

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022080622
CASE NO. 2022090289

THE CONSOLIDATED MATTERS INVOLVING

PARENTS ON BEHALF OF STUDENT, AND

CORONA-NORCO UNIFIED SCHOOL DISTRICT.

DECISION

DECEMBER 22, 2022

On August 18, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student naming Corona-Norco Unified School District in case number 2022080622. Corona-Norco Unified School District is called Corona-Norco. On September 9, 2022, OAH received a due process request from Corona-Norco naming Student in case number 2022090289. On September 16, 2022, OAH consolidated the two cases, and identified Student's case as the primary case for determining statutory timelines.

Administrative Law Judge Christine Arden heard this matter via videoconference on October 4, 6, 11, 12, 17, and 20, 2022, and November 1, and 3, 2022.

Attorney Sheila Bayne represented Student at hearing. Parents attended all hearing days on Student's behalf. Attorney Constance Taylor represented Corona-Norco at hearing. Dawn Rust, Director of the Corona-Norco Special Education Local Plan Area, attended all hearing days on Corona-Norco's behalf.

At the parties' request the matter was continued to December 5, 2022, to allow time for the parties to submit written closing argument briefs. The record was closed, and the matter was submitted on December 5, 2022.

ISSUES

Student's sub-issue 6(a) was reframed at the beginning of the hearing for clarity. Both parties acknowledged their agreement with that reframing on the record. The ALJ has authority to rephrase a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

Student withdrew Student's sub-issue 6(f) in Student's closing brief.

Corona-Norco's issues have been renumbered to aid analysis, but are otherwise unchanged from how they appeared in the September 26, 2022 Order Following Prehearing Conference.

STUDENT'S ISSUES:

1. Did Corona-Norco deny Student a free appropriate public education, called a FAPE, by failing to provide a functional behavior assessment for the 2022-2023 school year?

2. Did Corona-Norco deny Student a FAPE in the May 27, 2022 individualized educational program, called an IEP, by failing to provide sufficient programs and supports needed to enable Student to receive an educational benefit in the areas of speech/language and occupational therapy?
3. Did Corona-Norco deny Student a FAPE by failing to develop an IEP at the May 27, 2022 IEP team meeting that was reasonably calculated to enable Student to receive an educational benefit by failing to provide adequate goals for Student?
4. Did Corona-Norco deny Student a FAPE by failing to address regression suffered by Student during the 2021-2022 school year?
5. Did Corona-Norco deny Student a FAPE by failing to offer them placement with neurotypically developing peers to the maximum extent appropriate for the 2022-2023 school year?
6. Did Corona-Norco deny Student a FAPE at the May 27, 2022 IEP meeting, thereby offering a pre-determined IEP:
 - a) by denying Parents' request for placement in a mild/moderate special day class with inclusion in some general education classes;
 - b) by denying Parents' input on annual goals;
 - c) by denying Parents' request on eligibility category;
 - d) by denying Parents' request for an independent educational evaluation in psychoeducation; and
 - e) by denying Parents' request for Corona-Norco to conduct a functional behavior assessment.

CORONA-NORCO'S ISSUES

1. Was Corona-Norco's May 27, 2022 triennial psychoeducational assessment legally sufficient such that Student is not entitled to a publicly funded independent educational assessment in that area?
2. Did Corona-Norco's May 27, 2022 IEP constitute a FAPE in the least restrictive environment for Student such that Corona-Norco may implement that IEP without obtaining parental consent?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party

consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

Student has the burden of proof on Student's issues and Corona-Norco has the burden of proof on its issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

At the time the hearing started Student was 12 years old and attending Corona-Norco's seventh grade Essentials program, which is a mild-to-moderate special day class program. That program was located at Dr. August Ramirez Intermediate School, called Ramirez Intermediate. Student resided within Corona-Norco's geographic boundaries at all relevant times. Student was eligible for special education under the primary category of autism, and a secondary category of intellectual disability.

Corona-Norco's issues are addressed first in this Decision.

CORONA-NORCO'S ISSUE 1: WAS CORONA-NORCO'S MAY 27, 2022 TRIENNIAL PSYCHOEDUCATIONAL ASSESSMENT LEGALLY SUFFICIENT SUCH THAT STUDENT IS NOT ENTITLED TO A PUBLICLY FUNDED INDEPENDENT EDUCATIONAL ASSESSMENT?

Corona-Norco contends its psychoeducational assessment met the legal requisites for reevaluations of children eligible for special education, and that the Confidential Triennial Psychoeducational Assessment Report dated May 27, 2022, met

all legal requirements. Corona-Norco contends that, since the assessment and report were appropriate, Student is not entitled to a publicly funded independent educational evaluation in the area of psychoeducation.

Student contends the May 27, 2022 psychoeducational assessment failed to comply with all legal requirements.

STUDENT'S BACKGROUND

Student was initially found eligible for special education before starting kindergarten in Corona-Norco. Throughout elementary and middle school, Student was very well behaved, cooperative and compliant, and consistently tried hard at school, which he enjoyed. His teachers found it a pleasure to have Student in their classes. Student consistently performed well at many academic tasks requiring rote skills, such as spelling, basic mathematic functions, handwriting, and reading aloud. Student diligently completed assignments and prepared for quizzes and tests. Student had a full-time aide throughout the school day, and often depended on his aide's prompts to complete in-class assignments.

Outside of school Student took taekwondo and swimming lessons. He also took lessons in Gujarati, his Parents' native language, which his Parents sometimes speak at home, along with English. Student understands Gujarati, and can speak some words and phrases in Gujarati, which has its own unique alphabet.

Student had good work habits, decoding skills, and short-term memory, which enabled him to do well on a number of academic tasks. However, due to Student's cognitive and attention deficits, it was challenging for him to stay on task, comprehend

what he had read, and follow complex instructions. Student had difficulty drawing inferences, generalizing learned concepts to new tasks, applying abstract concepts, and engaging in abstract reasoning.

Student had limited verbal language and social-emotional skills. He did not initiate conversations. He usually conversed only with adults at school, and those conversations were quite literal. Without adult facilitation, Student did not independently engage socially with peers, except to greet them. Student was placed in a special day class for students with mild-to-moderate disabilities in the sixth grade at VanderMolen Fundamental Elementary School. The mild-to-moderate special day classes in Corona-Norco are taught grade-level curriculum.

SETTLEMENT AGREEMENT AND TEMPORARY PLACEMENT

At the beginning of the 2021-2022 school year, Student was in teacher Jaqueline Shires' sixth grade mild-to-moderate special day class. Student attended Shires' class for 1,400 minutes a week, and general education classes for social studies, science and physical education, for an aggregate of 90 minutes a week. Student received related services in speech and language delivered in a group for 625 minutes a year, and delivered individually for another 625 minutes a year. Student also received occupational therapy for 180 minutes a year, and adaptive physical education for 570 minutes a year. Student had a full-time one-to-one aide throughout his school day.

Parents were unhappy with Student's placement in Shires' mild-to-moderate special day class because they thought it was too restrictive and not academically rigorous enough for Student. They preferred Student be placed in general education

classes with supports. Consequently, Student filed a due process request against Corona-Norco in November 2021. The parties settled that lawsuit in February 2022.

Under the terms of that settlement agreement, Student was moved to a less restrictive temporary placement at VanderMolen from February 18, 2022, through the end of the 2021-2022 school year. The temporary placement provided an opportunity to see how Student would perform in a less restrictive environment. That temporary placement consisted of general education classes for science and physical education, and social studies in Shires' mild-to-moderate special day class. Student went to the resource center for his math and English/language arts classes where he received small group instruction in grade level curriculum taught by a credentialed special education teacher, called a resource specialist. Student also received weekly individual speech therapy, and weekly group speech therapy, in 25-minute sessions each. All other components of the June 11, 2021 IEP were implemented as written.

The settlement agreement also provided that for compensatory education Parents would be reimbursed for a limited amount of privately obtained academic tutoring and speech and language services through June 30, 2023.

The settlement agreement also provided the June 11, 2021 IEP would be "stay put" for Student if the parties did not agree to Corona-Norco's offer of a FAPE for the 2022-2023 school year. Student's 2022 annual IEP team meeting was due to be held by June 11, 2022. That IEP would include an offer of a FAPE for the 2022-2023 school year.

Student started in the temporary placement shortly after the parties entered into the settlement agreement on February 18, 2022. He went to the resource center and worked with resource specialist, Carrie Infantas, for 90 minutes a day. When Student was in the resource center, Infantas worked with three or four children in addition to

Student. That group worked on math, reading comprehension, and writing. All of the children, other than Student, were in general education classes for the rest of the school day.

PRIOR SETTLEMENT WAIVED STUDENT'S CLAIMS AGAINST DISTRICT THROUGH THE END OF THE 2021-2022 SCHOOL YEAR, EXCEPT FOR CLAIMS REGARDING STUDENT'S 2022 ANNUAL IEP

The February 18, 2022 settlement agreement between Student and Corona-Norco released all of Student's educational claims against the district through the end of the 2021-2022 school year, except for claims as to Student's 2022 annual IEP. At hearing counsel for both parties acknowledged the February 18, 2022 settlement agreement did not waive Student's claims against Corona-Norco regarding the offer of a FAPE made to Student for the 2022-2023 school year in the annual IEP dated May 27, 2022.

Parents disagreed with the results of Corona-Norco's May 27, 2022 psychoeducational assessment of Student. Corona-Norco filed its instant case with OAH, seeking a finding that the psychoeducational assessment dated May 27, 2022 was legally sufficient, which is the focus of Corona-Norco's Issue 1. Corona-Norco did not contend Student waived his right to challenge the sufficiency of the May 27, 2022 psychoeducational assessment in the February 18, 2022 settlement agreement.

COMPREHENSIVE ASSESSMENTS ARE REQUIRED

In assessing a child with a disability, the assessments must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been

classified. (34 C.F.R. § 300.304(c)(6).) A failure to properly assess is a procedural violation of the IDEA. (Department of Educ., State of Hawaii v. Cari Rae S. (D. Hawaii 2001) 158 F. Supp. 2d 1190, 1196; Park v. Anaheim Union High School Dist. (9th Cir. 2006) 464 F.3d 1025, 1032.) In a due process case brought by a school district to defend its assessments as appropriate, a procedural violation results in a denial of a FAPE only if that violation resulted in the loss of an educational opportunity to the pupil or it interfered with the opportunity of the parents to participate in the formulation process of the individualized education program. (Ed. Code, § 56505, subd. (j).); see W.G. v. Board of Trustees of Target Range School Dist. No. 23 (9th Cir. 1992) 960 F.2d 1479, 1484 (Target Range).)

LEGAL REQUIREMENTS FOR ASSESSMENT

Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(a)(1)(B)(i); Ed. Code, § 56321, subd. (a)(2).) The school district must hold an IEP to review the assessment report, which must be developed within a total time not to exceed 60 days, excluding days between the student's regular school sessions, terms, or days of school vacations in excess of five school days, from the date of receipt of the parent's written consent for assessment, unless the parent agrees to an extension in writing. (Ed. Code, §§ 56043, subd. (f)(1) & 56344, subd. (a).)

Among the most important procedural safeguards are those that protect the parent's right to be involved in the development of their child's educational plan. (Doug C. v. Hawaii Dept. of Educ. (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the

provision of a FAPE. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).) Assessment results provide parents with valuable information regarding their children's educational needs. The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, §56341.1, subds. (a)(2), (d)(3) & (f).)

If a child with a disability has been found eligible for special education, a school district must ensure that reevaluations of that child are conducted if warranted by the child's educational or related service needs, or if requested by a parent or teacher. (20 U.S.C. § 1414(a)(2)(A)(i) and (ii); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) The IDEA provides for reevaluations, referred to as reassessments in California law, to be conducted not more frequently than once a year unless the parent and school district agree otherwise, but at least once every three years unless the parent and school district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).)

Individuals who are both knowledgeable of the student's disability and competent to perform the assessment must conduct assessments of students' suspected disabilities. (Ed. Code §§ 56320, subd. (g); 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) School district assessors must review existing evaluation data on the

child, including information provided by the parents, current classroom based, local or state assessments, classroom-based observations, and observations by teachers and related service providers. (20 U.S.C. § 1414(c)(1); 34 C.F.R. §300.305(a)(1).)

Tests must be selected and administered to produce results that accurately reflect the student's aptitude, achievement level, or any other factors the test purports to measure. (Ed. Code, § 56320, subd. (d).) School districts are required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that would assist in determining the educational needs of a child. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) No single measure or assessment shall be the sole criterion for determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) The assessor must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical, and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).)

The assessments used must be selected and administered so as not to be discriminatory on a racial or cultural basis, and be provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally. It must be used for purposes for which the assessments are valid and reliable, and administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).)

Assessments must be selected and administered so as to best ensure that if the child has impaired sensory, manual or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills, unless those skills are the factors the test purports to measure. (34 C.F.R. §300.304(c)(3); Ed. Code, § 56320(d).) Assessment tools and strategies must provide relevant information that directly assists persons in determining the educational needs of the child. (20 U.S.C. § 1414(b)(4); 34 C.F.R. §300.304(c)(7); see also Ed. Code, § 56320, subd. (b)(1).)

The personnel who assess the student shall prepare a written report that shall include the following elements:

- whether the student may need special education and related services,
- the basis for making that determination,
- the relevant behavior noted during observation of the student in an appropriate setting,
- the relationship of that behavior to the student's academic and social functioning,
- the educationally relevant health, development and medical findings, if any,
- if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage, and
- consistent with superintendent guidelines for low incidence disabilities affecting less than one percent of the total statewide enrollment in grades K through 12, the need for specialized services, materials, and equipment. (Ed. Code, § 56327; see also 34 C.F.R. § 300.305(1) and (2).)

That report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).) The IEP team must consider the most recent assessments in determining the child's educational program. (34 C.F.R. § 300.324(a)(1)(iii); Ed. Code, § 56341.1, subd. (a)(3).)

A student may be entitled to an independent educational evaluation if the parents disagree with an evaluation obtained by the school district and request an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. §300.502 (a)(1); Ed. Code, § 56329, subd. (b).) If a parent requests an independent educational evaluation, the school district must either fund the evaluation at public expense, or file a due process complaint and obtain a final decision that its evaluation was appropriate. (34 C.F.R. § 300.502(2); Ed. Code, § 56329, subd. (c).)

PSYCHOEDUCATIONAL ASSESSMENT AND REPORT

Corona-Norco developed an assessment plan dated March 3, 2022, which proposed assessments of Student in the areas of academic achievement, social/adaptive/behavioral/emotional, perceptual/motor development, communication development, cognitive development, and health/development and provided it to Parents. The purpose for the proposed assessments was to gather information in preparation for Student's 2022 annual IEP, which was due to be held by June 2022.

Parents returned the signed assessment plan to Corona-Norco on March 4, 2022. Because VanderMolen had a four week break from school beginning on March 28, 2022, the deadline for completing the assessments was June 1, 2022. Here the IEP team timely reviewed the May 27, 2022 psychoeducational assessment report.

School psychologist, Flor Flores, conducted the psychoeducational assessment of Student in seven one-hour long sessions from March to May, 2022. The hour-long assessment sessions accommodated Student's attention deficit. Flores had a bachelor's degree in psychology and a master's degree in education from California Baptist University. Flores held a California school psychologist pupil personnel services credential, and had been a school psychologist since 2009. She was a school psychologist with Corona-Norco from 2013. Flores was responsible for all assessments at VanderMolen, which had a student body consisting of 900 children. Flores was knowledgeable about the characteristics of autism and intellectual disability, and was competent and well qualified to conduct the psychoeducational assessment of Student. Flores testified knowledgably with a professional demeanor and good recall. Her testimony at hearing was extremely credible and persuasive. She was very conversant about testing and Student's assessment results.

Flores reviewed existing evaluation data on Student, including information provided by Parents, classroom-based observations, and classroom assessment data and observations by teachers and related service providers. Flores gathered relevant information about Student from Mother, and three of Student's then current teachers. Those teachers were Shires, Infantas, and Abraham Salmeron, Student's general education teacher for science and physical education classes.

Flores interviewed Student's aide and his service providers, occupational therapist, Racquel Santos, and speech language therapist, Mary Sowjanya-Bonige. Flores reviewed Santos' occupational therapy assessment report dated May 27, 2022. Flores also reviewed Sowjanya-Bonige's May 13, 2022 speech and language assessment report. At hearing Sowjanya-Bonige testified Student was cooperative and diligent, and

had good concrete thinking skills, but much weaker critical and abstract thinking skills. According to Sowjanya-Bonige, Student's verbal interactions were literal, which is typical of those diagnosed with autism.

Flores was thorough in gathering information about Student. She conducted an extensive review of Student's educational records and previous assessment reports.

Flores used a variety of appropriate assessment tools and strategies to gather relevant information about Student in the areas of sensory-motor, academic achievement, social-emotional and behavior functioning, and adaptive functioning. Flores used multiple standardized assessment tools to assess Student's continuing eligibility for special education, as well as to determine Student's educational strengths and needs. All standardized instruments Flores administered to Student as part of the psychoeducational assessment were valid and reliable and used for their intended purposes.

Flores selected and administered the assessment tools to produce results that accurately reflected Student's aptitude, achievement level, and other factors the tests were designed to measure. Because Student had communication deficits due to his autism, Flores chose tests that used non-verbal responses, as well as tests that relied on verbal responses, particularly in the area of cognitive functioning, to ensure that Student's impaired speaking skills did not adversely impact the test results.

The assessments used to evaluate Student were selected and administered so as not to be discriminatory on a racial or cultural basis. The assessments were all provided to Student in English, his primary language, and in a form most likely to yield accurate information on what Student knew and could do academically, developmentally, and

functionally. Flores was trained and knowledgeable to give the assessments she administered to Student. Flores administered all testing instruments in accordance with instructions provided by their publishers.

Flores reviewed Corona-Norco's previous psychoeducational assessments of Student. Flores also reviewed the February 8, 2021 report of Dr. Aileen Arratoonian's independent psychoeducational evaluation of Student. Flores observed Student in seven testing sessions. Flores also observed Student for a reasonable amount of time in his mild-to-moderate special day class, in his general education science class, at lunch in the cafeteria, and at recess on the playground. Flores also administered multiple standardized tests to gather information about Student's overall general cognitive ability.

BEHAVIOR AND SOCIAL-EMOTIONAL SKILLS

Flores administered rating scales seeking information about Student's behavior and social-emotional skills. Flores gave one set of the rating scales to Mother, Shires, and Salmeron. Flores also administered another rating set of scales to Mother and Shires to obtain information on how Student's autism, behavior, and attention deficits affected his development and functional performance.

Mother's rating scale responses identified Student had strengths in following directions and reading people's feelings. Mother's responses indicated she thought Student generally functioned about average compared to same aged peers. Her responses also acknowledged Student had difficulty with functional communication and social skills.

Shires' rating scales responses indicated she thought Student accepted setbacks well and was resilient, followed visual schedules easily, and was respectful. Shires thought Student had poor attention and communication skills. Shires' responses further indicated Student perseverated on topics, and depended on his adult aide to complete tasks. Shires also reported Student often had difficulty comprehending and completing academic assignments. Shires recognized Student was restless and had difficulty maintaining self-control. Shires responded that Student had many behaviors typically associated with autism spectrum disorder that interfered with his ability to make friends.

Salmeron's rating scales responses reported Student made great efforts in class and cooperated with his aide. They indicated that, when Student was distracted, he was able to get back on-task when redirected. Salmeron also reported Student had problems with functional communication and attention, but that Student's study skills were average.

Based on information about Student's behavior and social-emotional skills gathered from the rating scales responses provided by Mother and teachers, Flores concluded Student was not able to develop peer relationships due to his limited communication skills.

COGNITIVE FUNCTIONING

Based on the results of administering two standardized tests of verbal and non-verbal cognitive functioning, Flores concluded Student's overall general cognitive ability, compared to his same age peers, was within the lower extreme range. This conclusion reflected the measurement of Student's short-term memory, visual processing, long-term storage and retrieval, fluid reasoning and crystallized ability. The phrase

“crystallized ability” refers to Student’s ability to apply previously learned skills and knowledge to new tasks. Student’s score on the Fluid-Crystallized Index was 54. This measurement of Student’s ability to apply learned skills to new tasks fell in the extreme low range compared to his same age peers. This meant Student had to work much harder than his peers to learn new material and master new academic skills.

Student’s score on the nonverbal index was 58. This meant, compared to same age peers, Student fell within the lower extreme range on nonverbal skills. The nonverbal index was an amalgamation of scores on widely varied nonverbal cognitive functioning scores. Student’s score on the instrument measuring how much new information he could retain and use placed him in the average range compared to his peers. However, Student scored in the very low range compared to his peers on a measurement of his short-term working memory. Student scored very low compared to his peers on the ability to perceive and analyze information and then retrieve that information. Student also scored in the very low range of ability compared to peers in concentration, attention, long term memory, and storage of information. Student also scored in the very low range compared to peers on engaging in various mental operations with adaptability and flexibility when faced with a new task.

ACADEMIC ACHIEVEMENT

Flores used a variety of tools to gather information about Student’s academic performance. The results of these assessment tools were not affected by economic, cultural or environmental factors.

The academic achievement assessment included a battery of tests, referred to as clusters, which measured Student’s academic performance compared to other same age

students, in many academic areas, including reading, mathematics, written language, and written expression. Student scored in the very low range compared to peers in broad reading, but had several strong scores involving rote skills. He scored in the average range on tests of word identification and word attack. He scored in the high average range in spelling, phonics, decoding skills and ability to identify unfamiliar words. Student's reading skills were assessed as average, although his reading comprehension was assessed as being in the very low range. His reading fluency scored in the low range.

Student scored in the below low range compared to same age peers in mathematical knowledge and reasoning, but he had multiple scores at and near the average range as well. He performed in the low average range in broad mathematics. He scored in the average range in math calculation skills. He scored in the very low range in knowledge of science, social studies, and science. Overall, Student scored in the average range on the academic skills cluster, which measured his reading decoding, math calculation and spelling skills.

SENSORY-MOTOR

Flores administered standardized tests measuring Student's visual-motor integration, visual perception and motor coordination. His visual-motor integration skills scored in the below average range, which indicated he would require extra time to take notes from the board and do writing tasks. His visual perception was scored in the very low range. His motor coordination was scored in the very low range, which meant that he would likely need extra time for writing tasks.

ASSESSOR'S REPORT AND CONCLUSIONS

The Confidential Triennial Psychoeducational Assessment Report dated May 27, 2022, written by Flores, included and addressed all elements required under Ed. Code, § 56327 and 34 C.F.R. § 300.305(1) and (2).) The report was timely provided to Parents and the rest of the IEP team and reviewed by the team. Based on the results of standardized testing, observations, a review of records and observations of Student, Flores concluded Student was eligible for special education under the categories of Autism and Intellectual Disability. Flores concluded Student had significantly below average intellectual functioning, compared to his same age peers. Flores also concluded Student had deficits in adaptive behavior. Flores also concluded Student may benefit from an educational setting with a low student-to-teacher ratio with robust adult support.

The report acknowledged Student needed exposure to neurotypical peers in general education to improve his social skills. Flores also opined Student would benefit from explicit instruction in self-care skills, which would foster his independence. Flores left it up to the IEP team to make a final determination regarding what constituted an appropriate program and placement for Student.

Flores reported on Student's behavior during her classroom and playground observations of him. Student relied on his aide to keep him on task. At lunch and recess Student did not socialize with peers. Flores included educationally relevant health, development and medical findings, of which there was nothing of particular note. She determined that neither environment, culture, nor economic disadvantage, affected any assessment results. Flores interpreted the assessment results for the IEP team.

Corona-Norco established its psychoeducational assessment met all legal requirements, and Student presented no persuasive evidence otherwise. The psychoeducational assessment and Confidential Triennial Psychoeducational Assessment Report dated May 27, 2022, written by Flores, complied with all legal requisites for assessing children under the IDEA. Corona-Norco met its burden of proof and established that the May 27, 2022 triennial psychoeducational assessment of Student and the assessment report were legally compliant. Therefore, Student is not entitled to a publicly funded independent psychoeducational assessment.

CORONA-NORCO'S ISSUE 2: DID CORONA-NORCO'S MAY 27, 2022 IEP CONSTITUTE A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT FOR STUDENT SUCH THAT CORONA-NORCO MAY IMPLEMENT THAT IEP WITHOUT OBTAINING PARENTAL CONSENT?

Corona-Norco contends it offered Student a FAPE in the least restrictive environment in the IEP dated May 27, 2022. Corona-Norco contends it complied with all procedural requirements in conducting the May 27, 2022 IEP. Corona-Norco further contends it offered Student appropriate measurable and sufficiently ambitious goals, and appropriate related services in speech and language and occupational therapy services which would enable Student to meet his goals in those areas. Corona-Norco further contends placement in the moderate-to-severe special day class, called the Life Skills program, which was offered in the May 27, 2022 IEP, was the least restrictive environment for Student.

Student contends the goals offered in the May 27, 2022 IEP were not sufficiently ambitious. Student further contends the Life Skills program placement offered in the

May 27, 2022 IEP was not the least restrictive environment for Student. Student further contends Corona-Norco failed to comply with procedural requirements because school psychologist Flores did not attend the third IEP team meeting on June 17, 2022, when placement was discussed.

DISTRICT MUST ESTABLISH ITS OFFER OF A FAPE WAS BOTH SUBSTANTIVELY APPROPRIATE AND IT COMPLIED WITH IDEA PROCEDURES

A FAPE, means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000].)

When a school district seeks to demonstrate it offered a FAPE, the legal analysis has two prongs. First, it must be determined whether the district has complied with the procedures set forth in the IDEA. (*Rowley*, supra, 458 U.S. at pp 206-207.) Second, the district must show that the IEP developed through those procedures was designed to

meet the child's unique needs and reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) Since Corona-Norco seeks an Order finding that it offered Student a FAPE in the IEP dated May 27, 2022, it must establish both its substantive and procedural compliance with the IDEA and California law to meet its burden of proof on this issue.

A determination regarding whether or not a child was offered a FAPE must be based on substantive grounds. (20 U.S.C., § 1415(f)(3)(E); Ed. Code, § 56505(f).) A procedural violation amounts to a substantive denial of a FAPE only if it either

- impedes the student's right to a FAPE,
- significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or
- causes the student to be deprived of educational benefit. (*Ibid.*, Ed. Code, ¶ 56505, subds. (f) and (j).)

Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 67 F.3d 877, 892.)

A school district's determinations regarding special education must be based on what was objectively reasonable for it to conclude given the information the district had at the time. A district cannot be judged exclusively in hindsight but instead, an IEP must take into account what was, and what was not, objectively reasonable at the time the IEP was drafted. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041)

The IEP team must include one or both of the parents or a representative chosen by the parents. It must include not less than one regular education teacher of the child

if the child is participating in general education, and not less than one special education teacher, or where appropriate, one special education provider to the student. (20 U.S.C. § 1414(d)(1)(B)(ii); 34 C.F.R. § 300.344(a)(2)) It must include a representative of the school district who is:

- qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of the student;
- knowledgeable about the general education curriculum; and
- knowledgeable about the availability of school district resources.

The team must include an individual who can interpret the instructional implications of assessment results. At the discretion of the parent, guardian or school district, other individuals may be included with knowledge or special expertise regarding the student; and, if appropriate, the student. (20 U.S.C., § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).)

The IEP team must include at least one teacher or specialist with knowledge in the suspected area of disability. (See *Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1499, abrogated in part on other grounds by *Schaffer ex rel. Schaffer v. Weast* (2005) 546 U.S. 49, 56-58.) Any team member who is qualified to interpret the results of an assessment may do so. (20 U.S.C. § 1414(d)(1)(B)(v); 34 C.F.R. § 300.321 (a)(5); Ed. Code, § 56341, subd. (b)(5).)

The Ninth Circuit has expressly held that the IDEA reference to a regular education teacher of the child at IEP team meetings does not require the presence of the student's current general education teacher on the IEP team. (*R.B. v. Napa Valley*

Unified Sch. Dist. (9th Cir. 2007) 496 F.3d 932, 939). However, the teacher chosen as an IEP team member should be knowledgeable about the child and implementation of the IEP developed. (*Id.*)

However, a required team member may be excused from attending an IEP meeting if parents give their written consent to the excusal before the meeting. If the meeting will involve a modification to or discussion of the excused member's area of the curriculum or related services that excused member must either confer with parents or submit his input to the team before the meeting. Ed. Code, § 56341 (f), (g) and (h). Here, all requisite members of the IEP team were present at all three IEP team meetings held to develop and finalize the May 27, 2022 IEP, except for those members who Parents excused in writing from attendance.

When developing an IEP the team must consider the

- child's strengths,
- concerns of the parents,
- assessment results, and
- the academic, developmental, and functional needs of the child.

The team must also consider the behavioral and communication needs of the child, and whether the child requires assistive technology devices. The team must also consider whether special factors, interventions, accommodations, or other program modifications are needed to provide the child with a FAPE. Ed. Code, § 56341.1; 34 C.F.R. § 300.324.

THE MAY 27, 2022 IEP TEAM MEETING

The IEP team had three meetings to develop and finalize Student's 2022 annual IEP. The team met on May 27, 2022, June 9, 2022, and June 17, 2022. All required members of the IEP team attended those meetings, except for those excused in writing by Parents.

MAY 27, 2022 IEP TEAM MEETING

Student's 2022 annual IEP was due to be held by June 11, 2022. Here, the IEP team met timely to develop Student's 2022 annual IEP on May 27, 2022. There was proper notice of the meeting, which Parents attended.

The May 27, 2022, IEP team reviewed the triennial assessment reports in the areas of psychoeducation, speech and language, and occupational therapy. Flores told the team Student had a high level of competency in basic skills, but required increased prompting when assignments were more difficult. Flores further noted Student often struggled with understanding information presented in general education classes.

Father told the team that because Student had been in the general education science class only since March 2022, Student was still unfamiliar with the content presented in that class. Father questioned the report's finding that Student had an intellectual disability. Father requested a further evaluation to determine if that finding was correct.

Student's service providers reviewed his progress in speech and language therapy sessions, and occupational therapy sessions. Shires reported on Student's present levels of performance in the mild-to-moderate special day class. Santos presented Student's

present levels in occupational therapy. The evidence established that Student's reported present levels of performance and needs were accurate. The team reviewed Student's progress on the 11 goals included in the IEP dated June 11, 2021. Student met two goals, partially met seven goals, and did not meet two goals.

JUNE 9, 2022 IEP TEAM MEETING

The team met for a second time on June 9, 2022. Catherine Secrist, Student's adaptive physical education provider, reviewed an assessment report she had prepared on Student's participation in physical education. Student's resource specialist provider, speech language pathologist, and two general education teachers reported on Student's performance in the resource room, during speech therapy sessions, and in Student's general education social studies and science classes.

The IEP team proposed 11 new goals in the areas of

- adaptive physical education,
- independence,
- math calculation,
- community,
- reading comprehension,
- written expression and vocabulary,
- vocational,
- sensory processing,
- praxis, and attention,
- receptive and expressive language, and
- pragmatics.

Father objected to some of the proposed goals because they were functional, rather than academic. Father also objected to proposed reading and math goals as improperly worded because grade level content was not specified as the standard. The rest of the team compromised on some, but not all of Parents' proposed changes to goals.

JUNE 17, 2022 IEP TEAM MEETING

Parents signed a form excusing the school psychologist and the general education teacher from attending the June 17, 2022 IEP team meeting. At hearing Student complained that the absence of Flores, the assessor who conducted the psychoeducational assessment, constituted a procedural error which interfered with Parents' opportunity to participate in the formulation process of the IEP.

However, because Parents signed a written consent to Flores' excusal from the June 17, 2022 meeting, Student's argument that Parents needed Flores's presence at the June 17, 2022 meeting to meaningfully participate in the formulation of the IEP is unpersuasive. The absence of Flores from the June 17, 2022 IEP meeting did not constitute a procedural error that significantly impeded Parents' opportunity to participate in the decision making process of formulating Student's IEP and providing Student with a FAPE.

Because Student would be matriculating to middle school in the upcoming school year, an administrator from Rameriz Intermediate, the school Student would attend in seventh grade, attended the June 17, 2022 IEP team meeting. That administrator explained to Parents the three levels of special day class programs available at Rameriz Intermediate. The mild-to-moderate special day class moving at the fastest pace with grade-level curriculum was the Basics program. The second level

mild-to-moderate special day class was the Essentials program, which moved at a slower pace than the Basics program, but also used grade-level curriculum. Most pupils in those two programs were on track to earn a high school diploma. The slowest paced special day class was the Life Skills program, which taught a modified curriculum below state grade level standards. Life Skills is a functional, rather than academic special day class. Most pupils in the Life Skills program are not on track to earn a high school diploma.

Shires, who was also Student's case carrier at the time, presented the offer of a FAPE to Parents. The placement offered was the Life Skills program, with a fine arts general education elective class and general education physical education. Speech therapy, occupational therapy, and adaptive physical education related services were offered. Student was also offered a special circumstance instructional assistance aide for the entire school day. Because Student was prone to academic regression over long breaks and vacations from school, he was offered extended school year. The May 27, 2022 IEP offered Student placement outside of general education for 86 percent of his school day.

Parents had no objection to the related services offered, but objected to placement in the Life Skills program, and did not consent to the May 27, 2022 IEP. Because Parents did not consent to the May 27, 2022 IEP, in accordance with the settlement agreement, Student's placement returned to the mild-to-moderate classroom offered in the June 11, 2021 IEP. It was not the temporary placement in the resource center and general education classes, with one class in the mild-to-moderate Essentials program.

THE IEP TEAM FAILED TO CONSIDER STUDENT'S SUCCESSFUL GRADES IN THE TEMPORARY PLACEMENT AND THE ESSENTIALS PROGRAM

In developing a child's IEP, the IEP team must consider the

- child's strengths,
- the parent's concerns for their child's education,
- the results of the most recent evaluation of the child, and
- the academic, developmental and functional needs of the child. (34 C.F.R. § 300.324(a)(i)-(iv).)

In developing an IEP the team must take into account all objective information reasonably available at that time. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann* at 1041.

Student's curriculum during the temporary placement from February 2022 through the end of the 2021-2022 school year, was based on state grade-level standards. Corona-Norco's special education administrator, Kristin Tharpe, informed Parents in her prior written notice dated August 2, 2022, that Student's curriculum up to that date had not been modified. Tharpe confirmed at hearing that Student's curriculum was not modified in his mild-to-moderate classes, or during the temporary placement, during the 2021-2022 school year. Student was graded in the same manner as his classmates, and according to grade-level standards.

The last day of the 2021-2022 regular school year was June 24, 2022. Student's report card for the third trimester that year was printed on June 22, 2022, five days after the June 17, 2022 IEP team meeting. It is reasonable to assume Student's third trimester grades, or an estimate of the grades Student earned in the third trimester, were known

by Student's teachers, and would have been available to the IEP team for discussion on June 17, 2022. Certainly, Student's first and second trimester grades for the 2021-2022 school year were available to the team. This was important information that the IEP team was required to review when discussing Student's placement for the upcoming school year (Ed. Code, § 56341.1, subd. (d)(5).) However, there was no evidence that such a discussion occurred at any of the three IEP team meetings.

One reason Student's grades for the 2021-2022 school year were critical is that Student performed very well both in the mild-to-moderate special day class, and in the resource center and general education classes during the temporary placement. Student's teachers testified uniformly at hearing that Student was graded on state standards for his grade level and he legitimately earned his grades.

Throughout the 2021-2022 school year, Student earned As, Bs and Cs in all of his grade-level classes. Student's recent grades were listed on page six of the May 27, 2022 psychoeducational assessment report. These passing to excellent grades should have alerted the IEP team to the fact that Student was performing well in comparison to his peers in grade-level classes. This information on Student's consistent academic success would have weighed heavily in favor of continuing a grade-level curriculum placement with the same or additional supports. It is unreasonable the team disregarded the good grades Student earned in both the mild-to-moderate special day class and the temporary placement.

Student's lowest grade in the entire 2021-2022 school year was one C minus. He earned mostly As and Bs in his classes that school year. The grade reports indicate Student was performing well in both placements he attended during the 2021-2022 school year. The law requires an IEP team to consider the continuum of placement

options appropriate for a student. Although multiple placements may be appropriate for a student, the team is to select the placement that constitutes the least restrictive of those placements. Here, Student's IEP team did not consider Student's successful academic performance in both placements during the 2021-2022 school year, when it inexplicably offered him a more restrictive, less academically rigorous, functional placement.

Although the June 17, 2022 IEP team did not have 2022-2023 school year information available to them, Student continued to earn good grades in the mild-to-moderate Essentials program at Ramirez Intermediate in Fall 2022. Tarra Brittain, Student's current case carrier and his current science teacher in the Essentials program, testified that the Essentials curriculum was not modified and was at state grade level standards. There was no evidence Student did not legitimately earn the grades listed on his report cards, in both the 2021-2022 school year and the first quarter of the 2022-2023 school year.

However, the IEP team ignored the good grades Student earned for the entire 2021-2022 school year. This was material information reasonably available during the time the IEP team was meeting to develop Student's 2002 annual IEP. The IEP team was obligated to consider Student's passing to excellent performance in grade-level classes before offering Student placement in a moderate-to-severe special day class with a modified functional curriculum. (34 C.F.R. § 300.324(a)(i)-(iv) and (b)(ii)(E); Ed. Code, 56341.1, subds. (A)(1)-(4) and (d)(5).)

Additionally, there was no evidence the team considered Student's need to be exposed to neurotypical peers to build his social and communication skills, even though the psychoeducational assessment report noted that need. The team failed to consider important information about Student's strengths and weaknesses.

TESTIMONY OF STUDENT'S CURRENT TEACHERS

Brittain and Grace Wilson, Student's current teachers in the Essentials program, testified in support of the IEP team's decision to offer Student placement in the more functional level Life Skills program for the 2022-2023 school year. However, for the first quarter of the 2022-2023 school year Student received a B minus in Brittain's science class, and an A in Wilson's English class. Wilson noted Student was one of two pupils in her English Essentials class, consisting of 13 pupils, who earned an A during the first quarter.

Regardless of Student's grades, both Brittain and Wilson opined that the appropriate placement for Student was in the more functional level Life Skills program. Their testimony appeared memorized and coached, and their opinions that Student should be placed in the Life Skills program were illogical. The inherent inconsistency in their testimony of Student's satisfactory grade-level performance and their opinions that Student required placement in the functional Life Skills program rendered their opinions nonsensical and unpersuasive. Consequently, the opinions given by Brittain and Wilson that Life Skills was a more appropriate placement for Student than the Essentials program, were not credible or persuasive.

A FUNCTIONAL PROGRAM WAS NOT THE LEAST RESTRICTIVE ENVIRONMENT

In determining the educational placement of a child with a disability, a school district must ensure that, in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs, and that the child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116(d) and (e).)

To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers, and that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. § 300.114(a).)

To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors:

1. the educational benefits of placement full-time in a regular class;
2. the non-academic benefits of such placement;
3. the effect the student has on the teacher and children in the regular class; and

4. the costs of mainstreaming the student. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402.)

If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires a further determination of whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050.) Mainstreaming is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

The continuum of program options includes but is not limited to, in the order of less restrictive to more restrictive settings,

- regular education,
- resource specialist programs,
- designated instruction and services,
- special classes,
- nonpublic, nonsectarian schools,
- state special schools,
- specially designed instruction in settings other than classrooms,
- itinerant instruction in settings other than classrooms, and
- instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

No one at hearing asserted Student should be placed in general education full time. However, the IEP team had an obligation to determine the maximum extent to which Student could be mainstreamed into general education. (*Daniel R.R.*, *supra*, 874 F.2d at p. 1050.) Student's grades throughout the 2021-2022 school year in a mild-to-moderate special day class, a resource class, and general education classes, all without a modified curriculum, conclusively demonstrated Student was capable of performing grade-level academics. This was consistent with Student's multiple average to high average scores in the academic achievement component of the May 2022 psychoeducational assessment.

The IEP team's failure to discuss Student's grades, or why the cognitive results of Flores' testing were so disparate with Student's satisfactory academic performance, particularly in light of Parent's protest concerning the cognitive testing results, was not appropriate.

Student's expert witness, school psychologist Theresa Edwards, who worked as a credentialed school psychologist with Los Angeles Unified School District from 1999 to June 2022, testified at hearing. In 2012 Edwards was given the Outstanding School Psychologist Award. In addition, Edwards supervised other school psychologists and mentored interns in school psychology. She was a qualified and believable witness, although she met Student and Parents only once in a virtual meeting.

In preparation for her testimony Edwards reviewed the May 27, 2022 IEP, the May 27, 2022 report of the psychoeducational assessment of Student, and Student's due process complaint. She also reviewed Student's recent report cards for the 2022-2023 school year. Edwards noted Student was a concrete thinker, and abstract thinking was his weakness, which is typical of people with autism. Edwards persuasively opined that,

considering Student's cognitive abilities, strengths, and weaknesses, it was very likely Student could be successful in a mild-to-moderate special day class. Conversely, Edwards was unsure if Student would be able to make any academic progress if he was placed in a moderate-to-severe special day class. Because the goal of educators is to place all children in the least restrictive environment Edwards believed it was inappropriate to place Student in a moderate-to-severe special day class.

Edwards further convincingly opined that with autistic children like Student, it is critical all traits of the child be considered when determining what placement is the least restrictive environment. Edwards persuasively opined Student would be able to successfully handle moving from one classroom to another for instruction throughout the school day, as long as the classrooms were reasonably close together. The evidence established the Rameriz Intermediate seventh grade Essentials classes were located close to each other. Therefore, the Essentials program would not present a proximity challenge for Student.

Edwards noted Student was strong in math calculation, reading and spelling, and he had excellent handwriting. He also had a good memory and was good at rote learning. His weakness was comprehension because he is a concrete thinker. Edwards noted Student also had serious social skill deficits, which is typical of children with autism. Edwards opined Student's exposure to, and inclusion with, neurotypical peers was essential to Student making progress in the area of social skills. Student would not be included much with neurotypical peers if he was placed in a moderate-to-severe special day class. Edwards opined Student needs exposure to peers with social skills greater than his own. If he is not given exposure to children with strong social skills, his progress in that area could be limited.

Edwards further stated it is possible a moderate-to-severe special class would be functioning at skill levels lower than Student's. This would be very bad for Student. It would inhibit Student's growth in multiple areas. Edwards persuasively opined that, since Student was doing well in the mild-to-moderate special day class, it would be much better to increase his access to general education inclusion, not to decrease that access. Edwards believed Student should be included in general education classes in his areas of strength, such as math calculation. Edwards also believed placement in a moderate-to-severe special day class would be bad for Student because he would not be sufficiently challenged. She noted that teachers in mild-to-moderate special day classes are trained to focus on the individual needs of each child. Therefore, a teacher in a mild-to-moderate special day class should be able to ensure Student's needs are met in that class. Edwards believed a mild-to-moderate special day class teacher could help Student to improve his academic thinking to be less concrete.

Edwards noted Student was already doing quite well in the Essentials program in his science and English classes, as well as in his general education classes. She noted that Student's historical progress in mild-to-moderate special day classes was pretty impressive. She further stated the IEP team should have considered Student's past successes when choosing the least restrictive placement for him. Edwards persuasively opined it was not reasonable or appropriate to change Student's placement to a moderate-to-severe special day class when he had succeeded to date in the mild-to-moderate special day class placement. Edwards also thought it is possible that Student has not yet peaked academically. Edwards further convincingly opined Student might become depressed or even regress academically if he was moved to a moderate-to-severe special day class.

Even though Edwards met Student and Parents only once in a virtual meeting, her testimony about Student's appropriate placement in the least restrictive environment and his appropriate maximum inclusion in general education was logical, reasonable and convincing. She presented as an honest and well-qualified witness to render a credible opinion on the least restrictive environment appropriate for Student's placement.

STUDENT'S CURRENT SUCCESS IN THE ESSENTIALS PROGRAM

Even though Student's grades for the first trimester of the 2022-2023 school year were not before the IEP team in May and June 2022, it is noteworthy that Student again received good grades in the Essentials program this school year. For his six classes in the Essentials program at the end of the first trimester of the 2022-2023 school year Student earned one A plus, two As, one A minus and one B minus.

These good grades must be considered by his IEP team in determining which program is the least restrictive environment in which Student can obtain educational benefit. It is an obligation of the IEP team to determine why and how Student earned such good grades in the mild-to-moderate special day class and in the temporary placement if the team believes he is unable to access his education in the Essentials program.

It was not logical or reasonable for Corona-Norco to offer Student placement in a less academically rigorous program when his grades for the 2021-2022 school year established he succeeded both in the Essentials program and in the temporary placement, which consisted of more inclusion in general education than was offered in the May 27, 2022 IEP. The IEP team must reconvene to consider Student's successful

grades in his academic, rather than functional setting, when deciding what the least restrictive placement for Student is, and what is the maximum extent Student can be appropriately included in general education.

Corona-Norco failed to meet its burden of proof that the May 27, 2022 IEP constitutes a FAPE in the least restrictive environment. Accordingly, the IEP cannot be implemented over parental objection.

STUDENT'S ISSUE 1: DID CORONA-NORCO DENY STUDENT A FAPE BY FAILING TO CONDUCT A FUNCTIONAL BEHAVIOR ASSESSMENT IN THE 2022-2023 SCHOOL YEAR?

Student contends Corona-Norco should have conducted a functional behavior assessment of Student for the 2022-2023 school year because the assessment would provide information regarding Student's attention deficit.

Corona-Norco contends it was unnecessary to conduct a functional behavior assessment of Student because Student had no maladaptive behaviors, and a functional behavior assessment would not provide useful information about why Student's attention was brief.

The only evidence Student provided on this issue was the testimony of Edwards, who testified that functional behavior assessments were originally developed to help people diagnosed with autism, and now they are generally used for children who demonstrate negative behaviors. Edwards' testimony implied a functional behavior assessment may have offered some helpful information about Student's dependence on his aide. However, Edwards had never conducted a functional behavior assessment on her own. It seemed from her testimony that she had only assisted another professional

in conducting a functional behavior assessment. Edwards did not establish she had expertise in functional behavior assessments. Therefore, Edwards' testimony regarding functional behavior assessments was not persuasive.

In contrast, Flores credibly and convincingly established that a functional behavior analysis was not appropriate for Student because there was no question regarding antecedent circumstances which preceded Student's distractibility. It was clear from multiple psychoeducational assessment results that Student's cognitive deficit was the cause of his distractibility. Flores' opinion that a functional behavior assessment was inappropriate because it would not shed light on what caused Student's frequent distractions from tasks was far more credible than Edwards' opinion on this issue.

Student failed to meet his burden of proof on Student's Issue number one.

STUDENT'S ISSUE 2: DID CORONA-NORCO DENY STUDENT A FAPE IN THE MAY 27, 2022 IEP BY FAILING TO OFFER SUFFICIENT PROGRAMS AND SUPPORTS TO ENABLE STUDENT TO RECEIVE EDUCATIONAL BENEFIT IN SPEECH AND LANGUAGE AND OCCUPATIONAL THERAPY?

Student contends Corona-Norco did not offer Student enough speech and language or occupational therapy services in the May 27, 2022 IEP to enable Student to receive educational benefit in those areas. Corona-Norco contends it offered Student appropriate amounts and types of both speech and language therapy and occupational therapy services for Student to make reasonable progress in those areas.

For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, the offer of educational services or placement must

be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314; 20 U. S.C. § 1401(9).)

SPEECH AND LANGUAGE SERVICES

The speech and language therapy services offered in the May 27, 2022 IEP were 25 individual 25-minute sessions per year, and 25 group 25-minute sessions per year. Sowjanya-Bonige, who was licensed in California as a speech-language pathologist since 2014, provided speech and language therapy services to Student in the 2021-2022 school year until May, 2022, testified at hearing. Sowjanya-Bonige assessed Student in the area of speech and language in Spring 2022 and drafted the speech and language triennial assessment report. Sowjanya-Bonige also prepared Student's present levels of performance in speech, and drafted the proposed speech goals for Student's May 27, 2022 IEP. Sowjanya-Bonige was extremely credible. She testified knowledgeably and candidly. She knew Student well and was very familiar with his communication needs.

Sowjanya-Bonige persuasively established that the speech and language goals offered to Student in the May 27, 2022 IEP were measurable, could be reached within a year, and were sufficiently ambitious. Sowjanya-Bonige also established at hearing that Student's achievement of the proposed speech and language goals in the May 22, 2022 IEP within one year was appropriately supported by the speech and language services offered in the May 27, 2022 IEP.

Student did not offer any credible or convincing evidence challenging Sowjanya-Bonige's expert opinion that the speech and language services offered in the May 27,

2022 IEP were sufficient to enable Student to obtain educational benefit and make reasonable progress on his speech and language goals. Parents did not want Student to be pulled out of his classes more than was necessary to receive related services because they were concerned about Student missing academic instruction. According to the notes in the May 27, 2022 IEP, it appeared the speech and language services were not a subject of dispute between Parents and the rest of the IEP team during the three annual 2022 IEP team meetings.

Christine Choi, Corona-Norco speech and language therapist, who had provided some speech and language services to Student at the end of the 2021-2022 school year, and attended all three of the 2022 annual IEP team meetings, also testified persuasively at hearing. Choi concurred with Sowjanya-Bonige that the speech and language services offered in the May 27, 2022 IEP were sufficient for Student to obtain educational benefit in that area.

Student did not call a speech-language pathologist to testify and counter the persuasive testimony of Sowjanya-Bonige and Choi. Student failed to meet his burden of proof to establish Corona-Norco denied him a FAPE in the May 27, 2022 IEP by failing to offer him sufficient services and supports in speech and language to provide Student with educational benefit in that area.

OCCUPATIONAL THERAPY SERVICES

The occupational therapy services offered in the May 27, 2022 IEP were nine, 20 minute sessions a year, for a total of 180 minutes of occupational therapy.

Student's expert witness, Jan Dee Goodis, who had been a licensed occupational therapist for 42 years, testified at hearing. Most of Goodis' testimony was not persuasive

or relevant. In preparation to testify Goodis reviewed the May 27, 2022 IEP, the June 11, 2022 IEP, and the 2022 occupational therapy assessment. Goodis only scanned the May 27, 2022 psychoeducational assessment.

Goodis met Student only once in September, 2022, in a one hour and 10 minute virtual Zoom meeting with Student and his Parents. In that meeting Goodis observed Student writing, coloring, bouncing a ball, and performing other fine and gross motor activities. Student was prompted by Parents to perform those tasks during the meeting. Goodis interviewed Parents during the meeting about Student's motor skills. Goodis opined Student had a good foundational motor skill set. Goodis never observed Student in a classroom, which gravely undermined all of her opinions regarding the occupational therapy services Student needed to function in a school setting. She also did not interview Student's teachers or service providers.

Goodis testified she may have recommended 10 more minutes a month of occupational therapy services than was offered in the May 27, 2022 IEP. She was not definite that 10 more minutes of occupational therapy per month would have reasonably enabled Student to make progress, or do any better than he was currently doing with motor skills. Goodis critiqued the occupational therapy intervention strategies offered Student in the May 27, 2022 IEP, but her criticisms were confusing and vague. Goodis opined the recommended intervention strategies on the IEP would be good if they worked with Student. She did not opine that the recommended strategies would not work with Student. Goodis' testimony was not persuasive. Therefore, Goodis' opinions were given little weight.

In contrast Corona-Norco's occupational therapist, Santos, who has a Ph.D. in occupational therapy, provided very persuasive testimony. Santos attended about 200 IEP

meetings per school year. Santos was very familiar with Student and his occupational therapy needs. She had provided occupational therapy services to Student both in the 2014-2015 school year, and in the 2021-2022 school year. Santos assessed Student in the area of occupational therapy in Spring 2022, and had drafted the proposed occupational therapy goal for Student's 2022 IEP. Santos observed Student in class, in the cafeteria at lunch, and on the playground at recess. She used both formal and informal methods to assess Student and gathered information from Parents about Student's motor skills and sensory issues. Santos convincingly testified that the occupational therapy services offered to Student in the May 27, 2022 IEP were appropriate, supported Student's occupational therapy goal, and were sufficient to provide Student educational benefit.

Santos' opinions were much more persuasive than Goodis' opinions regarding the appropriateness of the occupational therapy services offered in the May 27, 2022 IEP. Therefore, Student failed to meet his burden of proof to establish Corona-Norco denied Student a FAPE by failing to offer Student sufficient occupational therapy services and supports in the May 27, 2022 IEP.

Student did not establish that the May 27, 2022 IEP denied Student a FAPE because Corona-Norco failed to offer Student sufficient speech and language services and supports, and occupational therapy services and supports to enable Student to make educational benefit in those areas. Consequently, Student failed to meet his burden of proof on Student's Issue number two.

STUDENT'S ISSUE 3: DID CORONA-NORCO DENY STUDENT A FAPE BY FAILING TO OFFER ADEQUATE GOALS IN THE MAY 27, 2022 IEP?

Student contends the goals offered in the May 27, 2022 IEP were not appropriate because they were too functional and not academic enough to be sufficiently ambitious for Student. Corona-Norco contends the goals offered in the May 27, 2022 IEP were appropriate because they could be achieved by Student within one year, were measurable, and were sufficiently ambitious.

For each area in which a special education student has an identified need, the IEP team must develop annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345, subd. (a)(2); *Letter to Butler* (OSERS March 25, 1988).) An IEP must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).)

The purpose of goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345; see also, 64 Fed. Reg. 12,471 (1999).) In developing the IEP, the IEP team shall consider

- the strengths of the child,
- the concerns of the parents for enhancing the education of their child,
- the results of the initial evaluation or most recent evaluation of the child and the

- academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a).)

The IEP team need not draft IEP goals in a manner the parents find optimal, as long as the goals are sufficiently measurable. (*Bridges ex rel. F.B. v. Spartanburg County School Dist. Two* (D.S.C., Sept. 2, 2011, No. 7:10-cv-01873-JMC) 2011 WL 3882850, at *6.)

Student failed to meet seven of the 11 annual goals in the June 11, 2021 IEP, although he made progress in all but two. Father complained Student needed more academic, rather than functional goals, because he hoped Student would eventually earn a high school diploma. However, Father is not a credentialed teacher or otherwise an educational expert, and no witness with expertise on educational goals convincingly established that any of the goals offered Student in the May 27, 2022 IEP were not measurable or were not sufficiently ambitious or appropriate for Student.

Occupational therapist Goodis was the only expert witness for Student who testified about the sufficiency of a specific goal offered in the May 27, 2022 IEP. Goodis criticized the occupational therapy goal offered in the May 27, 2022 IEP as being both too specific and not specific enough. This testimony was confusing and illogical. Her criticism of the wording of the occupational therapy goal seemed to be mere nitpicking, and a guess, rather than a valid criticism of the goal. Goodis' testimony about the insufficiency of the offered occupational therapy goal was not persuasive.

In contrast, Santos, who had conducted the occupational therapy assessment of Student and provided him services, very credibly opined that the occupational therapy goal offered Student in the May 27, 2022 IEP was measurable, could be reached by

Student within a year, was sufficiently ambitious, and appropriate. Santos' testimony was far more persuasive than Goodis' testimony regarding the appropriateness of the occupational therapy goal offered Student in the May 27, 2022 IEP.

Edwards opined on behalf of Student that he should have been offered a prompt dependency reducing goal. However, the May 27, 2022 IEP offered Student a goal in the area of independence. That goal sought to increase Student's ability to effectively deal with changes in routine independently by reducing his reliance on prompts from an adult. The goal was specifically written to reduce Student's prompt dependency under certain circumstances from reliance on five prompts to only three prompts. Edwards did not mention this offered goal during her testimony. She may not have been aware of it.

Student did not offer any further expert testimony specifically claiming that any of the goals offered in the May 27, 2022 IEP were inappropriate in any way. Therefore, Student failed to meet his burden of proof on Student's Issue three.

STUDENT'S ISSUE 4: DID CORONA-NORCO DENY STUDENT A FAPE BY FAILING TO ADDRESS REGRESSION SUFFERED BY STUDENT DURING THE 2021-2022 SCHOOL YEAR?

Student contends that Corona-Norco failed to measure and address regression Student suffered in the 2020-2021 school year. Corona-Norco contends that this claim was waived by the February 18, 2022 settlement agreement between the parties. Additionally, Corona-Norco also contends Student did not suffer any regression in the 2021-2022 school year.

The May 27, 2022 IEP noted Student is prone to regress academically when he is away from school for extended breaks and vacations from school. Therefore, the team offered Student an extended school year program for the 2022-2023 school year. However, Student provided no evidence that Student regressed during the course of the 2021-2022 school year.

In fact, Student presented evidence of the opposite at hearing. The gravamen of Student's presentation at hearing was that Student had performed well and obtained educational benefit from his placement in the mild-to-moderate special day class with inclusion in general education through February 2022, and in his temporary placement for the remainder of the 2021-2022 school year. Based on Student's evidence, he contends it was inappropriate to offer Student a less rigorous academic placement in the functional Life Skills program. Student's evidence itself disproves Student's contention that he suffered regression during the 2021-2022 school year.

Therefore, Student failed to meet his burden of proof on Student's Issue four.

STUDENT'S ISSUE 5: DID CORONA-NORCO DENY STUDENT A FAPE BY FAILING TO OFFER PLACEMENT WITH NEUROTYPICALLY DEVELOPING PEERS TO THE MAXIMUM EXTENT APPROPRIATE FOR THE 2022-2023 SCHOOL YEAR?

Student contends the offer of placement for the 2022-2023 school year in the Life Skills program offered in the May 27, 2022 IEP denied Student a FAPE because it failed to offer him placement with neurotypically developing peers to the maximum extent appropriate. Corona-Norco contends that, due to Student's cognitive and attention

deficits, the Life Skills program, with a general education class in a fine arts elective and physical education, is the maximum inclusion in general education appropriate for Student.

By failing to consider the grades Student earned for the entire 2021-2022 school year the IEP team ignored material information reasonably available during the time the team was meeting to develop Student's 2002 annual IEP. The IEP team was obligated to consider Student's grades before offering Student placement in a moderate-to-severe special day class. (34 C.F.R. § 300.324(a)(i)-(iv).)

No one at hearing asserted Student should be placed in general education full time. However, the IEP team had an obligation to determine what was the maximum extent Student could be mainstreamed into general education. (*Daniel R.R., supra*, 874 F.2d at p. 1050.) The team's failure to consider Student's grades earned in both the mild-to-moderate special day class and in the temporary placement constituted a material procedural error that both deprived Student of an educational opportunity and interfered with Parents' opportunity to participate in the formulation process of the IEP. Consequently, this procedural error constitutes a substantive violation of the IDEA and California law. (Ed. Code section 56505 subds. (f) and (j)) Therefore, due to this error alone, Student was denied a FAPE in the May 27, 2022 IEP.

It was not logical or reasonable for Corona-Norco to offer Student placement in a less academically rigorous program when his grades for the 2021-2022 school year established he succeeded in the Essentials program and with more inclusion in general education than was offered in the May 27, 2022 IEP. The IEP team must reconvene to consider Student's successful grades in the Essentials program and the temporary

placement when deciding what the least restrictive placement for Student is, and what is the maximum extent Student can be appropriately included in general education.

This Decision has already found that Student was denied a FAPE because he was not offered a placement with neurotypically developing peers to the maximum extent appropriate in the May 27, 2022 IEP. Compelling evidence was introduced at hearing that Student has done very well in grade-level general education classes with neurotypical peers. Student received passing to excellent grades in both the mild-to-moderate special day class, and in the temporary placement, and continued to earn passing and excellent grades with placement under the June 11, 2021 IEP during the 2022-2023 school year.

Corona-Norco denied Student a FAPE by offering him a functional curriculum in a moderate-to-severe special day class in the May 27, 2022 IEP, with reduced inclusion in general education, limited to only 14 percent of Student's school day. This offer failed to offer Student inclusion with neurotypically developing peers to the maximum appropriate extent.

Therefore, Student met his burden of proof on Student's Issue five.

STUDENT'S ISSUE 6: DID CORONA-NORCO DENY STUDENT A FAPE BY PREDETERMINING THE MAY 27, 2022 IEP BY DENYING PARENTS' INPUT AND ASSESSMENT REQUESTS?

Student contends Corona-Norco predetermined the offer of a FAPE in the May 27, 2022 IEP because it disregarded Parents' input on placement, goals, and the secondary eligibility category of intellectual disability. Student also argues that Corona-Norco's refusal to grant Student an independent psychoeducational evaluation

and a district functional behavior assessment shows predetermination. Corona-Norco contends it did not predetermine the offer of a FAPE made in the May 27, 2022 IEP.

Predetermination of an IEP constitutes a procedural violation of the IDEA. A school district's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of a FAPE. Substantive harm occurs when parents are denied meaningful participation in a student's IEP development. (Maureen Deal; Phillip Deal, Parents on Behalf of Zachary Deal v. Hamilton County Bd. of Educ., (6th Cir. 2004) 392 F.3d 840, 857-858.) Predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (H.B., et al. v. Las Virgenes Unified School Dist. (9th Cir. 2007) 239 Fed. Appx. 342, 344 [nonpub. opn.]. The law is clear a district may not present a proposal at an IEP team meeting with a take it or leave it offer, which constitutes error. (JG v. Douglas County School Dist., (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.)

This Decision, at Corona-Norco's issue two and Student's issue five, has already found dispositive procedural and substantive errors that denied Student a FAPE in the May 27, 2022 IEP. Due to the above-mentioned rulings on Corona-Norco's procedural errors and resultant substantive harm that denied Student a FAPE, it is not necessary to address whether Corona-Norco made the additional procedural error of predetermining the May 27, 2022 IEP, or committed the additional procedural errors alleged by Student's Issue six.

CONCLUSIONS AND PREVAILING PARTY

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

CORONA-NORCO'S ISSUE 1:

Corona-Norco's triennial psychoeducational assessment was legally sufficient such that Student is not entitled to a publicly funded independent educational assessment in the area of psychoeducation.

Corona-Norco prevailed on its Issue 1.

CORONA-NORCO'S ISSUE 2:

The IEP dated May 27, 2022 did not offer Student a FAPE because it failed to offer Student placement in the least restrictive environment for Student. Corona-Norco may not implement the IEP dated May 27, 2022 without parental consent.

Student prevailed on Corona-Norco's Issue 2.

STUDENT'S ISSUE 1:

Corona-Norco did not deny Student a FAPE by failing to provide Student a functional behavior assessment for the 2022-2023 school year.

Corona-Norco prevailed on Student's Issue 1.

STUDENT'S ISSUE 2:

Corona-Norco did not deny Student a FAPE in the IEP dated May 27, 2022, by failing to offer sufficient programs and supports in the areas of speech and language and occupational therapy.

Corona-Norco prevailed on Student's Issue 2.

STUDENT'S ISSUE 3:

Corona-Norco did not deny Student a FAPE by failing to offer Student goals reasonably calculated to enable Student to receive an educational benefit in the IEP dated May 27, 2022.

Corona-Norco prevailed on Student's Issue 3.

STUDENT'S ISSUE 4:

Corona-Norco did not deny Student a FAPE by failing to address regression suffered by Student during the 2021-2022 school year.

Corona-Norco prevailed on Student's Issue 4.

STUDENT'S ISSUE 5:

Corona-Norco denied Student a FAPE by failing to offer Student placement with neurotypically developing peers to the maximum extent appropriate for the 2022-2023 school year.

Student prevailed on Student's Issue 5.

STUDENT'S ISSUE 6, SUBPARTS 6a THROUGH 6e:

Student's issue 6 was not ruled on because it was already determined earlier in this Decision that the May 27, 2022 IEP was procedurally and substantively defective and failed to offer Student a FAPE.

Neither Student, nor Corona-Norco, was the prevailing party on Student's Issue 6 or its subparts.

REMEDIES

Student did not establish he was entitled to either reimbursement for educational services paid for by Parents, or compensatory education. Even though Parents provided academic tutoring, speech therapy and occupational therapy, they did not establish that any of those expenses were necessary or reasonable to remedy deficiencies in Student's 2021-2022 educational program.

Moreover, Student released all claims stemming from Student's placement and program during the 2021-2022 school year, and Student negotiated a reimbursement amount for compensatory education in that agreement. Student's case was filed on August 18, 2022, at the very beginning of Corona-Norco's 2022-2023 school year, so none of the expenses Parents' incurred for privately obtained educational services would have been attributable to the 2022-2023 school year.

Additionally, Student proved he is academically able to obtain educational benefit from the Essentials program, which he has participated in since this case was

filed. Father was vague about the amounts spent and reimbursement he received from insurance towards occupational therapy services, and the periods of time during which the private tutoring and therapy services were obtained.

Since the psychoeducational assessment dated May 27, 2022 was found to be legally appropriate, and it was found that a district functional behavior assessment was not warranted, Student is not awarded any independent educational assessments at public expense. The only remedy awarded is that Student's IEP team is ordered to reconvene to consider all available information, including Student's grades during the 2021-2022 school year and the 2022-2023 school year to date. After consideration of that information the IEP team shall then make a new offer of a FAPE for the 2022-2023 school year that includes the least restrictive placement in which Student can receive educational benefit, and Student's inclusion to the maximum extent appropriate in the general education environment.

The IEP team shall reconvene within 30 days of the date this Decision is issued to make a new offer of a FAPE to Student for the 2022-2023 school year in compliance with the instructions contained in this Decision to consider Student's grades. The evidence admitted at hearing did not support the award of any other remedies requested by either party in this consolidated action.

ORDER

1. Corona-Norco shall not implement the May 27, 2022 IEP without parental consent. Until a new IEP is consented to by Parents or found to offer a FAPE by OAH, Student's operative program shall be the June 11, 2021 IEP.

2. Student's IEP team shall reconvene an IEP meeting within 30 days of the date this Decision is issued to develop an IEP and offer Student a FAPE for the remainder of the 2022-2023 school year, until his next annual IEP is due.
3. All of Student's other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

Christine Arden

Administrative Law Judge

Office of Administrative Hearings