and June 13, 2022. Based upon her review of records and her testing, she opined that Monrovia did not provide Student adequate speech services for the entire time period at issue.

Ms. Hollar's conclusions were not persuasive for several reasons. First, her analysis relied on a review of a bundle of educational records that were unreliable. Numerous important documents such as IEPs were missing pages, incomplete, misdated, or combined with other unrelated documents. This led to errors such as her belief that Monrovia offered Student six, 30-minute sessions of speech for the 2019-2020 school year, when the offer was 120 minutes per month. Ms. Hollar mistakenly believed Student did not receive any speech services from the beginning of the 2020-2021 school year until January 2021, which is the basis for her expert opinion that Monrovia owed Student compensatory services for this time. At the time she wrote her report, she was not aware that Student attended a language enriched classroom because Monrovia did not include the details of the classroom in the IEP document. Ms. Hollar did not interview any staff from Monrovia, so she lacked clarification on how Monrovia delivered Student's speech services and accommodations.

Importantly, Ms. Hollar did not know Student during the time period at issue, from December 6, 2019, through September 6, 2021. She assessed him nine months after he disenrolled from Monrovia and had spent a school year at CAVA, a significant intervening factor in any causal link between the speech services he received at Monrovia and his skills when she assessed him. Ms. Hollar could not persuasively rebut the idea that his school year at CAVA affected his communication functioning when she met him in 2022. As such, his communication functioning and educational needs at the time of her assessment, cannot reliably be assumed to be equivalent to his functioning

while he was Monrovia. Therefore, Ms. Hollar's expert testimony and report were given little weight in determining whether Monrovia provided Student with appropriate speech and language services, goals, and accommodations for the time period at issue.

Overall, from December 6, 2019, through September 6, 2021, Monrovia offered Student appropriate speech and language, including but not limited to services, goals, and accommodations. Monrovia prevailed on Issue 5.

ISSUE 6: FROM DECEMBER 6, 2019, THROUGH SEPTEMBER 6, 2021, DID MONROVIA FAIL TO PROVIDE APPROPRIATE OCCUPATIONAL THERAPY, INCLUDING BUT NOT LIMITED TO SERVICES, GOALS, AND ACCOMMODATIONS?

Student contends he had long-standing needs in the area of occupational therapy that Monrovia knew about but did not address. Student contends that occupational therapy assessments and observations in 2022 show that Student had fine motor, gross motor, and sensory needs that would have been apparent while Student attended Monrovia schools from December 6, 2019, through August 20, 2021.

Monrovia contends that Student did not demonstrate deficits in the area of occupational therapy when he was attending Monrovia schools and therefore, did not require occupational therapy goals, services, or accommodations. Monrovia points to Student's success in general education physical education and art as further proof of Student's abilities in gross and fine motor functioning.

Occupational therapy is a related service under the IDEA. (34 C.F.R. § 300.34.)

Historically, Student demonstrated appropriate skills in the areas of fine motor and gross motor while attending Monrovia schools. When Monrovia conducted an initial assessment of Student in November and December 2011, it did not identify any concerns in the areas of fine or gross motor skills. Student was diagnosed with autism but did not present with typical behaviors often associated with autism, such as sensory deficits.

From December 6, 2019, through September 6, 2021, Monrovia did not fail to provide appropriate occupational therapy, including but not limited to services, goals, and accommodations. Student did not have needs in the areas of fine motor, gross motor, or sensory such that he required occupational therapy services, goals, or accommodations. At the September 24, 2019 IEP team meeting, the team discussed his strengths were Legos and computers. He struggled with the writing process, but this was because he became frustrated when sounding out and writing words due to his learning disability.

The IEP team did not identify any concerns with fine or gross motor skills. From a fine motor perspective, he could write his first and last name and the date. He could use crayons, markers, and scissors appropriately. Student excelled at art, earning top grades and praise from his teacher. Student could button buttons and use zippers. Ms. Prather did not see a need for supports in the area of fine motor. With respect to gross motor, he could do jumping jacks, foot lunges, and stretches. He could walk and run morning laps regularly. He participated in general education physical education and received grades of 4, meaning proficient, on a 1-4 scale. He could move around the classroom, school, and playground independently. He could use the restroom independently and get water. He enjoyed playing tag and going on swings. Furthermore, Ms. Prather did not observe Student having sensory deficits.

At the IEP team meetings of February 26, 2020, September 3, 2020, October 21, 2020, and January 2021, the IEP team did not identify any needs that Student had related to occupational therapy.

Student offered testimony from two occupational therapists who assessed Student after he left Monrovia. Mandy Krzeminski was an occupational therapist who contracted with CAVA to assess special education students. On March 24, 2022, Ms. Krzeminski assessed Student in the area of occupational therapy. She determined that he qualified for school-based occupational therapy. Lori Spear is the Director of Occupational Therapy at Portview, a non-public school. On September 21 and 27, 2022, Ms. Spear assessed Student but did not draft a written assessment report. Ms. Spear, Student's expert in occupational therapy, opined Student required occupational therapy services at Monrovia for the period in controversy, from December 6, 2019, through September 6, 2021.

Ms. Krzeminski's and Ms. Spear's testimony, based upon their assessments of Student conducted long after Student left Monrovia, did not shed light as to Student's needs in occupational therapy for the time period at issue and the reasonableness of Monrovia's actions. (See *E.M. v. Pajaro Valley Unified Sch. Dist.* (9th Cir. 2011) 652 F.3d 999.) They did not know Student when he attended Monrovia. They did not interview Monrovia's staff. Additionally, their testimony as to Student's functioning and needs was not consistent with the overwhelming evidence about Student during the period in controversy. For example, Ms. Spears testified that Student could not tolerate being on a swing or doing jumping jacks. However, when Student attended Monrovia, he enjoyed swings and successfully participated in general education physical education. Ms. Krzeminski's and Ms. Spear's testimony was not persuasive.

Student failed to meet his burden of proof that Student had needs in the area of occupational therapy that Monrovia failed to address. Monrovia prevailed on Issue 6.

ISSUE 7: FROM DECEMBER 6, 2019, THROUGH SEPTEMBER 6, 2021, DID MONROVIA FAIL TO PROVIDE APPROPRIATE ASSISTIVE TECHNOLOGY, INCLUDING BUT NOT LIMITED TO SERVICES, GOALS, AND ACCOMMODATIONS?

ISSUE 11(c): FROM MARCH 13, 2020, THROUGH JULY 31, 2021, DID MONROVIA DENY STUDENT A FAPE DURING THE PERIOD OF DISTANCE LEARNING BY FAILING TO PROVIDE ASSISTIVE TECHNOLOGY SO THAT STUDENT COULD ACCESS DISTANCE LEARNING?

Student contends he required assistive technology to access his curriculum, which Monrovia failed to offer. In his closing brief, Student argued he required various technologies such as audio books and text to speech.

Monrovia contends Student did not require assistive technology services, goals, or accommodations.

An IEP team must consider whether a child requires assistive technology devices and services in order to receive a FAPE, as a regular part of the IEP process. (34 C.F.R. § 300.324; *Letter to Anonymous* (OSEP 1996) 24 IDELR 854.) Assistive technology and services must be directly connected to the student's educational needs. (*Letter to Naon* (OSEP 1995) 22 IDELR 888.)

Assistive technology device means any item, piece of equipment, or product system used to increase, maintain, or improve the functional capabilities of the special education student. (Ed. Code, § 56020.5; 34 C.F.R. § 300.5.) An assistive technology service is any service that directly assists a child with a disability in the selection, acquisition, or use of any assistive technology device. (34 C.F.R. § 300.6.)

A local education agency shall provide the use of school purchased assistive technology devices in a child's home if the IEP team determines the child needs access to those devices to receive a FAPE. (34 C.F.R § 300.105; Ed Code, § 56040.3.)

STUDENT DID NOT NEED ASSITIVE TECHNOLOGY DURING IN-PERSON LEARNING FOR THE 2019-2020 SCHOOL YEAR

From December 6, 2019, through March 12, 2020, while Student attended in-person instruction in fifth grade at Wild Rose, Monrovia appropriately did not offer him assistive technology, including but not limited to services, goals, and accommodations. At the September 24, 2019 IEP team meeting, the school determined Student did not require assistive technology devices or services. Student did not present any specific evidence as to Student's need for assistive technology while attending Ms. Prather's class in person.

STUDENT DID NOT NEED ASSITIVE TECHNOLOGY DURING DISTANCE LEARNING FOR THE 2019-2020 AND 2020-2021 SCHOOL YEARS

From March 13, 2020, through June 9, 2021, while Student attended distance learning at Wild Rose and Santa Fe, Monrovia appropriately did not offer assistive technology, including but not limited to services, goals, and accommodations. Like all

other Monrovia students during distance learning, Student was provided with a Chromebook computer, charger, and computer case. The district also provided a technology hotline for parents to use if they were having problems, and videos and handouts in English and Spanish. For special day classes, Monrovia created all-day Zoom links for the students, which allowed students to access their virtual classrooms.

Student initially had some difficulty accessing the technology and logging onto the virtual classroom. For the first two weeks he was not online. Then, Parents went to the school site and checked out a Chromebook and Ms. Prather showed them how to log on and use the technology. After a few weeks the technology problems were solved, and Student was participating in distance learning in Ms. Prather's class. Student attended Ms. Prather's distance learning class 75 percent of the time. He completed 85 percent of morning meetings and check-ins.

To support her students in distance learning, Ms. Prather used the embedded supports in the Chromebooks, Zoom break out rooms for small group and individualized instruction, Google Classroom, Classroom Dojo, and Flipgrid. These technologies were for all of her students, and not specific to Student.

Student continued to use a computer to access specialized academic instruction, speech services, and counseling while attending distance learning at Santa Fe. Student did not have attendance issues when in distance learning at Santa Fe. Student participated in class with his camera on. He asked questions in class. Ms. Hunt supported his attendance at speech sessions by texting Mother before each session to make sure he logged on.

At the beginning of the 2020-2021 school year Student had some difficulty logging on. He also had some difficulties with volume levels and his keyboard. Parents brought the computer to the school site for assistance. Student's math teacher helped the family problem-solve and fix his computer settings. Student's technology issues were resolved successfully early in the 2020-2021 school year.

At the October 21, 2020 annual IEP team meeting, Monrovia staff shared Student was attending class and participating in distance learning. He could type and share his screen. Monrovia staff did not see the need for assistive technology in his IEP. They did not see him as having significant difficulty with technology. Mother agreed with the team that he was improving in his use of technology. At home, she provided him with verbal encouragement. However, she was still concerned that he was struggling to access the information provided through the computer.

Dr. Larson opined that assistive technology would have been valuable to Student at the time of the October 21, 2020 IEP. Student's spelling was so poor that even auto correct would not understand the words he was trying to generate when typing. Dr. Bailey opined that Student required assistive technology to access his curriculum at the time of the October 21, 2020 IEP. However, these opinions were not persuasive as they were contradicted by the bulk of the evidence from documents developed at the relevant time and testimony from Monrovia staff that Student did not require assistive technology to access his curriculum.

Parents were frustrated with the technology for distance learning, a sentiment shared by many teachers, parents, and students throughout the period of school closures. However, Student's argument in this case conflates "technology" with

“assistive technology.” Every time a student with an IEP is provided a computer or audio book, this does not mean the child needs or is receiving assistive technology. Technology does not become assistive technology just because it is provided to a student with an IEP. Assistive technology devices and services are specifically those that a student requires to receive a FAPE based on the student’s educational needs, as determined by the IEP team, on an individualized basis. The evidence did not show that Student had disabilities or educational needs such that he required assistive technology devices and services beyond the technology that was provided to all Monrovia students during distance learning.

STUDENT DID NOT NEED ASSISTIVE TECHNOLOGY DURING IN-PERSON LEARNING FOR THE 2021-2022 SCHOOL YEAR

From August 18, 2021, through August 20, 2021, while Student attended in person instruction in seventh grade at Santa Fe, Monrovia appropriately did not offer assistive technology, including but not limited to services, goals, and accommodations. Student did not present any evidence regarding assistive technology for this time period.

The weight of the evidence showed Student did not require assistive technology during the 2019-2020, 2020-2021, or 2021-2022 school years, while Student attended Monrovia. As such, Monrovia did not deny Student a FAPE by failing provide assistive technology, goals, accommodations, including during distance learning. Monrovia prevailed on Issues 7 and 11, subdivision (c).

ISSUE 8: FROM DECEMBER 6, 2019, THROUGH SEPTEMBER 6, 2021, DID MONROVIA DENY STUDENT A FAPE BY FAILING TO ADDRESS STUDENT'S SOCIAL SKILLS NEEDS?

Student contends in his closing brief that because of his autism, Student could not read social cues or socialize with peers, which resulted in him being bullied. The bullying, Student argues, led to school aversion and social anxiety. Student contends he currently needs social skills training and intervention to compensate for Monrovia's failure to address his autism and language disabilities, which led to bullying and trauma.

Monrovia contends it supported Student's social skills development in Ms. Prather's language enriched classroom and through speech services. Monrovia further contends Student got along well with peers and staff and did not demonstrate social skills deficits while attending Monrovia schools.

MONROVIA APPROPRIATELY ADDRESSED STUDENT'S SOCIAL SKILLS DURING IN-PERSON LEARNING FOR THE 2019-2020 SCHOOL YEAR

From December 6, 2019, through March 12, 2020, while Student attended in-person instruction in fifth grade at Wild Rose, Monrovia did not fail to address Student's social skills needs. Mother believed Student had no friends at Wild Rose. Mother's testimony was not credible. At the September 24, 2019 IEP team meeting, the IEP team reported that Student was friendly and had many friends. The evidence overwhelming showed that Student interacted well with peers and teachers and did not have social skills deficits that interfered with his education.

MONROVIA APPROPRIATELY ADDRESSED STUDENT'S SOCIAL SKILLS DURING DISTANCE LEARNING FOR THE 2019-2020 AND 2020-2021 SCHOOL YEARS

From March 13, 2020, through June 9, 2021, while Student attended distance learning at Wild Rose and Santa Fe, Monrovia did not fail to address Student's social skills needs. Student raises arguments in his closing brief that Student was the victim of bullying while at Mayflower because he lacked social skills, which caused anxiety that worsened during distance learning.

However, the evidence did not establish causal links for this theory. Student did not display symptoms typically associated with autism at school in Monrovia. There is no evidence that Student's social skills had any connection with the altercation in fourth grade. Student's residual anxiety from the altercation did not prevent him from attending Wild Rose for the 2019-2020 school year, until school closures in March 2020. Student did not present evidence that his anxiety around school became worse during distance learning. The testimony and documentary evidence did not show that Student had needs in the area of social skills during distance learning in the 2019-2020 or 2020-2021 school years.

MONROVIA APPROPRIATELY ADDRESSED STUDENT'S SOCIAL SKILLS DURING IN-PERSON LEARNING FOR THE 2021-2022 SCHOOL YEAR

Student did not present any evidence about his social skills from August 18, 2021, through August 20, 2021, while Student attended in-person instruction in seventh grade at Santa Fe. The weight of the evidence showed Student did not have social skills

deficits that impacted his education during the 2019-2020, 2020-2021, and 2021-2022 school years, while he attended school in Monrovia. Therefore, Monrovia did not deny Student a FAPE by failing to address Student's social skills. Monrovia prevailed on Issue 8.

ISSUE 9: FROM DECEMBER 6, 2019, THROUGH SEPTEMBER 6, 2021, DID MONROVIA DENY STUDENT A FAPE BY FAILING TO DRAFT A HEALTH SERVICES PLAN OR HAVE A SCHOOL NURSE ATTEND HIS IEP TEAM MEETINGS?

Student contends he was diagnosed with autism, ADHD, PTSD, gastritis, facial tics, seasonal allergies, and allergies to penicillin and milk. Student alleges he was prescribed medication for ADHD, an inhaler for asthma, and was seeing a specialist for diabetes. Student contends that because of this, Monrovia should have drafted a health plan for him, and a nurse should have attended his IEP team meetings.

Monrovia contends Student did not need any medical assistance during his school day, and as such, did not require a health plan or the attendance of a nurse at his IEP team meetings.

In California, related services include health and nursing services. (Ed. Code § 56363, subd. (b)(12).) Health and nursing related services include managing an individual's health problems on the school site. (Cal. Code Regs., tit. 5, § 3051.12(a)(2).) For some students with health needs, a school district must develop an individualized health care plan as part of the IEP.

From December 6, 2019, through September 6, 2021, Monrovia did not deny Student a FAPE by failing to draft a health services plan or have a school nurse attend his IEP team meetings. Mother reported numerous health-related issues to Monrovia, including that Student was diagnosed with ADHD, autism, language disorder, gastritis, asthma, seasonal allergies, and a milk allergy. She also told the IEP team that he took medications and struggled with eating and stomach pain. However, Student did not present any evidence that Student's health-related diagnoses affected his education or ability to access his curriculum. At the September 24, 2019 IEP team meeting, the IEP team indicated he came to school in good health.

Overall, Student did not establish any connection between his physical health and education. Student did not meet his burden of proof that Monrovia denied Student a FAPE by failing to draft a health services plan or have a school nurse attend his IEP team meetings. Monrovia prevailed on Issue 9.

**ISSUE 10: FROM DECEMBER 6, 2019, THROUGH SEPTEMBER 6, 2021,
DID MONROVIA DENY STUDENT A FAPE BY FAILING TO PROVIDE
TRANSPORTATION SERVICES TO AND FROM HIS SCHOOL OF
ATTENDANCE AS A RELATED SERVICE?**

Student contends he required transportation as a related service, which Monrovia failed to provide when Student attended in-person instruction at Wild Rose. Student argues he received special education transportation for the years he attended Mayflower and that Monrovia did not provide any rationale based upon Student's educational needs to justify its decision not to transport him between home and Wild Rose.

Monrovia contends Parents voluntarily waived special education transportation when they requested an intra-district transfer from Mayflower to Wild Rose.

Transportation is a related service under the IDEA. (34 C.F.R. § 300.34.) IEP teams decide on a case-by-case basis whether an eligible student requires special education transportation to benefit from their education.

From December 6, 2019, through March 12, 2020, while Student attended in-person instruction in fifth grade at Wild Rose, Monrovia was not required to provide transportation services to and from his school of attendance as a related service. On August 8, 2019, prior to the beginning of his fifth-grade year, Mother requested an intra-district transfer from Mayflower to Wild Rose. Monrovia approved the intra-district transfer. The August 8, 2019, intra-district transfer form, which was signed by Mother, included a statement that parents assumed all responsibility to provide transportation to the school requested. Monrovia considered the signed intra-district transfer form to be a waiver of special education transportation, even if Student would otherwise qualify.

Despite reading and signing the intra-district transfer form, Mother expected Student to receive special education transportation between his home and Wild Rose. Student's IEP from Mayflower included transportation as a related service. Mother believed Monrovia had many buses available. Student could not independently transport himself to Wild Rose by walking, riding a bicycle, or using public transportation. Mother requested Wild Rose provide special education transportation, but the school declined because she had requested the intra-district transfer. She transported Student to and from Wild Rose for the 2019-2020 school year, until March 13, 2020.

The weight of the evidence demonstrated Parents waived Student's special education transportation in the August 8, 2019 intra-district transfer form. As such, Monrovia was not required to provide Student with transportation as a related service for this time period.

From March 13, 2020, through June 3, 2020, while Student attended distance learning in fifth grade at Wild Rose, and from August 19, 2020, through June 9, 2021, while Student attended distance learning in sixth grade at Santa Fe, Monrovia was not required to provide transportation as a related service. Student did not require transportation of any type because he did not attend a physical school site.

From August 18, 2021, through August 20, 2021, while Student attended in-person instruction in seventh grade at Santa Fe, Monrovia did not fail to provide transportation services to and from his school of attendance as a related service. Student did not present any evidence as to Student's transportation needs or services for this period.

Student did not meet his burden of proof that Monrovia denied Student a FAPE by failing to provide transportation as a related service to and from his school of attendance during the 2019-2020, 2020-2021, and 2021-2022 school years. Monrovia prevailed on Issue 10.

ISSUES 11(a) AND 11(d): FROM MARCH 13, 2020, THROUGH JULY 31, 2021, DID MONROVIA DENY STUDENT A FAPE DURING THE PERIOD OF DISTANCE LEARNING BY FAILING TO IMPLEMENT HIS IEP SERVICES OR ADJUST STUDENT'S IEP SERVICES, GOALS, AND ACCOMMODATIONS?

Student contends that Monrovia did not implement Student's IEP during distance learning at Wild Rose and Santa Fe. Student contends that Parents' recollection of the events during this time period are more reliable than Monrovia's witnesses, whose testimony, in Student's view, ranged from confused to disingenuous.

Monrovia contends it implemented Student's IEP during distance learning by providing all specialized academic instruction and speech and language services in his IEPs, and that Student's refusal to log on was self-imposed. Monrovia contends that during the 2020-2021 school year, it offered Student in-person instruction in learning pods and hybrid instruction, but Parents opted to continue distance learning.

A school district must implement a student's IEP with all required components. (34 C.F.R. § 300.323(c).) A school district violates the IDEA if it materially fails to implement a child's IEP. (20 U.S.C. § 1401(9).) A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822.) However, "[t]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*)

Local educational agencies must continue to implement a student's IEP, including specialized academic instruction, during distance learning. (*California Department of Education Special Education Guidance for Covid-19*, September 30, 2020.)

On March 13, 2020, Governor Newsom issued Executive Order N-26-20, requiring the California Department of Education, referred to as CDE, and Health and Human Services Agency to jointly develop guidance ensuring that during the Covid-19 pandemic students with disabilities receive a FAPE consistent with their IEP and meeting other procedural safeguards under the IDEA and California law. On March 20, 2020, CDE issued the mandated guidance, which it updated on April 9, 2020, and September 30, 2020. In its March 20, 2020 guidance, CDE reiterated that the federal government did not waive the requirements under the IDEA.

Local educational agencies must review each student's IEP periodically, but not less than one time per year, to determine whether the child is achieving their annual IEP goals and to revise the IEP to address any lack of expected progress, results of re-evaluations, parental concerns, the child's needs, or other matters. (20 U.S.C. § 1414(d)(4).)

During distance learning, a local educational agency denies a child a substantive FAPE if it fails to provide special education and related services that allow the child to access specialized instruction and related services individually designed to provide educational benefit and reasonably calculated to enable a child to make progress. (*Rowley, supra*, 458 U.S. 176, 201-204; *Endrew F., supra*, 137 S.Ct. 988, 1000.)

On March 18, 2020, Monrovia sent Parents a prior written notice letter regarding the closure of in-person schooling due to the Covid-19 outbreak. Beginning March 13, 2020, students began distance learning at home. Monrovia did not have a lapse in services for students with IEPs after closing school on March 13, 2020. They continued to provide all related service minutes in the students' IEPs. Ms. Johnson insisted that Monrovia staff implement all related service minutes of students' IEPs, despite push-

back from some staff and union members who believed they were being required to work harder than general education teachers, and for longer workdays than specified in their contracts.

In the first few weeks after March 13, 2020, Monrovia special education teachers, staff, and related service providers used a variety of tools to provide IEP services to special education students. Monrovia used school buses to deliver packets of work to some students and teachers also went to homes to deliver materials. Most schools in Monrovia had already provided students with personal computers or other devices prior to school closures. However, some families needed internet connections which Monrovia provided as needed.

Monrovia provided webinars on distance learning to parents, community members, and school employees. Monrovia offered a webinar to parents in Spanish and English, which many parents accessed. The webinar did not require a fee and was designed to be easy for parents to access. Parents responded to some district communication about distance learning, as shown by their participation in district surveys.

From March 13, 2020, through June 3, 2020, while Student attended distance learning in fifth grade at Wild Rose, Monrovia implemented Student's specialized academic instruction minutes. Ms. Prather continued the same class schedule with a normal school day. Student attended Ms. Prather's distance learning class 75 percent of time. He completed 85 percent of morning meetings and check ins.

From March 13, 2020, through June 3, 2020, while Student attended distance learning in fifth grade at Wild Rose, Monrovia failed to implement the speech services in Student's operative of IEP of September 24, 2019. Ms. Dionisio credibly testified that she offered speech session via Zoom, but Student did not attend. She did not know why he was absent. Monrovia sent reminders to Parents but did not receive a response. Ms. Dionisio could not recall seeing Student for a single Zoom speech session. She considered him to be absent because he was not availing himself to virtual speech sessions. Mackenzie Hunt testified unpersuasively that she confirmed in Monrovia's speech logs that Student received all speech services for spring 2020. Ms. Hunt's broad conclusory statement appeared to have been coached and was not credible. Student's IEP of September 3, 2020, confirms Ms. Dionisio's recollection. Student accessed no speech activities during distance learning for spring 2020.

Monrovia's passive attitude towards Student's attendance for virtual speech sessions did not meet the threshold for IEP implementation. In this case, Monrovia should have investigated why Student missed the speech sessions and taken affirmative steps to close the gap between Monrovia's willingness to offer virtual speech services and Student's inability to access those services. This amounted to a material failure to implement Student's IEP, in violation of the IDEA.

From August 19, 2020, through June 9, 2021, while Student attended distance learning in sixth grade at Santa Fe, Monrovia implemented Student's IEP services, including specialized academic instruction, speech, and counseling. Ms. Esquer recalled that Student participated in class with his camera on. He asked questions in class.

Ms. Magana testified that Student did not have attendance issues when in distance learning at Santa Fe. Because Monrovia materially failed to implement Student's speech and language services during distance learning in the 2019-2020 school year, Student prevailed on Issue 11, subsection (a).

During the 2020-2021 school year, Monrovia gradually transitioned from distance learning at home to in-person learning at school sites. From August 2020, through the end of October 2020, Monrovia only offered distance learning. In November 2020, Monrovia opened up learning pods for a select group of students, including children of essential workers, students with attendance issues, and students not turning in schoolwork. Monrovia called these learning pods the "Best Pods." There was a waiting list of parents interested in the best pods. Ms. Johnson testified that it was challenging to get staff back to the school sites. Monrovia offered all students the opportunity to attend in-person in a hybrid format beginning in the third week of April 2021. Parents chose to continue Student with distance learning.

From March 13, 2020, through June 9, 2021, while Student attended distance learning at Wild Rose and Santa Fe, Monrovia did not fail to adjust Student's IEPs services, goals, and accommodations, with the exception of adding reading and writing goals in Student's October 21, 2020 annual IEP. Monrovia convened two IEP team meetings during this period to address Parents' concerns and for Student's annual review on October 21, 2020. Parent did not request any additional meetings. Student failed to meet his burden of proof that Monrovia was required to make any adjustments to his IEP specific to distance learning. Monrovia prevailed on Issue 11, subsection (d).

ISSUE 12: FROM SEPTEMBER 7, 2021, THROUGH AUGUST 26, 2022, DID MONROVIA FAIL TO COORDINATE WITH THE CALIFORNIA VIRTUAL ACADEMY AS NECESSARY AND AS EXPEDITIOUSLY AS POSSIBLE, AS REQUIRED UNDER CALIFORNIA EDUCATION CODE SECTION 56320, SUBDIVISION (I), AND 20 UNITED STATES CODE SECTION 1414(B)(3)(D), IN PROVIDING ASSESSMENT RECORDS AND PROTOCOLS, THEREBY DENYING STUDENT A FAPE, AND DENYING HIS PARENTS MEANINGFUL PARTICIPATION IN THE PLANNING OF STUDENT'S EDUCATIONAL PROGRAM?

Student contends Monrovia misdated Student's IEP to make it appear that the school district completed a triennial assessment in October 2020, and that this created confusion for Student's IEP team at CAVA, delaying CAVA's assessment until January 2022. Even though CAVA was responsible for assessing Student and providing him with a FAPE after his enrollment in the charter school, Student argues Monrovia bears responsibility for the delayed assessment and should be held responsible on equitable grounds.

Monrovia contends that when Student disenrolled from Monrovia it carefully gathered Student's educational records and mailed them to CAVA, in compliance with its legal obligations. It contends that when Student's attorney requested documents from Monrovia in 2022, Monrovia tried to be helpful by asking CAVA to send copies, but the copies Monrovia received from CAVA were incomplete and had errors. Monrovia attributes any problems with Student's educational records to CAVA.

Each local educational agency shall ensure that assessments of children with disabilities who transfer from one school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations. (20 U.S.C. § 1414(b)(3)(D); Ed. Code, § 56320(i); 34 C.F.R. § 300.304(c)(5).)

On August 24, 2021, Student disenrolled from Monrovia with the intent to enroll in CAVA. On or around September 7, 2021, Student began attending CAVA, a virtual school with no in-person instruction. At that time, Monrovia had started but not completed Student's triennial assessments.

CAVA requested Student's educational records from Monrovia. Liana Bessera, administrative secretary for special education at Monrovia, gathered the files and mailed the records to CAVA. It was a large stack of papers, around three inches thick. She recalls needing to obtain a larger envelope than usual due to the many pages. Monrovia did not keep Student's records relating to the incomplete assessments because educational records follow the student.

On December 6, 2021, Student initiated the current due process hearing against Monrovia. Ms. Bessera emailed CAVA to request Student's records. On December 7, 2021, CAVA provided Monrovia with Student's records. However, the file Monrovia received was much smaller than the file it sent. Additionally, many of the records provided by CAVA were missing pages and disorganized. Numerous documents from CAVA's set of records were unreliable in this proceeding.

Student's argument that Monrovia is responsible for CAVA's delay in assessing Student is not persuasive. Monrovia was responsible for completing triennial

assessments when he was a Monrovia student. They failed to do so, which this Decision addresses. Upon Student's enrollment at CAVA, the charter school became responsible for providing Student with a FAPE, including assessing him.

Student did not meet his burden of proof that Monrovia failed to coordinate with Student's next local educational agency, CAVA, with respect to coordinating assessments or in providing records and protocols related to Student's assessments. Monrovia sent CAVA all of Student's educational records. Student did not present any evidence that CAVA asked for more coordination efforts that Monrovia refused. Monrovia complied with its legal obligations regarding coordination of assessments and student records, and thus did not deny Student a FAPE. Monrovia prevailed on Issue 12.

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FOLLOWING PAGE)

ISSUE 13: FROM DECEMBER 6, 2019, THROUGH AUGUST 29, 2022, DID MONROVIA DENY PARENTS MEANINGFUL PARTICIPATION BY: NOTIFYING PARENTS THAT THEY WOULD TAKE ACTION AGAINST PARENTS IF THEY DID NOT WITHDRAW THEIR DUE PROCESS COMPLAINT; FAILING, FROM DECEMBER 6, 2019, THROUGH SEPTEMBER 6, 2021, TO COMPLETELY TRANSLATE STUDENT'S IEPs AND ASSESSMENT REPORTS INTO SPANISH; AND FAILING TO PROVIDE PRIOR WRITTEN NOTICES FOR PARENTS' REQUESTS?

Student contends Monrovia failed to provide prior written notice to Parents' requests for assessment, a one-to-one aide, tutoring, and transportation. Student contends Monrovia failed to completely translate Student's IEPs into Spanish, because while the forms were in Spanish, the information filled in by the IEP team was in English. Student further contends Monrovia chilled parent participation by warning Parents they may be reported to Child Protective Services if they did not withdraw their due process complaint.

Monrovia contends Parents did not request copies of the IEP documents in Spanish. Monrovia contends the allegation that it threatened Parents is absurd and intended only to harass Monrovia. Monrovia further contends the email in question was sent after Student disenrolled from Monrovia, so that it could not have interfered with Parents' participation in the IEP process at Monrovia. Finally, Monrovia asserts Parents suffered no harm because they did not withdraw the complaint.

The IDEA guarantees parents the right to participate in meetings with regard to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. (34 C.F.R. § 300.501(b).)

The Ninth Circuit has established that parents' right to participation under the IDEA extends to the enforcement of the IEP in administrative due process hearings:

"Moreover, in enacting the IDEA, Congress was as concerned with parental participation in the enforcement of the IEP as it was in its formation. (See *Rowley*, 458 U.S. at 205 (discussing Congress's intent to 'giv[e] parents and guardians a large measure of participation at every stage of the administrative process (emphasis added).)) Under the IDEA, parental participation does not end when the parent signs the IEP. Parents must be able to use the IEP to monitor and enforce the services that their child is to receive." (*M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189.)

Parental participation safeguards are among the most important procedural safeguards in the IDEA. (*Doug C. v. Hawaii Dept. of Education* (9th Cir. 2013) 720 F. 3d 1038, 1043.) "Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA." (*Id.* at p. 1044, citing *Amanda J.*, *supra*, 267 F.3d at 882, 892.)

A district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(34 C.F.R. § 300.322(e).) California regulations require schools to provide parents with a copy of the IEP in parents' primary language, if requested by the parents. (Cal. Code Regs., tit. 5, § 3040(b).)

A district must provide parents with prior written notice whenever it proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." (34 C.F.R. § 300.503.)

The written notice of procedural safeguards and any prior written notices must be provided in a language that is understandable to the general public and also in the native language of the parent unless it is clearly not feasible to do so. (34 C.F.R. § 300.503.)

Prior written notice should contain:

- A. a description of the action proposed or refused by the agency;
- B. an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- C. a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- D. sources for parents to contact to obtain assistance in understanding the provisions of this subchapter;

- E. a description of other options considered by the IEP Team and the reason why those options were rejected; and
- F. a description of the factors that are relevant to the agency's proposal or refusal. (20 U.S.C. § 1415(c)(1).)

Failure to provide prior written notice is "harmless" if it does "not result in a loss of educational opportunity or significantly restrict parental participation." (Marcus I. v. Dep't of Educ. (9th Cir. 2014) 583 Fed. App'x. 753, 755; see also J.P. ex rel. Popowitz v. Los Angeles Unified Sch. Dist., No. CV 09-01083 MMM MANX, 2011 WL 12697384 (C.D. Cal. Feb. 16, 2011) (finding plaintiffs were not prejudiced by the failure to provide a prior written notice because "the parents were active participants in the IEP meeting and contributed to and acquiesced in the conclusions reached and recommendations made.").)

On December 6, 2021, Student filed a complaint in the current matter. On January 5, 2022, Monrovia responded to Student's complaint via an email from Monrovia's attorney to Student's attorney, with the responsive pleading attached to the email. In the email, Monrovia's attorney wrote:

"Lastly, we do not believe a judge would rule in the parent's favor as the District performed its due diligence to explore any additional social emotional needs with an evaluation by School Psychologist Katima Lindsey. The parent's fear of bullying at school were always investigated and it is documented that they were unfounded. (Note those were always around the time CPS was contacted.) Furthermore, her concerns of Student's anxiety were never observed at school. This is not to say the child did not have some trepidations – but those were related to the issues

at home and were manifested when the student was around his father. NOT AT SCHOOL. Did mother tell you? We will be forced to bring that out during the hearing. Therefore, I hope you will advise your client to withdraw this case and avoid the potential testimony which may give rise to ANOTHER CPS report because the district administrator who will sit in the hearing is a mandated reporter. She cannot pretend not to hear the details of the testimony."

Mother received a copy of the email from her attorney. She asked the parent support provider at McKinley to translate the document and read it to her in Spanish. Mother felt frightened and powerless. She believed this allegation could result in her child or husband being taken from her. She spoke to Ms. Najera about the accusations. Ms. Najera is a mandated reporter. She investigated the accusations by interviewing Student. This caused great stress to the family. Ms. Najera concluded that the accusations were unfounded. She had no concerns that Father abused Student and did not believe that a report should be made to Child Protective Services.

On the witness stand, Mother broke down sobbing as she explained that she believed Monrovia had great authority and the power to hurt her. She lived in fear of this accusation every day even though it was not true that her husband abused Student. Parents considered withdrawing the complaint. Ultimately, they decided to continue with the case.

Dr. Bailey is an expert in Child Protective Services. In general, many families who are investigated are fearful. However, in this case, Parents were especially fearful because of their vulnerable socioeconomic status.

Monrovia impeded Parents' rights under the IDEA when they threatened to call Child Protective Services if Parents did not withdraw their complaint. This tactic has no place in the IEP process. It created great fear in Parents and denied their right to meaningfully participate at each stage of the IEP process, including the enforcement of Student's rights in an administrative proceeding. (See *M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d. 1189.)

From December 6, 2019, through September 6, 2021. Monrovia convened three IEP team meetings for Student: on September 3, 2020, October 21, 2020, and in January 2021. Parents attended the September 3, 2020 IEP, along with Student's sister, private therapist, and Regional Center Service Coordinator. Monrovia provided a Spanish-language interpreter for the meeting and offered Parents a copy of their procedural safeguards in Spanish. Parents attended the October 21, 2020 IEP, along with Student's sister and a representative from Five Acres, the agency providing Student with private counseling at the time. Monrovia provided a Spanish-language interpreter for the meeting and offered Parents a copy of their procedural safeguards in Spanish. The IEP form was in Spanish, but the content entered by the IEP team was in English. Monrovia convened an IEP team meeting for Student in January 2021. The IEP document was not admitted into evidence. Student did not present any evidence that Parents requested a copy of any of these IEPs in Spanish, or that they were unable to participate in this meeting due to language barriers.

Student did not meet his burden of proof that Monrovia denied Parents meaningful participation in the IEP process by not completely translating the IEP documents and assessment reports into Spanish. The law requires a school district to take whatever action is necessary to ensure that the parent understands the

proceedings of the IEP team meeting and to supply IEP documents in a parent's primary language upon request. Monrovia provided Spanish-language interpreters. Parents actively participated in the meetings. There is no evidence that Parents requested translated copies of the IEP documents or were unable to understand the IEP team meetings.

Student did not meet his burden of proof that Monrovia denied Parents meaningful participation in the IEP process by not providing prior written notice letters to all of Parents' requests. The IEP process is dynamic and often involves ongoing communication between parents and schools. Here, Parents raised many concerns, questions, and requests throughout the time period in issue, which Monrovia appropriately addressed in the context it was raised. When, at an IEP team meeting, Mother requested that Student not read aloud in class and that he receive tutoring, the IEP team discussed her concerns within the meeting and came to a consensus on the topics. When Mother suggested a one-to-one aide, the team discussed her request and Ms. Esquer explained that Monrovia would assess Student for an aide when he returned to in-person instruction on campus. At the IEP team meeting, Mother agreed to this. When Mother verbally asked Wild Rose about transportation, the school responded that she had agreed to transport Student due to the intra-district transfer.

Mother made two formal requests in a letter dated July 28, 2021 that triggered Monrovia's obligation to respond formally in a prior written notice. On July 28, 2021, Mother sent Ms. Johnson a letter requesting a one-to-one aide and a hybrid school schedule. However, Mother sent the letter to the wrong email address. Additionally, Ms. Johnson was out of the office and did not receive a copy of the letter until after September 2021, when Student was enrolled at CAVA. Any failure of Monrovia to

provide a prior written notice letter to Parents after Student no longer attended Monrovia was a harmless error. Student did not provide any evidence as to how Monrovia's failure to provide prior written notice letters impaired Parents ability to participate in the IEP process.

Overall, Monrovia made one error with respect to parental participation in the IEP process that rose to the denial of FAPE. From January 5, 2022, the date of the email response from Monrovia, through August 29, 2022, the date before the hearing convened, Monrovia denied Student a FAPE by impeding Parents' rights under the IDEA when they threatened to call Child Protective Services if Parents did not withdraw their complaint. Student prevailed on Issue 13, subdivision (a). Monrovia prevailed on Issue 13, subdivisions (b) and (c).

CONCLUSIONS AND PREVAILING PARTY

Pursuant to 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):

From December 6, 2019, through September 6, 2021, Monrovia Unified School District denied Student a FAPE by failing to appropriately assess him in the area of social-emotional functioning, including educationally-related mental health service needs.

Student prevailed on Issue 1, subdivision (a).

ISSUE 1(b):

From December 6, 2019, through October 22, 2020, Monrovia Unified School District did not deny Student a FAPE by failing to appropriately assess him in the area of psychoeducational functioning.

From October 23, 2020, the date the triennial assessments were due, through September 6, 2021, Monrovia Unified School District denied Student a FAPE by failing to appropriately assess him in the area of psychoeducational functioning when it did not complete his triennial evaluation.

Student prevailed on Issue 1, subdivision (b).

ISSUE 1(c):

From December 6, 2019, through October 22, 2020, Monrovia Unified School District did not deny Student a FAPE by failing to appropriately assess him in the area of speech and language.

From October 23, 2020, the date the triennial assessments were due, through September 6, 2021, Monrovia Unified School District denied Student a FAPE by failing to appropriately assess him in the area of speech and language when it did not complete his triennial evaluation.

Student prevailed on Issue 1, subdivision(c).

ISSUE 1(d):

From December 6, 2019, through October 22, 2020, Monrovia Unified School District did not deny Student a FAPE by failing to appropriately assess him in the area of health.

From October 23, 2020, the date the triennial assessments were due, through September 6, 2021, Monrovia Unified School District denied Student a FAPE by failing to appropriately assess him in the area of health when it did not complete his triennial evaluation.

Student prevailed on Issue 1, subdivision (d).

ISSUE 1(e):

From December 6, 2019, through September 6, 2021, Monrovia Unified School District did not deny Student a FAPE by failing to appropriately assess him in the area of occupational therapy.

Monrovia prevailed on Issue 1, subdivision (e).

ISSUE 1(f):

From December 6, 2019, through September 6, 2021, Monrovia Unified School District did not deny Student a FAPE by failing to appropriately assess him in the area of assistive technology.

Monrovia prevailed on Issue 1, subdivision (f).

ISSUE 1(g):

From December 6, 2019, through September 6, 2021, Monrovia Unified School District did not deny Student a FAPE by failing to appropriately assess him in the area of behavior.

Monrovia prevailed on Issue 1, subdivision (g).

ISSUE 1(h):

From December 6, 2019, through September 6, 2021, Monrovia Unified School District did not deny Student a FAPE by failing to appropriately assess him in the area of auditory processing.

Monrovia prevailed on Issue 1, subdivision (h).

ISSUE 2:

From December 6, 2019, through March 12, 2020, while Student attended in-person instruction at Wild Rose, Monrovia Unified School District did not deny Student a FAPE by failing to adequately address Student's learning disability in reading and writing, including providing appropriate services, goals, and accommodations.

From March 13, 2020, through June 3, 2020, while Student attended distance learning at Wild Rose, Monrovia Unified School District denied Student a FAPE by failing to adequately address Student's learning disability in reading and writing, including providing appropriate services and accommodations.

From June 4, 2020, through October 20, 2020, while Student attended distance learning at Santa Fe, Monrovia Unified School District did not deny Student a FAPE by failing to adequately address Student's learning disability in reading and writing, including providing appropriate services and accommodations.

From October 21, 2020, the date of Student's annual IEP, through September 6, 2021, Monrovia Unified School District denied Student a FAPE by failing to adequately address Student's learning disability in reading and writing by failing to provide appropriate goals.

Student prevailed on Issue 2.

ISSUE 3:

From December 6, 2019, through March 12, 2020, while Student attended in-person instruction at Wild Rose, Monrovia Unified School District did not deny Student a FAPE by failing to provide appropriate services, goals, and accommodations for mathematics.

From March 13, 2020, through June 3, 2020, while Student attended distance learning at Wild Rose, Monrovia Unified School District denied Student a FAPE by failing to provide appropriate services and accommodations for mathematics.

From June 4, 2020, through September 6, 2021, while Student attended Santa Fe, Monrovia Unified School District did not deny Student a FAPE by failing to provide appropriate services and accommodations for mathematics.

Student prevailed on Issue 3.

ISSUE 4:

From December 6, 2019, through September 6, 2021, Monrovia Unified School District did not deny Student a FAPE by failing to provide appropriate behavioral and social-emotional services, goals, or accommodations to address Student's mental health needs, including those caused by bullying.

Monrovia prevailed on Issue 4.

ISSUE 5:

From December 6, 2019, through September 6, 2021, Monrovia Unified School District did not deny Student a FAPE by failing to provide appropriate speech and language, including services, goals, and accommodations.

Monrovia prevailed on Issue 5.

ISSUE 6:

From December 6, 2019, through September 6, 2021, Monrovia Unified School District did not deny Student a FAPE by failing to provide appropriate occupational therapy, including to services, goals, and accommodations.

Monrovia prevailed on Issue 6.

ISSUE 7:

From December 6, 2019, through September 6, 2021, Monrovia Unified School District did not deny Student a FAPE by failing to provide appropriate assistive technology, including services, goals, and accommodations.

Monrovia prevailed on Issue 7.

ISSUE 8:

From December 6, 2019, through September 6, 2021, Monrovia Unified School District did not deny Student a FAPE by failing to address Student's social skills needs.

Monrovia prevailed on Issue 8.

ISSUE 9:

From December 6, 2019, through September 6, 2021, Monrovia Unified School District did not deny Student a FAPE by failing to draft a health services plan or have a school nurse attend his IEP team meetings.

Monrovia prevailed on Issue 9.

ISSUE 10:

From December 6, 2019, through September 6, 2021, Monrovia Unified School District did not deny Student a FAPE by failing to provide transportation services to and from his school of attendance as a related service.

Monrovia prevailed on Issue 10.

ISSUE 11(a):

From March 13, 2020, through June 3, 2020, while Student attended distance learning at Wild Rose, Monrovia Unified School District denied Student a FAPE by failing to implement his IEP services in the area of speech.

From June 4, 2020, through July 31, 2021, while Student attended distance learning at Santa Fe, Monrovia Unified School District did not deny Student a FAPE by failing to implement his IEP services.

Student prevailed on Issue 11, subdivision (a).

ISSUE 11(b):

From March 13, 2020, through October 22, 2020, Monrovia Unified School District did not deny Student a FAPE by failing to conduct a triennial assessment.

From October 23, 2020, the date the triennial assessments were due, through July 31, 2021, Monrovia Unified School District denied Student a FAPE by failing to conduct triennial assessments.

Student prevailed on Issue 11, subdivision (b).

ISSUE 11(c):

From March 13, 2020, through July 31, 2021, Monrovia Unified School District did not deny Student a FAPE failing to conduct a provide assistive technology so that Student could access distance learning.

Monrovia prevailed on Issue 11, subdivision (c).

ISSUE 11(d):

From March 13, 2020, through October 20, 2020, Monrovia Unified School District did not deny Student a FAPE by failing to adjust Student's IEP services, goals, and accommodations.

From October 21, 2020, the date of Student's annual IEP, through July 31, 2021, 2021, Monrovia Unified School District denied Student a FAPE by failing to adjust Student's IEP goals in the areas of reading and writing, however this was not specifically tied to distance learning.

Monrovia prevailed on Issue 11, subdivision (d).

ISSUE 12:

From September 7, 2021, the date Student began attending the charter school, through August 26, 2022, Monrovia Unified School District did not deny Student a FAPE, by failing to coordinate with the California Virtual Academy as necessary and as expeditiously as possible, as required under California Education Code section 56320, subdivision (i), and 20 United States Code section 1414(b)(3)(D).

Monrovia prevailed on Issue 12.

ISSUE 13(a):

From December 6, 2019, through January 4, 2022, Monrovia did not deny Parents meaningful participation by notifying Parents that they would take action against Parents if they did not withdraw their due process complaint.

From January 5, 2022, the date of the email response from Monrovia, through August 29, 2022, the date before the hearing convened, Monrovia denied Parents meaningful participation by notifying parents that they would take action against parents if they did not withdraw their due process complaint.

Student prevailed on Issue 13, subdivision (a).

ISSUE 13(b):

From December 6, 2019, through September 6, 2021, Monrovia did not deny Parents meaningful participation by failing to completely translate Student's IEPs and assessment reports into Spanish.

Monrovia prevailed on Issue 13, subdivision (b).

ISSUE 13(c):

From December 6, 2019, through August 29, 2022, Monrovia did not deny Parents meaningful participation by failing to provide prior written notices for Parents' requests.

Monrovia prevailed on Issue 13, subdivision (c).

REMEDIES

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, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an Administrative Law

Judge who hears and decides a special education administrative due process matter. (*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) (2006).) The purpose of the IDEA is to provide students with disabilities a FAPE which emphasizes special education and related services to meet their unique needs. (*Burlington, supra*, 471 U.S. 359, 374.) 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 (*Puyallup*).) 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.)

An independent educational evaluation at public expense may be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. (*Los Angeles Unified School Dist. v. D.L.* (C.D. Cal. 2008) 548 F.Supp.2d 815, 822-23.)

A school district also may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Park, supra*, 464 F.3d at p. 1033.) 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 day-

for-day compensation. (*Puyallup, supra*, 31 F.3d 1489, 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.)

Monrovia denied Student a FAPE by failing to assess Student in the area of social-emotional functioning and failing to conduct triennial assessments. Student is entitled to reimbursement for the private evaluations he received. Student did not present evidence of the cost of Dr. Larson's neuropsychological evaluation. Dr. Bailey's report was pro bono and at no cost to the family. Student presented evidence that he incurred \$695.00 in charges from the Stowell Learning Center assessment and \$2,800.00 in charges from Ms. Hollar's speech and language assessment. Student is awarded \$3,495.00 for the costs of the private assessments.

Student regressed in the areas of reading, writing, and mathematics, from March 13, 2020, through June 3, 2020. He is entitled to one hour per week of compensatory services for his regression in reading and writing, and one hour per week for his regression in math, totaling 20 hours of compensatory education for the 10-week period.

Student is entitled to compensatory education for Monrovia's failure to implement his speech services during distance learning at Wild Rose, from March 13, 2020, through June 3, 2020. During this 10-week period, Student missed five hours of speech services, for which he is entitled to compensatory services.

Monrovia failed to provide Student with appropriate annual IEP goals in the areas of reading and writing from the date of Student's annual IEP on October 21, 2020, through August 20, 2021. Student is entitled to one hour per week of compensatory services for the 28 weeks that he did not have appropriate goals in these areas. In total, Student is entitled to 53 hours of compensatory education for the time period at issue.

Monrovia denied Parents meaningful participation by notifying Parents that they would take action against Parents if they did not withdraw their due process complaint. It is improper for a school district to respond to a due process complaint by threatening that unless the parents withdraw their complaint the school district will report the family to Child Protective Services. The threat from one governmental agency to trigger an investigation by another government agency likely has a chilling effect on a family's ability to trust governmental institutions. Here, the problem is deepened by the family's social vulnerability and the evidence that any such report would be baseless. It was an improper tactic that is likely to impede this family's ability to participate in Student's IEP process going forward. Parents are entitled to an equitable remedy.

To remedy this denial of meaningful parental participation, Parents are awarded up to \$5,000.00 in reimbursement for parent education, counseling, and support to assist Parents with their participation in Student's IEP process prospectively. For the purpose of this remedy, reimbursement for parent education, counseling, and support shall include:

- parent counseling;
- parent education courses or training in the IEP process and/or Student's disabilities;
- registration fees and tuition for attendance at conferences by nonprofit organizations or universities addressing disabilities or education;
- services from qualified and experienced educational consultants; and
- Spanish-language interpretation and translation services associated with accessing this remedy.

For the purpose of this order, a qualified and experienced educational consultant means an individual who has either been employed by a California State Regional Center for the Disabled as an education consultant or an individual who has received a certificate denoting specialized training in special education advocacy from a non-profit organization or a university. This award excludes attorneys' fees, transportation, lodging, meals, or any tangible electronic devices. The reimbursement funds must be used by January 3, 2027, and any remaining unused funds on that date shall be forfeited.

ORDER

1. Within 60 days of this Decision, Monrovia shall reimburse Parents \$3,495.00 for the costs they incurred for the private assessments by Stowell Learning Center and Susan Hollar. Monrovia shall send the funds to the client trust account of Student's attorneys, if such an account exists, or otherwise to the firm's general account, who shall distribute the reimbursement to the payors within 15 days of receipt of the funds and in accordance with California rules and guidelines for attorney ethics and the use of client trust funds.
2. Within 30 days of being notified of Parents' selection, Monrovia shall contract with a certified non-public agency of Parents' choice to provide 53 hours of compensatory education to be used in any educationally-related area of Parents' choice. Parents may choose more than one certified non-public agency to provide the compensatory education. Any compensatory education services not used by January 4, 2025, shall be forfeited by Student.

3. From January 3, 2023, through January 3, 2027, Monrovia shall reimburse Parents in an amount not to exceed \$5,000.00 for parent education, counseling, and support, as defined above in the remedies section of this Decision. Parent shall submit invoices and proof of payment to Monrovia, who shall reimburse Parents within 60 days of receipt. Any amount remaining as of January 4, 2027, shall be forfeited by Parents.
4. 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.

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings