

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022080864

PARENTS ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL DISTRICT.

DECISION

December 15, 2022

On August 24, 2022, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming San Juan Unified School District. Administrative Law Judge Rommel P. Cruz heard this matter by videoconference on October 11, 12, 13, and 18, and November 1, and 2, 2022.

Attorney Lynda Williams represented Parents and Student. Mother attended each day of hearing. Father attended part of the hearing on November 1, 2022. Student did not attend the hearing.

Attorney Dee Anna Hassanpour represented San Juan Unified. Assistant Director of Special Education Robert Morgan, Ph.D., attended each day of hearing on behalf of San Juan Unified.

At the parties' request, the matter was continued to November 23, 2022, for written closing briefs and reply briefs. The record was closed, and the matter was submitted for decision on November 23, 2022.

SAN JUAN UNIFIED'S MOTION TO STRIKE STUDENT'S REPLY BRIEF

On November 23, 2022, the parties timely filed reply briefs. On November 28, 2022, San Juan Unified filed a motion to strike Student's reply brief. San Juan Unified contends that Student's reply brief improperly argued claims not raised in the complaint and not heard at hearing. On December 1, 2022, Student filed a response to the motion.

The parties' closing and reply briefs are the parties' arguments and are not considered evidence. Therefore, the arguments raised in the closing briefs shall be considered to the extent the arguments involve the issues that were heard at the hearing and decided in this Decision.

The issues to be heard and decided at the hearing are limited to the issues alleged in the complaint unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Here, Student's complaint did not allege that San Juan Unified failed to offer him occupational therapy goals, or that San Juan Unified failed in its duty to identify, locate, and evaluate Student for special education and related services,

commonly referred to as child find. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); Ed. Code § 56301, subd. (a).) San Juan Unified did not consent to litigating those claims, and those claims were not heard at the hearing. Accordingly, this Decision makes no determination as to Student's claims involving occupational therapy goals or child find. For these reasons, San Juan Unified's motion to strike Student's reply brief is denied.

ISSUES

The following are the issues heard and decided in this matter. A free appropriate public education is referred to as a FAPE. An individualized education program is called an IEP.

1. Did San Juan Unified deny Student a FAPE during the 2020-2021 school year, by failing to provide Student the following services during distance learning:
 - a. in-person speech and language services; and
 - b. in-person specialized academic instruction?
2. Did San Juan Unified deny Student a FAPE during the 2020-2021 school year, by failing to provide Student accommodations in the form of assistive technology during distance learning?
3. Did San Juan Unified deny Student a FAPE during the 2020-2021 school year, by failing to assess Student in the following areas before assigning him to distance learning:
 - a. functional behavior; and
 - b. speech and language?

4. Did San Juan Unified deny Student a FAPE from August 24, 2020, through August 24, 2022, by:
 - a. failing to offer appropriate goals in the areas of:
 - i. behavior, and
 - ii. speech;
 - b. failing to offer appropriate accommodations;
 - c. failing to offer appropriate program modifications;
 - d. failing to offer appropriate speech and language services; and
 - e. failing to offer a one-to-one aide?
5. Did San Juan Unified deny Student a FAPE by failing to offer extended school year services in 2021 and 2022?
6. Did San Juan Unified deny Student a FAPE from May 24, 2021, through August 24, 2022, by failing to conduct a functional behavior assessment?
7. Did San Juan Unified deny Student a FAPE from May 24, 2021, through August 24, 2022, by failing to offer appropriate:
 - a. applied behavior analysis therapy; and
 - b. clinic meetings?
8. Did San Juan Unified deny Student a FAPE during the 2020-2021, and 2021-2022 school years, by failing to offer Student placement with neurotypically developed peers to the maximum extent possible?
9. Did San Juan Unified deny Student a FAPE from May 24, 2021, through August 24, 2022, by failing to offer Parent appropriate training in special education eligibility?
10. Did San Juan Unified deny Student a FAPE from May 24, 2021, through August 24, 2022, by failing to consider Parent's concerns?

JURISDICTION

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

- all children with disabilities have available to them a 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 (2006); Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.)

At the hearing, the party filing the complaint has the burden of proof by a preponderance of the evidence. (*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) [standard of review in IDEA administrative hearing decisions is preponderance of the evidence].) Here, Student requested the hearing and had the burden of proof as to each issue. 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 of the hearing, Student was five years old, in kindergarten, and eligible for special education and related services under the category of autism. He resided within San Juan Unified's geographic boundaries at all relevant times.

ISSUES 1(a) AND 1(b): IN-PERSON SPEECH AND LANGUAGE SERVICES AND SPECIALIZED ACADEMIC INSTRUCTION DURING DISTANCE LEARNING FOR THE 2020-2021 SCHOOL YEAR

Student contends San Juan Unified failed to implement his IEP by not providing in-person specialized academic instruction and speech and language services, during distance learning, in the 2020-2021 school year.

San Juan Unified contends Student did not enroll in San Juan Unified during the 2020-2021 school year until May 24, 2021, and did not attend school for the rest of the school year, either in-person or through distance learning. Therefore, San Juan Unified argues it could not provide Student with in-person specialized academic instruction and speech and language services during distance learning for the 2020-2021 school year.

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.) California describes children with disabilities who may need special education and related services as an individuals with exceptional needs. (Ed. Code, § 56026.)

The IEP is the centerpiece of the IDEA's education delivery system for disabled children and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032 and

56345.) The IEP is a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs. (*School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996].) The IEP describes the child's needs, academic and functional goals, and a statement of the special education, related services, and program modifications and accommodations that will be provided. (*B.H. v. Manhattan Unified Sch. Dist.* (2019) 35 Cal.App.5th 563, 570; 20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, §§ 56032 and 56345, subd. (a).)

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; *Andrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000].) A school district must have an IEP in place at the beginning of each school year for each child with exceptional needs residing within the school district's geographical boundaries. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a); Ed. Code, § 56344, subd. (c).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) It must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Fuhrmann v. East Hanover Bd. Of Educ.* (3rd Cir. 1993) 993 F.2d 1031(*Fuhrmann*).) An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

The school district responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. (34 C.F.R. § 300.300(b)(1); Ed. Code, § 56346, subd. (a).) Consent means:

- the parent was fully informed of, and understands all the information relevant to the activity for which consent is sought,
- agrees voluntarily in writing to carrying out the activity for which the consent is sought, and
- understands consent may be revoked at any time. (34 C.F.R. § 300.9(a).)

If the parent of the child fails to respond or refuses to consent to the initiation of services, the public agency shall not provide special education and related services to the child. (Ed. Code, § 56346, subd. (b).) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide the consent, the public agency shall not be considered to be in violation of the requirement to make available a FAPE to the child. (Ed. Code, § 56346 subd. (c).)

Issue 1 involves the initiation of special education services, as Student had not previously received an IEP. Consequently, it was necessary for Parents to consent in writing to San Juan Unified's initial offer of special education before San Juan Unified could legally provide special education and relates services to Student.

The evidence established that Parents did not consent in writing to San Juan Unified's initial offer of special education. Thus, San Juan Unified could not provide Student with in-person specialized academic instruction and speech and language services, during distance learning, for the 2020-2021 school year because Parents did

not provide written consent to the IEP. Further, Student did not enroll in San Juan Unified for the 2020-2021 school year until May 24, 2021, near the end of the 2020-2021 school year. Finally, even though enrolled, Student did not attend San Juan Unified for the remainder of the school year.

In November 2019, three months before Student's third birthday, San Juan Unified received a referral from a regional center for Student to be assessed for special education and related services. The referral listed articulation, and receptive and expressive language skills as areas of concern. San Juan Unified provided Parents with an assessment plan to assess Student's speech and language communication development, vision, and hearing. Parents provided written consent to the assessment plan.

San Juan Unified convened an IEP team meeting on February 26, 2020, to determine Student's eligibility for special education. Among those who attended the meeting were Parents, speech-language pathologist Laura Enos Grover, and staff from the early childhood education Head Start program, where Student attended at the time.

Enos Grover assessed Student's speech and language communication development as part of Student's initial evaluation for special education. Enos Grover worked in the school setting as a speech-language pathologist for 20 years, including six years with San Juan Unified. She had a master's degree in speech language pathology, and was certified by the American Speech-Language-Hearing Association. She was trained and experienced in assessing children in the area of language and speech communication development, having conducted approximately 15 speech and language assessments each year. Enos Grover testified at the hearing.

Enos Grover presented her findings, conclusions, and recommendations to the February 26, 2020 IEP team. The IEP team determined Student qualified for special education under the category of speech and language impairment due to deficits in his receptive and expressive language skills. The IEP team identified Student's receptive and expressive language skills to be areas of need, and offered goals to address those needs, including a goal to increase his vocabulary. The IEP team offered 400 minutes each week of individual and group services during the regular school year, to be delivered in San Juan Unified's preschool communication class. The IEP also offered 360 minutes a week of the same services in the preschool communication class during the 2020 extended school year.

Student offered no evidence to establish that Student required specialized academic instruction at the time.

The February 26, 2020, IEP was San Juan Unified's initial offer of special education for Student, as he had not previously received an IEP. However, Parents did not consent to this IEP. Without Parents' consent, San Juan Unified could not implement the IEP.

Student failed to establish that Parents provided written consent to the February 26, 2020 IEP. The February 26, 2020, IEP meeting notes indicated that "Parents agree with district's entire offer of FAPE." However, the IEP did not have signatures from either Father or Mother. Therefore, there was no written consent to the IEP on the face of the IEP document. Nor did Parents provide written consent in a letter or email, for example, following the February 26, 2020 IEP team meeting.

During the hearing, Mother and Father could not recall providing written consent to the February 26, 2020 IEP, and Student failed to present any evidence showing Parents had consented in writing to the IEP. Accordingly, Student failed to prove San Juan Unified was obligated to implement the February 26, 2020 IEP.

In addition, Student was not enrolled in San Juan Unified during the 2020-2021 school year until May 24, 2021. San Juan Unified closed its school campuses in March 2020 in response to the COVID-19 pandemic. San Juan Unified's first day of instruction for the 2020-2021 school year was August 13, 2020. On February 10, 2021, San Juan Unified's Assistant Director of Special Education Jennifer Nelson mailed a written notice to Parents advising Parents that Student was required to enroll in San Juan Unified to receive special education services. Nelson's letter provided instructions on the enrollment process and indicated that Parents had not completed Student's enrollment into San Juan Unified.

Mother testified that Parents were no longer living at the address the letter was mailed to and did not receive the letter. However, Nelson explained at the hearing that the letter was mailed to Parents' last known address, and the letter did not return to San Juan Unified as undeliverable. Nevertheless, Parents completed enrollment forms on May 24, 2021, and Student enrolled in San Juan Unified that day.

Documentation of Student's enrollment history with San Juan Unified and Nelson's testimony established that Student was not enrolled in San Juan Unified until May 24, 2021. For that reason, San Juan Unified had no duty to provide Student with special education and related services during the 2020-2021 school year, prior to his enrollment in San Juan Unified on May 24, 2021.

In April 2021, San Juan Unified opened its school campuses for in-person instruction, with students given the option of remaining in distance learning. However, the evidence did not establish that Parents elected for Student to participate in distance learning for the eight school days remaining until the last day of instruction on June 8, 2021.

Student also failed to establish that Parent sought instruction and services for Student, either in-person or through distance learning, for the remainder of the 2020-2021 school year. Therefore, San Juan Unified did not fail to provide Student with in-person instruction and speech and language services during distance learning in the 2020-2021 school year.

Student claims San Juan Unified denied him a FAPE by shifting his services from in-person to distance learning during the 2020-2021 school year. Student's claim is meritless as distance learning was lawful during the applicable time frame. On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency in California as a result of the COVID-19 pandemic. On March 13, 2020, Governor Newsom issued Executive Order N-26-20, which authorized school districts to continue educating students to the extent feasible, through distance learning and/or independent study.

On March 19, 2020, Governor Newsom issued Executive Order N-33-20, ordering all California residents to immediately stay at home or place of residence except as needed to operate critical federal infrastructure sectors. (Cal. Exec. Order N-33-20 (March 19, 2020).) The California State Public Health Officer issued a list of designated essential workers who were allowed to leave their homes to support specified critical infrastructure sectors, which included workers teaching at public and

private kindergarten to grade 12 schools, but only for distance learning. Executive Order N-33-20 remained in effect until June 11, 2021. (*Brach v. Newsom* (9th Cir. 2021) 6 F.4th 904, 911.)

The Governor's stay-at-home order that restricted teaching to distance learning was authorized under Government Code sections 8567, 8627, and 8665, and Health and Safety Code sections 120125, 120140, 131080, 120130, subdivision (c), 120135, 120145, 120175, and 120150. The Governor's order and local educational agencies' school closures and limitation of instruction to distance learning was consistent with the Ninth Circuit's decision in *N.D. v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116-1117 (*N.D.*), and deemed lawful by the United States District Court. (*E.M.C. v. Ventura Unified School District* (C.D.Cal. October 14, 2020, No. 2:20-cv-09024-SVW-PD) 2020 WL 7094071.) Relying on *N.D.*, *supra*, the court upheld the Governor's order, and denied the student's request for in-person services despite the student's IEP providing in-person services, as the IEP had been modified by lawful statewide restrictions prohibiting in-person instruction. (*Id.* at *6.) The court rejected the student's argument that restrictions on in-person services did not excuse a school district from its obligation to provide in-person IEP services. (*Ibid.*) Similarly, here, San Juan's provision of distance learning as a result of the COVID-19 pandemic and related Governor's orders was lawful, and Student was not denied a FAPE on this basis.

Moreover, Student's arguments in his closing brief that San Juan Unified's provision of distance learning was tantamount to a breach of contract is misplaced as California implements the IDEA through its special education laws, not through contract law. (*Miller v. San Mateo-Foster City Unified School Dist.* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860.)

Accordingly, Student failed to prove by a preponderance of the evidence that San Juan Unified denied him a FAPE during the 2020-2021 school year by failing to provide him in-person specialized academic instruction and speech and language services during distance learning. San Juan Unified prevailed on Issues 1(a) and 1(b).

ISSUE 2: ASSISTIVE TECHNOLOGY ACCOMMODATIONS DURING DISTANCE LEARNING FOR THE 2020-2021 SCHOOL YEAR

Student alleges San Juan Unified denied him a FAPE by failing to provide assistive technology accommodations during the 2020-2021 school year. San Juan Unified contends it had no obligation to provide Student with assistive technology or a FAPE, as Student was not enrolled in San Juan Unified for the 2020-2021 school year until May 24, 2021, and did not attend school either in-person or through distance learning for the 2020-2021 school year.

As found in Issues 1(a) and 1(b), Student failed to prove Parents provided written consent to the February 26, 2020 IEP. Accordingly, San Juan Unified could not implement the IEP during the 2020-2021 school year, and therefore, had no obligation to provide Student a FAPE. Accordingly, San Juan Unified had no obligation to provide Student with assistive technology for the 2020-2021 school year.

Student failed to prove by a preponderance of the evidence that San Juan Unified denied him a FAPE by failing to provide him with an accommodation in the form of assistive technology during distance learning for the 2020-2021 school year. San Juan Unified prevailed on Issue 2.

ISSUES 3(a) AND 3(b): ASSESSMENTS IN THE AREAS OF FUNCTIONAL BEHAVIOR AND SPEECH AND LANGUAGE PRIOR TO ASSIGNING STUDENT TO DISTANCE LEARNING FOR THE 2020-2021 SCHOOL YEAR

Student contends San Juan denied him a FAPE by failing to assess him in the areas of functional behavior and speech and language prior to assigning him to distance learning during the 2020-2021 school year.

San Juan Unified contends it had no obligation to assess Student's functional behavior or speech and language during the 2020-2021 school year because Parents had not consented to Student receiving special education. San Juan Unified further contends Student was not enrolled in San Juan Unified, did not attend school either in-person or through distance learning during the 2020-2021 school year, and was not legally required to attend school due to his age during the 2020-2021 school year. Moreover, Student failed to present legal authority to support that San Juan Unified was obligated to assess Student prior to following the Governor's lawful orders that authorized distance learning.

After a child has been deemed eligible for special education, reassessment must be performed if the district determines that is warranted by the child's educational or related services needs. (20 U.S.C. § 1414 (a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) Further, the local educational agency must conduct a reassessment upon a parent's request, even when the school determines that no additional data is needed to determine the student's educational needs. (20 U.S.C. § 1414(a)(2)(A)(ii); Ed. Code, § 56381, subds. (a)(1) and (d); 34 C.F.R. § 300.303(a)(2).)

A failure to perform a necessary assessment is a procedural violation of the IDEA. However, a procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

As found in Issue 1, Parents did not consent to the initiation of special education for Student and Student did not attend San Juan Unified during the 2020-2021 school year. Moreover, San Juan Unified's provision of distance learning was lawful. Student failed to present any legal authority that showed a school district was required to assess a student prior to providing distance learning as a result of the COVID-19 pandemic. Finally, Student failed to show by a preponderance of the evidence that he required a functional behavior assessment or a reassessment in speech and language, to receive a FAPE during the 2020-2021 school year. Accordingly, Student failed to prove by a preponderance of the evidence that San Juan Unified denied him a FAPE during the 2020-2021 school year, by failing to assess him in the areas of functional behavior and speech and language prior to assigning him to distance learning. San Juan Unified prevailed on Issue 3.

ISSUES 4(a)(i) AND 4(a)(ii): BEHAVIOR AND SPEECH GOALS FROM AUGUST 24, 2020, THROUGH AUGUST 24, 2022

Student contends San Juan Unified denied him FAPE by failing to offer him a behavior goal to address his maladaptive behaviors, and speech goals to address his intelligibility and the volume of his voice. San Juan Unified contends Student's IEPs

dated June 9, 2021, and November 19, 2021, and as amended on June 22, 2022, offered Student appropriate speech goals. San Juan Unified also contends that Student did not require a behavior goal until his IEP was amended on June 22, 2022, referred to as the June 22, 2022 IEP.

An IEP must include a statement of measurable, annual academic and functional goals designed to meet the needs of the student. An IEP must also include a description of how the student's progress toward annual goals will be measured. (Ed. Code, § 56345, subds. (a)(2) and (a)(3).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (OSERS, March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations) (Notice of Interpretation).)

BEHAVIOR GOALS

2020-2021 SCHOOL YEAR

Student offered no testimony or documentary evidence that Student had any behaviors during the 2020-2021 school year, that would adversely impact his education. San Juan Unified's first day of instruction for the 2020-2021 school year was August 13, 2020. As discussed in Issues 1, 2, and 3, Student did not attend San Juan Unified, either in-person or through distance learning, during the 2020-2021 school year. Therefore, San Juan Unified had no reason to suspect his behaviors were an area of concern that warranted a behavior goal in his IEP at the time.

JUNE 9, 2021 IEP

Student also failed to prove he required a behavior goal in the June 9, 2021 IEP. Student enrolled in San Juan Unified on May 24, 2021. Student had no problem behaviors known by San Juan Unified at the time, and San Juan Unified had no reason to suspect that Student's behavior would be a concern in the school setting.

San Juan Unified held an IEP team meeting for Student on June 9, 2021, during which, a new IEP was developed for the 2021 extended school year, and the 2021-2022 school year. Among those who attended were Parents, Enos Grover, and a special education teacher. At the meeting, Parents shared that Student was creative and independent. He was attentive and good with following directions. After watching Parents perform a task, Student could independently perform the same task immediately.

The only behavior Parents reported to the IEP team was that Student got upset at home when Parents asked him to stop using a tablet device. Parents did not report any other concerning behaviors at the June 9, 2021 IEP team meeting. San Juan Unified did not offer a behavior goal in the June 9, 2021 IEP. Parent consented to the IEP on June 9, 2021.

At the hearing, Enos Grover persuasively opined that Student's tablet-related tantrums at home were not uncommon for a child his age, and therefore, did not justify an IEP goal for behavior. Student offered no evidence to contradict Enos Grover's opinion, or evidence that Student had any other problem behaviors that warranted a

behavior goal in the June 9, 2021 IEP. Accordingly, Student failed to prove by a preponderance of the evidence that San Juan Unified denied him a FAPE by not offering a behavior goal in the June 9, 2021 IEP.

NOVEMBER 19, 2021 IEP

Student failed to prove he required a behavior goal in the November 19, 2021 IEP. Student's behaviors were a problem when he joined Enos Grover's preschool communication class for 2021-2022 school year. At the start of the school year, Student was aggressive towards peers and would hit or pull other children out of their chairs when they cried for a long time. He also hit or pushed other children when he wanted something they had. He took things away from other children. If he did not get what he wanted from the other child, or if the child took an item back, Student would chase and hit the child. His aggressive behaviors occurred daily.

Student also eloped from the classroom and had difficulty remaining in his seat or workstation. Student eloped for 10 minutes in some instances. Student struggled to remain in his workstation during activities, and he required a lot of attention and redirection.

Enos Grover sought support early in the school year from a San Juan Unified behaviorist. With support from the behaviorist, Enos Grover collected data and identified the functions of Student's problem behaviors at the beginning of the 2021-2022 school year. Enos Grover found that Student became dysregulated when the classroom got too loud for Student, when he wanted something that other children had, or during certain competitive activities. Enos Grover observed Student to elope, hit, pull, and push other students, or run around the classroom when dysregulated.

To support Student, Enos Grover attempted to keep the classroom noise to an acceptable level. San Juan Unified provided Student headphones to reduce sound distraction. He did not initially use the headphones offered to him, but by kindergarten, he requested the headphones when the classroom was too loud. Student was encouraged to notify Enos Grover or an instructional aide when he felt the class was getting too loud. Student could not recognize his own sensory needs.

During fall 2021, San Juan Unified implemented a rewards system for Student by allowing Student to earn rewards such as candies, brushing with the sensory brush, time in the break area, jumping on the trampoline, or running outside to promote positive behavior. Transition songs, warnings before transitions, and a timer for transitions were also offered to support Student. Brushing with a sensory brush, fidgets, and time in a dedicated break area helped to calm Student. A sensory brush is a surgical brush commonly used by surgeons to clean their hands, and in Student's case, used to brush his arms, legs, and other body parts to regulate his senses. Student was also allowed extra time outside the classroom to move or jump on the trampoline to calm himself.

Also, in fall 2021, school psychologist Allison Hartsell assessed Student's cognitive functioning, social emotional functioning, adaptive skills, and behavior. Hartsell reported her findings, conclusions, and recommendations in a written psychoeducational evaluation report dated November 19, 2021.

On November 9, 2021, Hartsell observed Student wandering around the classroom and was redirected by an instructional aide back to his seat. Hartsell also observed Student seated next to an instructional aide, a few feet away from his peers, because he had attempted to hit his classmates earlier that day. Hartsell opined in her

report that Student required significant levels of one-to-one behavior support to ensure he remained on task and did not become aggressive towards other students based on what she observed.

In addition, Hartsell asked Enos Grover to rate Student's behaviors using a behavior assessment measure. Enos Grover rated Student's aggression in the clinically significant range. Aggression was defined by the assessment instrument as the tendency to do physical or emotional harm to others or their property.

On November 19, 2021, San Juan Unified convened an IEP team meeting to review its assessments, Student's eligibility for special education, to develop an IEP for the remainder of the school year, and to transition Student to kindergarten the following school year. Among those present at the meeting were

- Mother,
- Enos Grover,
- Hartsell,
- special education teacher Melanie Borin, and
- occupational therapist Tom Passerino.

The IEP team recommended changing Student's special education eligibility to autism based on assessment results.

San Juan Unified's IEP team members determined that the November 19, 2021, IEP did not require an IEP goal to address Student's problem behaviors. At the hearing, Enos Grover and Hartsell opined that Student's behaviors were adequately addressed

with the supports and interventions in the preschool communication class, and therefore, an IEP goal was not needed. A preponderance of the evidence supported their opinions.

Despite Student's problem behaviors, the evidence established that a behavior goal was not required in the November 19, 2021 IEP for Student to receive a FAPE. An IEP is required to target a student's needs, but an IEP is not required to offer every goal from which a student might benefit. (*Capistrano Unified School District v. S.W., et al.* (9th Cir. 2021) 21 F.4th 1125, 1133.) Furthermore, a school district is not required to develop goals for areas covered by the general curriculum for which a student needs only accommodations and modifications. (Notice of Interpretation, *supra*, Question 4.)

Here, a preponderance of the evidence demonstrated that the strategies and supports San Juan Unified provided Student within the preschool communication class to regulate his emotions were effective. Student's aggression was a daily occurrence at the start of the 2021-2022 school year, but improved during the school year. The severity and frequency of his aggression declined and he did not elope as often. By November 2021, Student was no longer pulling other students, his pushing decreased to once every other week, and his elopement from the classroom also decreased to once every few weeks.

The evidence did not establish by a preponderance of the evidence that Student required a behavior goal in the November 19, 2021 IEP, as the behavior supports and interventions were effective in reducing Student's problem behaviors.

In addition, Student failed to offer persuasive evidence that the absence of such a goal impeded his right to FAPE, Parents' ability to meaningfully participate in the IEP

process, or deprived Student of an educational benefit. No evidence was offered to demonstrate the extent to which Student's problem behaviors adversely impacted his education following the November 19, 2021 IEP team meeting.

Accordingly, Student failed to prove by a preponderance of the evidence that the San Juan Unified denied him a FAPE by failing to offer him a behavior goal in the November 19, 2021 IEP.

JUNE 22, 2022 IEP

Following the November 19, 2021 IEP team meeting, speech-language pathologist Coryn Hernandez provided Student 20 minutes a week of speech and language services outside of the preschool communication class pursuant to the November 19, 2021 IEP. Hernandez had a master's degree in communication sciences and disorders. As a speech-language pathologist for San Juan Unified for the past three years, Hernandez conducted assessments and provided speech and language therapy to students as a group or individually. She testified at the hearing.

Hernandez did not observe Student display maladaptive behaviors during speech therapy or in the classroom. Student had no difficulty transitioning between the classroom and speech therapy. He looked forward to speech therapy, was engaged during the sessions, put forth good effort, and worked well with the other students in therapy. In sum, the behavior supports and interventions were effective in addressing Student's problem behaviors in the preschool communication class.

The IEP team reconvened on June 7, and 22, 2022, to discuss Student's transition to kindergarten for the 2022-2023 school year. Parent could not attend the June 7, 2022

IEP team meeting, and San Juan Unified rescheduled the IEP team meeting to June 22, 2022. Parent attended the June 22, 2022 meeting, along with Enos Grover, principal Jamal Hicks, and a general education kindergarten teacher.

The IEP team meeting notes indicated that Student was no longer pushing other children when it got too loud. However, he continued to push children if they were not listening to the teacher or following rules, or if the other student did not like losing to Student during a race. Student targeted students who easily got upset with him. The frequency, duration, and severity of these behaviors was not established at the hearing.

On June 22, 2022, the IEP team offered to amend Student's IEP to add a goal to help him regulate his emotions to support his transition to a general education kindergarten class. The team developed the goal to address Student's emotional dysregulation with sustained noise, when another student had a toy he wanted, or during competitive situations. When Student was dysregulated, he eloped from the classroom or an activity, ran around in the classroom, or hit other students. When given break cards, and supports from the teacher for breaks, and with the use of brushing, noise-canceling headphones, reinforcement charts and other supports, the goal required Student to request a break and reduce his emotional excesses to no more than two times a week. At the hearing, Enos Grover persuasively opined that the goal was objectively measurable and appropriate to address Student's behavioral needs.

Student offered no testimony or evidence challenging the appropriateness of the emotional regulation goal, or whether the goal as written, impeded Student's right to a FAPE, Parents' participation in the IEP process, or deprived Student of an educational benefit. Therefore, the evidence did not establish that San Juan Unified failed to offer Student an appropriate behavior goal in the June 22, 2022 IEP.

In sum, Student failed to establish that San Juan Unified denied him a FAPE by failing to offer him a behavior goal from August 2020, through August 2022. Student did not display any problem behaviors prior to the 2021-2022 school year. During the 2021-2022 school year, Student's problem behaviors decreased in frequency and severity through the support and interventions offered in the preschool communication class, without the need for an IEP goal for behavior. Furthermore, to support his transition to a general education kindergarten class, the June 22, 2022 IEP offered an emotional regulation goal that appropriately addressed Student's problem behaviors.

Accordingly, Student failed to meet his burden of proving by a preponderance of the evidence that San Juan Unified denied him a FAPE from August 24, 2020, through August 24, 2022, by failing to offer appropriate goals in the area of behavior. San Juan Unified prevailed on Issue 4(a)(i).

SPEECH GOALS

San Juan Unified offered Student appropriate speech goals from August 2020, through August 2022. Student had deficits in the areas of receptive and expressive language, and articulation. San Juan Unified offered measurable and challenging goals to address each of Student's speech and language needs.

As part of Student's initial special education evaluation in February 2020, Enos Grover assessed Student's voice and fluency and found them appropriate for Student's age. Student's speech was mostly intelligible, and Enos Grover opined at the hearing that that an articulation goal was not needed at the time. Enos Grover also found Student's receptive language skills to be significantly delayed.

In the area of expressive language, Enos Grover found Student's mean length of utterance was below age level. Mean length of utterance is the average number of morphemes a child uses in each sentence. A morpheme is the smallest unit within a word that carries a meaning. For example, the word cat has one morpheme, and the word cats, which contains the base word plus the plural, has two morphemes. Enos Grover concluded that Student had significant delays in the area of expressive language.

FEBRUARY 26, 2020 IEP

On February 26, 2020, the IEP team reviewed Enos Grover's assessment and Student's unique needs. The IEP team agreed that Student had needs in the areas of receptive and expressive language. The IEP team offered three goals in the areas of receptive language, expressive language, and vocabulary.

The expressive language goal aimed to improve Student's mean length utterance from approximately two, to three or four. Using visual supports and verbal modeling as needed, the goal required Student to use three to four words to make a request, comment, or to label something, with 80 percent accuracy over two speech sessions. Student failed to present any evidence to show the goal was not reasonably challenging, measurable, or appropriately tailored to meet Student's expressive language needs.

Student could follow routine or familiar commands without gestural cues. The goal sought to improve Student's ability to follow one-to-two step classroom instructions, or instructions involving actions. Student had to follow one-to-two step instructions with 80 percent accuracy over two speech sessions to meet the goal. Student failed to present

any evidence to show the receptive language goal was not reasonably challenging and measurable, or appropriately tailored to improve Student's ability to follow directions.

In the area of vocabulary, Student's ability to identify and label certain clothing items, actions, and simple pronouns, was an area of need. Accordingly, the IEP team offered a vocabulary goal. The goal sought to increase Student's vocabulary to a minimum of 25 words in four or more categories such as clothing, actions, animals, and other subjects. To meet the goal, Student had to identify and label words accurately with 80 percent accuracy over two speech sessions. Student failed to present any evidence to show the vocabulary goal was not reasonably challenging, measurable, or appropriately tailored to meet Student's need in this area.

Student offered no testimony or documentary evidence to demonstrate that San Juan Unified had any reason to suspect the volume of Student's voice or intelligibility was a concern in the classroom that necessitated IEP goals. Moreover, Enos Grover found no concerns about Student's voice during her assessment. Consequently, the evidence failed to establish that Student had speech deficits, specifically for his intelligibility and the volume of his voice, that required additional goals for the 2020-2021 school year.

San Juan Unified offered appropriate speech goals to address Student's receptive and expressive language deficits for the 2020-2021 school year. Student did not require additional speech goals to receive a FAPE for that school year. Accordingly, Student failed to prove by a preponderance of the evidence that San Juan Unified denied him a FAPE during the 2020-2021 school year, by failing to offer him appropriate speech goals.

JUNE 9, 2021 IEP

San Juan Unified's last day of instruction for the 2020-2021 school year was June 8, 2021. On June 9, 2021, the IEP team met to develop a new IEP for Student. Parents and Enos Grover were among those who attended the meeting.

San Juan Unified had not worked with Student prior to the June 9, 2021 IEP team meeting. Therefore, the San Juan Unified IEP team members relied on Parents to report Student's present levels of performance and progress towards the February 26, 2020 IEP goals.

Parents reported that Student used more words to ask for something or explain what he was doing. For example, he could say up to seven words, such as "Mommy, I want a hot dog please," and "Mommy, look at this, it is a triangle." Based on Parents' input, the IEP team determined Student met his prior expressive language goal.

However, Parents reported Student had difficulty accurately responding to questions. For example, when asked how he was doing, Student would respond by describing what he was doing or what he wanted to do.

Parents also reported Student consistently followed one-step instructions at home. Student could follow simple functional instruction, such as being asked to pick up something off the floor. He could not consistently follow two-step instructions, and would need to be reminded of the second step if he got distracted. Based on Parents' input, the IEP team determined Student met his previous receptive language goal. However, the IEP team determined he needed help in following instructions that involved concepts such as space, quality, and quantity.

The IEP team determined Student had not met his vocabulary goal. Parents shared Student was using more words, but Parents opined at the meeting he did not use as much vocabulary as other children his age.

Parents also reported Student did not consistently produce accurate speech sounds. Parents shared Student held his tongue differently when he spoke certain words. In addition, Parent reported Student spoke loudly.

The IEP team identified Student's receptive and expressive language, and articulation, as areas of concern. Receptive and expressive language goals were offered in the June 9, 2021 IEP. Enos Grover persuasively testified each of the goals were challenging and measurable based on the information available to the IEP team meeting at the time.

The expressive language goal aimed to help Student better respond to questions. With the help of visual supports, the goal required Student to accurately respond with complete sentences using the present progressive when asked what he was doing. He had to accurately respond 80 percent of the time to achieve the goal.

A goal was offered to increase Student's vocabulary. The goal required Student to identify items and label the items using words he had yet to learn, in four or more categories such as action, shapes, and school related vocabulary. Student had to identify and label with 80 percent accuracy to meet the goal.

To improve his receptive language skills, the IEP team offered a goal to improve Student's ability to follow instructions that involved spatial, qualitative, and quantitative concepts. To meet the goal, Student had to accurately follow 80 percent of one-to-two step instructions involving concepts that he had not learned.

The June 9, 2021 IEP did not offer an articulation goal. Enos Grover persuasively testified the June 9, 2021 IEP did not offer an articulation goal because San Juan Unified did not know enough about Student's specific articulation needs to develop an appropriate measurable goal. Rather, at the June 9, 2021 IEP team meeting, San Juan Unified offered to conduct a comprehensive assessment of Student in fall 2021, that included Student's communication development. Enos Grover testified that an articulation goal would be considered by the IEP team once Student was assessed at the beginning of the 2021-2022 school year. Student did not offer evidence that the absence of an articulation goal in the June 9, 2021 IEP impeded Student's right to a FAPE, significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, or deprived Student of an educational benefit. Student had the burden of proof for this issue, yet failed to offer witness testimony or documentary evidence to support this claim.

Student relied on the testimony of Theresa Edwards, to claim that he required an IEP goal to address the volume of his voice and that the goals offered in the June 9, 2021 IEP were not appropriate. Based solely on the June 9, 2021, IEP's description of Parent's report that Student spoke loudly, Edwards testified Student required an IEP goal to address the volume of his voice. The evidence did not support Edward's opinion.

Edwards was a school psychologist for over 23 years, and conducted over 200 psychoeducational evaluations in her career. However, she had no training or experience in evaluating a child's speech and language development, nor developing and implementing speech and language IEP goals.

Edwards had not met Parents at the time of her testimony. More importantly, she had not spoken to Student, nor observed him speak. She did not observe Student

at school or at home. She did not interview Enos Grover, anyone who assessed or taught Student, or any other staff from San Juan Unified. She was not familiar with San Juan Unified's preschool communication class, or that type of class in general. She did not attend any of Student's IEP team meetings.

Edwards was not familiar with Student's unique skills and deficits, or the program San Juan Unified offered to Student. Therefore, her critique of Student's IEPs, including the goals offered, and her opinions at the hearing were not persuasive, and accordingly, given little weight.

Neither Enos Grover, nor any other witnesses who observed Student at school or assessed Student, testified that the volume of Student's voice was a concern. No persuasive testimony or documentary evidence supported Student's claim that the volume of his voice in the school setting was an area of need that warranted an IEP goal.

The June 9, 2021 IEP offered Student appropriate goals to address his receptive and expressive language deficits. Student did not require a goal to address the volume of his voice. San Juan Unified's decision to defer development of an articulation goal until after Student's assessments at the start of the 2021-2022 school year, did not deny Student a FAPE. Consequently, Student failed to prove by a preponderance of the evidence that San Juan Unified denied him a FAPE by failing to offer him appropriate speech goals in the June 9, 2021 IEP.

NOVEMBER 19, 2021 IEP

Enos Grover assessed Student's speech and language development for a second time in fall 2021. In the area of articulation, Enos Grover found Student's lateral emission of the /ch/, /j/ and /sh/ sounds to be concerning and distracting, and

recommended an articulation goal. At the hearing, Enos Grover explained that lateral emission occurs when the sound releases from the sides of the mouth, instead of the front.

Enos Grover also found Student's mean length of utterance was below what would be expected for his age. His mean length of utterance of 3.4 was below the 5.5 for his age group.

Student also committed a significant rate of errors in his words and sentences. Student committed errors such as excluding the present progressive-"ing", failing to use an object in his sentences, substituting present for past tense, and using incomplete sentences.

Enos Grover assessed Student's listening comprehension and oral expression skills using a standardized assessment measure. Student scored below average in both listening comprehension and oral expression.

On November 19, 2021, the IEP team reviewed Enos Grover's November 19, 2021 assessment report. The IEP team offered four goals to address Student's intelligibility, and receptive and expressive language needs. The November 19, 2021 IEP also offered 400 minutes each week of instruction in the preschool communication class and 20 minutes a week of small group speech and language services to work on Student's articulation.

At the hearing, Enos Grover and Hernandez persuasively opined the speech goals were reasonably ambitious and appropriately designed to meet Student's speech needs. One goal targeted Student's difficulty in producing the /s/ sound. Student had to accurately produce the /s/ sound at the different positions within a word with

80 percent accuracy. Student would be given visual, verbal, and tactile cues as needed. Hernandez was responsible for implementing this goal and, at the hearing, opined the goal was appropriately tailored to reduce Student's lateral air emission when producing the /s/ sound.

Another intelligibility goal aimed to help reduce Student's lateral emissions when producing the /ch/ and /sh/ sounds. The goal required Student to accurately produce the /ch/ and /sh/ sounds 80 percent of the time, with the help of visual, verbal, and tactile cues. Hernandez was also responsible for implementing this goal, and opined the goal was appropriately tailored to Student's articulation needs.

An expressive language goal required Student to respond in full sentences using correct pronouns, present progressive and prepositional phrases when asked who, what, or where questions. To achieve the goal, Student had to accurately respond as required 80 percent of the time.

The receptive language goal asked Student to follow one-to-two step instructions involving concepts such as weight, volume, quantity, completeness, location, and direction. Student had to successfully follow the instructions 80 percent of the time.

Student failed to offer any persuasive testimony or documentary evidence challenging the appropriateness of the speech goals offered in the November 19, 2021 IEP. Furthermore, Student offered no persuasive evidence to demonstrate that San Juan Unified should have offered Student additional speech goals in the November 19, 2021 IEP. Accordingly, Student failed to prove by a preponderance of the evidence that the November 19, 2021 IEP failed to offer appropriate speech goals.

JUNE 22, 2022 IEP

San Juan Unified continued to offer appropriate speech goals at the time of the June 22, 2022 IEP team meeting. The June 22, 2022 IEP team reviewed Student's progress on IEP goals. Student's production of the /s/ sounds in words improved, and he got better at accurately producing the /sh/ and /ch/ sounds. His ability to respond with full sentences to who, what, and where questions also improved, and his responses were more varied and accurate. He learned to distinguish the difference between small, medium, and large, and could identify full and empty with 80 percent accuracy.

Student presented no testimony or documentary evidence that challenged the appropriateness of the speech goals offered in the June 22, 2022 IEP, or demonstrated that the IEP should have offered additional speech goals. The goals were appropriately tailored to meet his speech needs, and Student made progress towards his goals. No additional speech goals were needed. Accordingly, Student failed to prove the June 22, 2022 IEP failed to offer appropriate speech goals.

The evidence established that San Juan Unified offered Student appropriate speech goals from August 2020, through August 2022, to address his receptive and expressive language deficits, and articulation needs. The evidence did not establish Student required a goal to address the volume of his voice or any other speech goals. Accordingly, Student failed to meet his burden of proving by a preponderance of the evidence that San Juan Unified denied him a FAPE from August 24, 2020, through August 24, 2022, by failing to offer him appropriate speech goals. San Juan Unified prevailed on Issue 4(a)(ii).

ISSUES 4(b) AND 4(c): ACCOMMODATIONS AND PROGRAM MODIFICATIONS FROM AUGUST 24, 2020, THROUGH AUGUST 24, 2022

Student contends the June 22, 2022, IEP failed to include in the appropriate section, some of the accommodations that were described in the IEP team meeting notes. Student also contends San Juan Unified's offer of placement in the preschool communication class was an inappropriate program modification. San Juan Unified contends Student failed to prove that his IEPs lacked any accommodations and program modifications necessary for him to receive a FAPE.

An IEP shall include a statement of the program modifications or supports for school personnel that will be provided for the child to:

- advance appropriately toward attaining annual goals;
- be involved in and make progress in the general education curriculum in accordance with subclause (l) and to participate in extracurricular and other nonacademic activities; and
- be educated and participate with other children with disabilities and nondisabled children. (20 U.S.C. § 1414(d)(1)(A)(iv).)

Student failed to prove that San Juan Unified denied him a FAPE because the June 22, 2022, IEP did not list each of the supports Student received in the offer of FAPE page of the IEP document. In addition, the evidence failed to establish that the preschool communication class was a modification to Student's program modification.

None of Student IEPs in question, including the June 22, 2022 IEP, offered program accommodations and modifications. The IEP teams determined, and noted in IEPs' offer of FAPE pages, that Student did not need program accommodations and

modifications in the general education class or in other education-related settings. Student failed to offer any testimony or documentary evidence challenging the appropriateness of those determinations. Rather, Student argues the supports, rather than the accommodations and program modifications, were inadequate.

Occupational therapist JanDee Goodis testified on behalf of Student to offer opinions as to the accommodations, program modifications, and supports offered in Student's IEPs. Goodis was an occupational therapist for nearly 42 years, and provided in-home occupational therapy services for children under the age of one, through 18 years of age. She had nine years of experience as an occupational therapist in the school setting and had last worked for a school district in 2011.

Prior to her testimony, Goodis reviewed Student's current and prior IEPs, San Juan Unified's November 15, 2021, occupational therapy assessment report prepared by Passerino, and Enos Grover's November 19, 2021 assessment report. Goodis did not review Hartsell's psychoeducational evaluation report or any other educational records pertaining to Student. Goodis did not attend any of Student's IEP team meetings, and did not interview Enos Grover, Passerino, Student's kindergarten teacher Deborah Kypke, or any member of San Juan Unified's staff.

Goodis met Parents and Student for the first time on October 17, 2022, the day before she testified. They met by videoconference to allow Goodis to observe Student doing what Goodis described as basic occupational therapy skills. Parents and Student were in their home during the videoconference. Goodis observed Student for about one hour.

Goodis was too unfamiliar with Student's skills and deficits to credibly opine as to his academic or functional needs, the appropriateness of the accommodations,

program modifications, and supports offered in Student's IEPs, or to offer credible recommendations to Student's educational program. At the hearing, Goodis acknowledged that she did not know what accommodations, program modifications, or supports worked for Student. Accordingly, her testimony was not persuasive, and given little weight.

The evidence failed to establish that the manner in which the supports were described in the various sections of the June 22, 2022 IEP denied Student a FAPE. The IEP is to be read as a whole. There is no requirement that necessary information be included in a particular section of the IEP if that information is contained elsewhere. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2); Ed. Code, § 56345, subd. (h).) The supports Student needed and received were listed in three areas of the IEP. The IEP's offer of FAPE page listed visual supports the school personnel or Student needed, including a visual schedule, a reinforcement schedule, movement breaks, transition supports, a timer, verbal reminders, and other support.

In addition, the emotional regulation goal offered in the June 22, 2022, IEP also provided that Student would be given break cards, brushing, noise-canceling headphones, reinforcement cards, and other supports to help him meet that goal. Furthermore, the IEP team meeting notes described additional supports that Student received but were not listed in the offer of FAPE page. The supports included a reinforcement chart, a sensory brush, a headphone, jumping on a trampoline, sensory activities such as play-doh and kinetic sand, and access to a break room. Read as a whole, the IEP appropriately listed the supports San Juan Unified offered to Student at school.

Student offered no testimony or documentary evidence to show the description of the supports in the various sections of June 22, 2022 IEP significantly impeded Parents' ability to meaningfully participate in the IEP process. The June 22, 2022 IEP team discussed the supports Student received and required, and Parent meaningfully participated in that discussion.

In addition, the manner in which the supports were written in the June 22, 2022, IEP did not deprive Student of an educational benefit or impede his right to a FAPE. Despite not being listed in the IEP's offer of FAPE page, San Juan Unified provided Student the supports listed in the emotional regulation goal and IEP team meeting notes in the preschool communication class during the 2022 extended school year, and in kindergarten during the 2022-2023 school year. Those supports were embedded in the preschool communication class, and made available to Student in his kindergarten class. The evidence did not support Student's claim that San Juan Unified failed to offer him appropriate supports.

Furthermore, the preschool communication class did not constitute a program modification as Student contends. San Juan Unified's preschool communication class was specifically designed to provide intensive speech and language services to students, like Student, with severe speech and language delays. The preschool communication class was not a modification of a program or curriculum to support Student's learning.

Student failed to prove that San Juan Unified did not offer him appropriate accommodations and program modifications, or supports. Accordingly, Student failed to meet his burden of proving by a preponderance of the evidence that San Juan

Unified denied him a FAPE from August 24, 2020, through August 24, 2022, by failing to offer appropriate accommodations and program modifications. San Juan Unified prevailed on Issues 4(b) and 4(c).

ISSUE 4(d): SPEECH AND LANGUAGE SERVICES FROM AUGUST 24, 2020, THROUGH AUGUST 24, 2022

Student contends San Juan Unified failed to offer him appropriate speech and language services during the 2020-2021 school year. Student did not argue in his closing brief that San Juan Unified failed to offer him appropriate speech and language services following the 2020-2021 school year. San Juan Unified contends Student's IEPs offered him appropriate speech and language services at all times to enable him to benefit from his education.

Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [in California, related services are also called designated instruction and services].) Language and speech development and remediation are related services available to assist a child with a disability in benefitting from special education. (Ed. Code, § 56363, subd. (b)(1); 34 C.F.R. § 300.34(c)(15).)

San Juan Unified offered Student appropriate speech and language services from August 24, 2020, through August 24, 2022. Student's IEPs from August 24, 2020,

through the 2022 extended school year, offered him 400 minutes each week of individual and small group instruction in the preschool communication class during the regular school year, and 360 minutes a week during the extend school year.

Enos Grover testified 400 minutes of instruction in the preschool communication class was appropriate to meet Student's receptive and expressive language needs. Language, behavioral, and sensory supports were embedded in the class. The class offered students language supports using visuals such as communication books and boards, verbal modeling, gestural supports, repetition, wait time, and music.

The preschool communication class also offered behavior supports such as

- positive behavior charts,
- schedules,
- timers,
- breaks,
- verbal reminders,
- social stories, and
- videos.

The class also supported students' sensory needs by offering

- noise cancelling headphones,
- fidgets, brushing,
- squeezes and hugs,
- movement breaks, and
- calming breaks.

Student benefitted from the preschool communication class and made progress towards his IEP speech goals. By March 25, 2022, Student was often using present progressives, saying phrases like “they are flying” or “the dog is playing with the computer.” He identified subjects by name when asked who questions.

The evidence demonstrated Grover was well qualified to provide Student with speech and language services and the preschool communication class was appropriately designed to meet Student’s receptive and expressive language deficits. Student offered no testimony or documentary evidence to demonstrate otherwise.

In addition, Student’s November 19, 2021, and June 22, 2022 IEPs offered an additional 20 minutes each week of speech and language services outside of the preschool communication class for the 2021-2022 school year and extended school year, to work on Student’s intelligibility goals.

At the hearing, Hernandez opined the 20 minutes each week of speech and language services to address Student’s intelligibility was enough time to complete a sufficient amount of articulation therapy drills. Hernandez also opined that too long a session was not always productive as students tended to lose interest and focus after 20 minutes, especially for children of Student’s age.

Student benefitted from weekly speech services. Initially, Student could barely produce the /s/ sound. By March 3, 2022, he learned to drag the last /t/ sound to become the /s/ sound. By May 31, 2022, Student could produce the /s/ sound in the initial position with 60 percent accuracy with mild cues, 80 percent accuracy in the medial position with mild cues, and 57 percent accuracy in the final position with maximum cues.

Student transitioned to a general education kindergarten class for the 2022-2023 school year. Student's June 22, 2022, IEP increased his speech and language services to eight sessions a month, for 30 minutes a session, for a total of 240 minutes a month.

For the 2022-2023 school year, Hernandez remained Student's therapist, was Student's case manager, and became responsible for all of Student's speech and language IEP goals. Hernandez testified the eight sessions a month of speech and language services was provided twice a week, and an additional session was provided if the month had a fifth week. She persuasively opined the frequency and duration of the sessions were sufficient to address all of Student's speech and language goals. Student failed to offer testimony or documentary evidence to challenge Hernandez's opinion.

The evidence established that San Juan Unified offered Student appropriate speech and language services during from August 2020, through August 2022. Accordingly, Student failed to meet his burden of proving by a preponderance of the evidence that San Juan Unified denied him a FAPE by failing to offer appropriate speech and language services from August 24, 2020, through August 24, 2022. San Juan Unified prevailed on Issue 4(d).

ISSUE 4(e): ONE-TO-ONE AIDE FROM AUGUST 24, 2020, THROUGH AUGUST 24, 2022

Student contends San Juan Unified denied him a FAPE by failing to offer him a one-to-one aide to support his behavioral needs. San Juan Unified contends Student did not require a one-to-one aide to receive a FAPE.

Student failed to prove he required a one-to-one aide. The preschool communication class offered sufficient personnel to support Student's needs. Enos Grover was assisted by two instructional aides. The class sizes ranged from 10 to 14 students. The small adult-to-student ratio was adequate to support Student's behavioral needs. The preschool communication staff effectively supervised and supported Student with prompts and redirection when Student was inattentive, out of his area, or misbehaving. A one-to-one aide for Student was not required for Student to succeed academically and functionally in the preschool communication class.

Furthermore, Student's sensory and behavioral needs were adequately supported in his kindergarten class. Student was not aggressive and did not elope in Kypke's kindergarten class. The strategies and supports in the classroom successfully managed Student's behaviors without the need of a one-to-one aide. Neither Parents, Student's experts, Enos Grover, Kypke, Hernandez, nor any other witness testified that Student required a one-to-one aide. Student failed to submit any evidence to support this claim. Accordingly, Student failed to meet his burden of proving by a preponderance of the evidence that San Juan Unified denied him a FAPE from August 24, 2020, through August 24, 2022, by failing to offer a one-to-one aide. San Juan Unified prevailed on Issue 4(e).

ISSUE 5: EXTENDED SCHOOL YEAR SERVICES IN 2021 AND 2022

Student alleged San Juan Unified denied him a FAPE by failing to offer extended school year services in 2021 and 2022. San Juan Unified contends Student's IEPs offered him extended school year services in 2021 and 2022.

Extended school year services must be provided if a student's IEP team determines that the services are necessary as a provision of FAPE. (34 C.F.R. § 300.106(a)(2).) Extended school year services shall be provided when a student has a disability which is likely to continue indefinitely, interruption of the student's educational programming could cause regression; and when coupled with limited recoupment capacity, would render it unlikely that student would attain self-sufficiency and independence. (Cal. Code Regs., tit. 5, § 3043.)

Here, Student failed to prove San Juan Unified denied him a FAPE by failing to offer him extended school year services in 2021 and 2022. The June 6, 2021, IEP team determined that Student's language skills decreased over school breaks, and offered Student extended school year services in 2021. The 2021 extended school year services included 360 minutes a week of instruction in the preschool communication class.

Similarly, the November 19, 2021 IEP offered Student 360 minutes a week of instruction in the preschool communication class and 20 minutes a week of speech and language services during the 2022 extended school year. The June 22, 2022 IEP made no changes to the November 19, 2021 IEP's offer for extended school year services for 2022.

The documentary evidence contradicted Student's contention that San Juan Unified failed to offer extended school year services for 2021 and 2022. Accordingly, Student failed to meet his burden of proving by a preponderance of evidence that San Juan Unified denied him a FAPE by failing to offer him extended school year services in 2021 and 2022. San Juan Unified prevailed on Issue 5.

ISSUE 6: FUNCTIONAL BEHAVIOR ASSESMENT FROM MAY 24, 2021, THROUGH AUGUST 24, 2022

Student contends San Juan Unified failed to conduct a functional behavior assessment during the 2021-2022 school year, to assess the functions of his aggression and outbursts. San Juan Unified contends a functional behavior assessment of Student was not warranted.

A functional behavior assessment focuses on identifying the function or purpose behind a child's behavior. (*Questions and Answers on Discipline Procedures* (Office of Special Education and Rehabilitative Services, June 1, 2009), Q. E-2.) The process typically involves looking closely at a wide range of child-specific factors such as social, affective, and environmental. (*Ibid.*) The functional behavior assessment assists the IEP team in determining the extent of the special education and related services that the child needs, including a behavior intervention plan to help reduce or eliminate the problem behavior. (*Id.* at Q. E-4)

The evidence established that San Juan Unified was not required to conduct a functional behavior assessment of Student from May 24, 2021, through August 24, 2022. Student did not attend school, either in person or through distance learning, during the 2020-2021 school year, and no evidence was offered to demonstrate Student displayed problem behaviors during the 2021 extended school year that warranted a functional behavior assessment. Thus, Student did not prove a functional behavior assessment was warranted prior to the 2021-2022 school year.

San Juan Unified adequately identified the functions of Student's problem behaviors during the 2021-2022 school year, without the need for a functional behavior

assessment. As found in Issue 4(a)(i), with the support of a behaviorist, Enos Grover collected data and identified the functions of Student's problem behaviors. Enos Grover found that Student became dysregulated when the classroom got too loud for Student, when he wanted something that other children had, or during certain competitive activities. Enos Grover observed Student to elope, hit, pull, and push other students, or run around the classroom when dysregulated.

As found in Issue 4(a)(i), a preponderance of the evidence demonstrated that the strategies and supports San Juan Unified provided Student to regulate his emotions were effective. Student's aggression was a daily occurrence at the start of the 2021-2022 school year, but improved during the school year. He had no problems transitioning to, and participating in, speech therapy with Hernandez. Because of San Juan Unified's behavior interventions, the severity and frequency of Student's aggression and elopement declined.

By kindergarten in the 2022-2023 school year, Student's problem behaviors were successfully managed by the classroom strategies and supports. Kypke testified that at the start of the school year, Student was fixated with a particular student, wanted to sit next to that student on the carpet and at the tables, and would push other students to be next to that student. Kypke solved the problem by allowing Student to sit next to the student on the carpet, but Student had to sit in his designated table at all other times. As a result of Kypke's strategy, Student no longer moved his chair or pushed others to be next to the student. Kypke recalled that Student voiced his displeasure once but did nothing else to get near the student.

Student was offered the same positive behavior strategies and calming supports in kindergarten that he received in his preschool communication class. However, not all

the strategies and supports were needed in kindergarten. Student no longer needed the reinforcement chart. He also appropriately requested breaks by using break cards or by simply asking. Student also did not elope from class. He did not require additional breaks beyond movement breaks the class got throughout the school day. He had no difficulty transitioning between activities. Student requested headphones when the class got too loud, and he remained engaged with activities and lessons even while wearing the headphones. He used the sensory brush as needed to calm himself. Kypke persuasively testified the classroom strategies and supports successfully managed Student's behaviors.

A preponderance of the evidence established that San Juan Unified identified the functions of Student's problem behaviors without the need for a formal functional behavior assessment. Student did not exhibit problem behaviors that warranted a functional behavior assessment prior to the start of the 2021-2022 school year, and San Juan Unified's informal observations and data collection during 2021-2022 school year were effective in developing strategies and supports to address Student's behavioral needs. Therefore, a functional behavior assessment was not needed during the 2021-2022 school year or the 2022 extended school year.

In addition, Student's behavioral needs were successfully managed in the kindergarten classroom at the start of the 2022-2023 school year, using the same strategies and supports provided during preschool. Therefore, a functional behavior assessment was not warranted at the start of the 2022-2023 school year. Furthermore, Parents did not request a functional behavior assessment during the relevant period. Accordingly, Student failed to prove by a preponderance of the evidence that San Juan Unified denied him a FAPE by not conducting a functional behavior assessment from May 24, 2021, through August 24, 2022. San Juan Unified prevailed on Issue 6.

ISSUES 7(a) AND 7(b): APPLIED BEHAVIOR ANALYSIS THERAPY AND CLINIC MEETINGS

Student contends San Juan Unified denied him a FAPE by failing to offer in-home applied behavior analysis therapy and related clinic meetings. San Juan Unified contends Student did not require applied behavior analysis therapy or clinic meetings to receive a FAPE.

In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, strategies, including positive behavioral interventions, and supports to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) Applied behavior analysis is an intensive behavior modification therapy sometimes used for children with autism who have significant behavioral challenges.

Student abandoned this issue during the hearing. Student failed to submit any evidence to support that he required at-home behavior modification services or related clinic meetings in his IEP.

No one from Student's IEP team, including Parents, requested San Juan Unified provide Student applied behavior analysis therapy or clinical meetings during the relevant time period. No witnesses opined at hearing that Student required applied behavior analysis therapy, either at home or at school, or clinical meetings, to access and benefit from his education. Student offered no documentary evidence to support his contention. The evidence failed to establish that Student required in-home applied behavioral analysis therapy or clinic meetings to receive a FAPE. Accordingly, Student failed to prove by a preponderance of the evidence that San Juan Unified denied him a

FAPE from May 24, 2021, through August 24, 2022, by failing to offer him applied behavioral analysis therapy or clinic meetings. San Juan Unified prevailed on Issues 7(a) and 7(b).

ISSUE 8: PLACEMENT WITH NEUROTYPICAL PEERS DURING THE 2020-2021 AND 2021-2022 SCHOOL YEARS

Student alleged San Juan Unified denied him a FAPE by failing to place him with neurotypical peers to the maximum extent possible during the 2020-2021 and 2021-2022 school years. San Juan Unified contends placement in the preschool school communication class offered Student a FAPE in the least restrictive environment.

School districts are required to provide each special education student with a program in the least restrictive environment. 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); 34 C.F.R. § 300.114(a); Ed. Code, § 56031.)

The continuum of program options includes, but is not necessarily limited to, in increasing order of restrictiveness:

- 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, and instruction in the home, in hospitals, or other institutions.

(Ed. Code, § 56361.)

To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit 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 [adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)].) If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining 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.)

Student failed to prove San Juan Unified denied him a FAPE by not placing him in a classroom with neurotypically developed peers. The evidence failed to demonstrate that San Juan Unified's offer of placement in the preschool communication class denied Student mainstreaming opportunities with neurotypically developed peers to the maximum extent possible.

Nelson testified regarding Student's IEP placement. Nelson explained San Juan Unified's preschool placement options. Among Nelson's responsibilities as assistant director was to oversee San Juan Unified's preschool programs. She assumed the role of assistant director in July 2022. For the two years prior, she was a program specialist with San Juan Unified, responsible for supporting San Juan Unified's preschool programs, including Enos Grover's preschool communication class.

At the hearing, Nelson explained a child placed in the preschool communication class had the option of also attending an early childhood education program with neurotypical peers, such as Head Start, if the child's parent elected to enroll the child in an early childhood education program. If the parent elected to enroll the child in the early childhood education program, then the program would accommodate the child's schedule to attend the preschool communication class.

At the hearing, Mother recalled Student participated in a class by video in Head Start for distance learning during the 2020-2021 school year, but no evidence was offered that Parents elected to enroll Student in an early childhood education program for the 2021-2022 school year. In addition, the preschool communication class was part of comprehensive school campus and located next door to an early childhood education class for preschool aged children. Grover testified that the students in the preschool communication class had opportunities during recess to

interact with typically developed peers from the early childhood education class. Student failed to prove San Juan Unified had a duty to offer more mainstreaming opportunities with typically developed peers absent Student's enrollment in an early childhood education program. Despite several days of hearing, Student failed to offer any testimony or documentary evidence to support this least restrictive environment placement claim.

Furthermore, Parents testified they had no concerns regarding the developmental level of Student's peers in the preschool communication class. Father opined Student's placement with other children with speech and language needs was appropriate. Mother testified she observed Student in the preschool communication class and that the other children appeared to be at the same educational and developmental level as Student. Neither Parents nor any other witness at the hearing expressed concerns about the developmental level of the other children in Student's preschool communication class.

The evidence established that San Juan Unified's offer of placement in the preschool communication class during the 2020-2021 and 2021-2022 school years, offered Student placement in the least restrictive environment, without restricting Student's access to neurotypically developed peers to the maximum extent possible. Accordingly, Student failed to prove by a preponderance of the evidence that San Juan Unified denied him a FAPE by failing to offer him placement with neurotypically developed peers to the maximum extent possible during the 2020-2021 and 2021-2022 school years. San Juan Unified prevailed on Issue 8.

ISSUE 9: PARENT TRAINING IN SPECIAL EDUCATION ELIGIBILITY

Student contends San Juan Unified denied him a FAPE by failing to offer Parents training in special education eligibility. San Juan Unified contends Parents did not require training in special education eligibility for Student to receive a FAPE.

Related services required to assist a student with exceptional needs to benefit from special education may include parent counseling and training. (Ed. Code, § 56363, subd. (b)(11).) Parent training means assisting a parent in understanding the special needs of the student, providing the parent with information about child development, and helping the parent acquire necessary skills to facilitate the implementation of the student's IEP. (34 C.F.R. § 300.34(c)(8)(i)-(iii).)

Student failed to prove San Juan Unified denied him a FAPE by failing to offer training for Parents in the area of special education eligibility. Parents did not request training from San Juan Unified during the relevant time period. Father testified that it was not necessary for him to receive training in special education eligibility to better understand and participate in Student's IEP process. As discussed in Issues 4 and 10, Parents meaningfully participated in Student's IEP process.

The evidence failed to establish that Parents required training in special education eligibility requirements to understand Student's needs, development, or to acquire necessary skills to facilitate the implementation of Student's IEP. Accordingly, Student failed to meet his burden of proving by a preponderance of the evidence that San Juan Unified denied him a FAPE by failing to offer Parent appropriate training in special education eligibility from May 24, 2021, through August 24, 2022. San Juan Unified prevailed on Issue 9.

ISSUE 10: CONSIDERATION OF PARENT'S CONCERNS

Student contends Parents communicated to San Juan Unified concerns regarding Student's intelligibility, need for a laptop to access distance learning, peer socialization, and transportation to school. Student argues that San Juan Unified ignored Parents concerns. San Juan Unified contends it routinely sought input from Parents in preparation of Student's assessments and IEPs, and discussed Parents' reported concerns during the IEP team meetings.

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).) 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) and (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) and (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3), and (f).) A parent has meaningfully participated in the development of an IEP when the parent is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

The evidence established that San Juan Unified considered Parents' concerns regarding Student's needs and for enhancing his education. No evidence was offered that Parents reported concerns to San Juan Unified about the need for a laptop to allow Student to access distance learning during the relevant period. As discussed in Issues 1(a) and 1(b), Student did not enroll in San Juan Unified during the 2020-2021 school year until May 24, 2021, and did not elect to participate in distance learning, or attend school for the remainder of the 2020-2021 school year following enrollment.

Furthermore, Student was not assigned to distance learning from May 24, 2021, through August 24, 2022. Mother testified Student participated in distance learning by video for Head Start during the 2020-2021 school year, and that following Student's enrollment on May 24, 2021, Parents did not request a laptop from San Juan Unified as Student was expected to attend in-person instruction in San Juan Unified. Therefore, San Juan Unified did not fail to consider Parents' concerns for a laptop to enable Student to access distance learning.

San Juan Unified considered Parents' concerns at each IEP team meeting. During the June 9, 2021, November 19, 2021, and June 22, 2022 IEP team meetings, Parents shared information and their concerns regarding Student's potty training, safety, intelligibility, the volume of his voice, his vocabulary and conversation skills, and temperament. San Juan Unified considered Parents' concerns during the IEP development process. Parents did not express any concerns, or make any requests at the IEP team meetings that San Juan Unified's IEP team members did not consider.

In addition, Parents did not report to San Juan Unified concerns regarding transporting Student between home and school. San Juan Unified provided Student transportation to and from his preschool communication class. In kindergarten during

the 2022-2023 school year, Parents transported Student to school through the month of August 2022. Student offered no evidence that Parents reported transportation concerns to San Juan Unified between May 24, 2021, through August 24, 2022, that San Juan Unified failed to consider.

In addition, Parents completed a health and development information form on September 20, 2021, in which Parent listed comprehension, speech, social cues, and eye contact as areas of concern in Student's development. In a separate information form completed by Parent on September 20, 2021, Parent listed potty training and the volume of Student's voice as areas of major concern, and identified potty training, vocabulary skills and back and forth verbal communication skills as Parent's most important goals for Student. San Juan Unified considered all the information Parents reported in both forms in the development of Student's November 19, 2021 IEP, and offered goals and services to address his intelligibility and communication skills.

Furthermore, the volume of Student's voice was not a concern in school, nor were his social skills. Enos Grover testified that Student had a lot of friends and was popular among his peers. Therefore, Parents' concerns regarding Student's voice and peer socialization did not warrant further consideration from San Juan Unified.

Student offered no testimony or documentary evidence that established that San Juan Unified failed to consider any concerns Parents reported during or outside of the IEP team meetings, or how any such failures impeded Student's right to a FAPE, Parents' ability to meaningfully participate in the IEP process, or deprived Student of an educational benefit. Accordingly, Student failed to meet his burden of proving by a

preponderance of evidence that San Juan Unified denied him a FAPE from May 24, 2021, through August 24, 2022, by failing to consider Parent's concerns. San Juan Unified prevailed on Issue 10.

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.

ISSUES 1(a) AND 1(b):

San Juan Unified did not deny Student a FAPE during the 2020-2021 school year, by failing to provide Student in-person speech and language services and in-person specialized academic instruction during distance learning.

San Juan Unified prevailed on Issues 1(a) and 1(b).

ISSUE 2:

San Juan Unified did not deny Student a FAPE during the 2020-2021 school year, by failing to provide Student accommodations in the form of assistive technology during distance learning.

San Juan Unified prevailed on Issue 2.

ISSUES 3(a) AND 3(b):

San Juan Unified did not deny Student a FAPE during the 2020-2021 school year, by failing to assess Student in the areas of functional behavior and speech and language before assigning him to distance learning.

San Juan Unified prevailed on Issues 3(a) and 3(b).

ISSUE 4(a)(i):

San Juan Unified did not deny Student a FAPE from August 24, 2020, through August 24, 2022, by failing to offer appropriate goals in the area of behavior.

San Juan Unified prevailed on Issue 4(a)(i).

ISSUE 4(a)(ii):

San Juan Unified did not deny Student a FAPE from August 24, 2020, through August 24, 2022, by failing to offer appropriate goals in the area of speech.

San Juan Unified prevailed on Issue 4(a)(ii).

ISSUES 4(b) AND 4(c):

San Juan Unified did not deny Student a FAPE from August 24, 2020, through August 24, 2022, by failing to offer appropriate accommodations and program modifications.

San Juan Unified prevailed on Issues 4(b) and 4(c).

ISSUE 4(d):

San Juan Unified did not deny Student a FAPE from August 24, 2020, through August 24, 2022, by failing to offer appropriate speech and language services.

San Juan Unified prevailed on Issue 4(d).

ISSUE 4(e):

San Juan Unified did not deny Student a FAPE from August 24, 2020, through August 24, 2022, by failing to offer a one-to-one aide.

San Juan Unified prevailed on Issue 4(e).

ISSUE 5:

San Juan Unified did not deny Student a FAPE by failing to offer extended school year services in 2021 and 2022.

San Juan Unified prevailed on Issue 5.

ISSUE 6:

San Juan Unified did not deny Student a FAPE from May 24, 2021, through August 24, 2022, by failing to conduct a functional behavior assessment.

San Juan Unified prevailed on Issue 6.

ISSUES 7(a) AND 7(b):

San Juan Unified did not deny Student a FAPE from May 24, 2021, through August 24, 2022, by failing to offer appropriate applied behavior analysis therapy and clinic meetings.

San Juan Unified prevailed on Issues 7(a) and 7(b).

ISSUE 8:

San Juan Unified did not deny Student a FAPE during the 2020-2021 and 2021-2022 school years, by failing to offer Student placement with neurotypically developed peers to the maximum extent possible.

San Juan Unified prevailed on Issue 8.

ISSUE 9:

San Juan Unified did not deny Student a FAPE from May 24, 2021, through August 24, 2022, by failing to offer Parent appropriate training in special education eligibility.

San Juan Unified prevailed on Issue 9.

ISSUE 10:

San Juan Unified did not deny Student a FAPE from May 24, 2021, through August 24, 2022, by failing to consider Parent's concerns.

San Juan Unified prevailed on Issue 10.

ORDER

All of Student's requested relief is 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.

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings