

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022010449

PARENT ON BEHALF OF STUDENT,

v.

HESPERIA UNIFIED SCHOOL DISTRICT.

DECISION

April 08, 2022

On January 18, 2022, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Hesperia Unified School District. Administrative Law Judge Kara Hatfield heard this matter via videoconference on March 8, 9, and 10, 2022.

Attorneys Meghan Sherry and Carolyn Ruth represented Student. Student attended all hearing days. Father attended on March 8, 2022. Mother attended on March 9 and 10, 2022. Attorney Laurie Arrowsmith represented Hesperia Unified School District. Eric Land, Hesperia's Director of Special Services, attended all hearing days on

Hesperia's behalf. Kathleen Peters, Program Manager of Desert Mountain Special Education Local Plan Area, of which Hesperia is a member, attended on March 8 and 9, 2022. Sheila Parisian, Program Specialist at Desert Mountain Special Education Local Plan Area, attended on March 10, 2022.

At the parties' request the matter was continued to March 28, 2022, for written closing briefs. The record was closed, and the matter was submitted on March 28, 2022.

ISSUES

Did Hesperia Unified School District deny Student a free appropriate public education, called a FAPE, by:

1. Failing from mid-March 202 to implement Student's March 4, 2020 individualized education program, called IEP, specifically by:
 - a. Changing the location of services from a school campus to Student's home;
 - b. Changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual;
 - c. Changing the delivery method of related services from in-person to remotely;
 - d. Changing the location and delivery method of special education and related services without notice to Parent; and
 - e. Changing the location and delivery method of special education and related services without consent by Parent;

2. Failing to implement Student's October 27, 2020 IEP, specifically by:
 - a. Changing the location of services from a school campus to Student's home;
 - b. Changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual;
 - c. Changing the delivery method of related services from in-person to remotely; and
 - d. Changing the location and delivery method of special education and related services without consent by Parent;
3. Failing to implement Student's April 22, 2021 IEP, specifically by:
 - a. Changing the location of services from a school campus to Student's home;
 - b. Changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual;
 - c. Changing the delivery method of related services from in-person to remotely; and
 - d. Changing the location and delivery method of special education and related services without consent by Parent;
4. Failing to implement Student's May 12, 2021 IEP, specifically by:
 - a. Changing the location of services from a school campus to Student's home;
 - b. Changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual;

- c. Changing the delivery method of related services from in-person to remotely; and
- d. Changing the location and delivery method of special education and related services without consent by Parent?

JURISDICTION

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

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected.

(20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

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

preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student filed the due process complaint and therefore had the burden of proof in this matter. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 19 years old and held his own educational rights at the time of the hearing. Student turned 18 while he still attended school and assigned his educational rights to Father for the duration of his time in high school. Student received a regular diploma and graduated high school at the end of May 2021. Student resided within Hesperia's geographic boundaries at all relevant times. Student was eligible for special education under the categories of specific learning disability and speech/language impairment.

ISSUE 1: FAILING TO IMPLEMENT STUDENT'S MARCH 4, 2020 IEP AFTER MID-MARCH 2020

Student contends Hesperia denied him a FAPE after mid-March 2020 by failing to implement his March 4, 2020 IEP by changing the location of services from a school campus to Student's home, changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual, changing the delivery method of related services from in person to remotely, changing the location and delivery method of special education and related services without notice to Parent, and changing the location and delivery method of special education and related services without consent by Parent.

Hesperia contends it did not deny Student a FAPE after March 13, 2020, when the district closed schools due to the novel coronavirus pandemic, called COVID-19, in response to lawful orders of the Governor and state and local health departments. Hesperia asserts it was not obligated to provide Student special education and related services from March 23, 2020, after spring break, through the balance of the 2019-2020 school year at the end of May 2020 because it did not provide instruction or services to any students at Oak Hills High School, without or with disabilities, during that time. Hesperia further argues it provided Student access to his program of special education and related services stated in the March 4, 2020 IEP via distance learning, in conformity with federal and state laws and guidance issued by federal and state education departments.

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

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

Student attended another school district until his 11th grade year. In his former district, Student's placement was in special day classes. He moved to and enrolled in Hesperia at the start of 11th grade at Oak Hills High School. In November 2019, Hesperia convened an IEP team meeting to review a psychoeducational assessment the prior district conducted in May 2019, but had not yet held an IEP team meeting to review before Student moved to Hesperia. After reviewing, over two meeting dates, the assessment and Student's performance at Oak Hills High, the IEP team determined Student continued to qualify for special education and related services under his prior eligibility categories of specific learning disability and other health impairment due to a diagnosis of attention deficit hyperactivity disorder.

The IEP team determined the least restrictive environment in which Student could be satisfactorily educated was no longer self-contained special day classes but the collaborative classrooms offered at Oak Hills High, in which students with disabilities and IEPs were educated in the same classroom alongside general education students, co-taught by a credentialed special education teacher and general education teacher, who were in some classes also assisted by a classroom aide. For the 2020 spring semester, Student would be placed in the collaboration, general education setting for English, math, science, and history. In addition, Student's IEP offered a special education study hall class, and a general education elective. The IEP team developed new academic and speech/communication goals. Among other things, Hesperia offered Student speech therapy services of two 30-minute sessions in group each month, and two 30-minute sessions, individually, each month. Father provided written consent to the November 20, 2019 IEP, on December 17, 2019.

On March 4, 2020, the IEP team met to review Student's progress in the new placement of collaboration classes. The IEP team agreed Student would continue in that

placement with the related services previously offered, as well as social work services through a local agency with which Hesperia partnered. Father provided written consent to the March 4, 2020 IEP on May 21, 2020.

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

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

On March 12, 2020, the United States Department of Education Office of Special Education and Rehabilitative Services, known as OSERS, published guidance to states for educating children with disabilities during the COVID-19 pandemic. (OSERS, March 12, 2020, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (OSERS Q & A), Answer to Question A-1.) OSERS advised local educational agencies they would not violate the IDEA if they closed schools to slow or stop the spread of COVID-19 and if they did not provide educational services to the general student population, then they would not be required to provide services to students with disabilities during that same time period. (*Id.*, at p. 2, Answer A-1.) Once school resumed instruction, the local educational agency was required to “make every effort to provide special education and related services to the child in accordance with the child’s IEP.” (*Ibid.*)

On Friday March 13, 2020, California Governor Gavin Newsom issued Executive Order N-26-20, which authorized school districts to continue educating students to the extent feasible, through distance learning and/or independent study. The Order directed the California Department of Education, called CDE, to issue guidance on how to ensure students with disabilities received a FAPE. In response, CDE advised local

educational agencies to “do their best in adhering to IDEA requirements ... to the maximum extent possible.” CDE encouraged local educational agencies to “consider ways to use distance technology to meet these obligations.” (CDE, *Special Education Guidance for COVID-19, COVID-19 School Closures and Services to Students with Disabilities* (March 20, 2020) (CDE March 20, 2020 Guidance).)

MARCH 16 THROUGH MAY 28, 2020, AT OAK HILLS HIGH SCHOOL AND ADDITIONAL FEDERAL AND STATE GUIDANCE ON PROVIDING SPECIAL EDUCATION DURING THE COVID-19 PANDEMIC

Hesperia’s schools were closed from March 16, 2020 through March 20, 2020, for spring break. On or about Monday March 16, 2020, Hesperia closed an additional week after spring break due to COVID-19, and sent an email to all families of students enrolled in Hesperia, called all those families, and put information on the district’s website and social media accounts announcing Hesperia would be closed through the end of March 2020. All Hesperia schools remained closed through March 30, 2020, as result of Governor Newsom’s declaration of a state of emergency.

On Thursday March 19, 2020, Governor Newsom issued Executive Order N-33-20, directing all California residents “to immediately heed the current State public health directives,” including the requirement “to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors.” (Cal. Exec. Order N-33-20 (March 19, 2020).) Further, the California State Public Health Officer issued a list of designated “essential” workers who were allowed to leave their homes to support specified critical infrastructure sectors, which included workers teaching at “public and private... K-12 schools,” but only for “distance learning.” As recently noted by the Ninth Circuit, Executive Order N-33-20 remained in effect until

June 11, 2021, and California residents were prohibited from leaving their homes except to the extent State officials provided an exception. “[T]he ability to operate schools (or anything else) turned on what sort of permission State officials granted back either in the form of rules governing ‘critical infrastructure sectors’ or some exception to the stay-at-home order.” (*Brach v. Newsom* (9th Cir. 2021) 6 F.4th 904, 911.)

On March 21, 2020, the U.S. Department of Education’s Office for Civil Rights, called OCR, and OSERS issued supplemental guidance in response to reluctance by some school districts to provide any distance instruction because they believed that federal disability law presented insurmountable barriers to remote education. Recognizing that “educational institutions are straining to address the challenges of this national emergency,” OCR and OSERS assured school districts they should not opt to close or decline to provide distance instruction. (OCR and OSERS, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, (March 21, 2020), at p. 1) (OSERS Supplemental Fact Sheet).) “To be clear: ensuring compliance with [the IDEA] ... should not prevent any school from offering educational programs through distance instruction”. (*Ibid.*) “[T]he provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.” (*Id.* at pp. 1-2.) The U.S. Department of Education emphasized that “federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities” and the “determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency.” (*Ibid.*) The U.S. Department of Education encouraged parents and educators to collaborate creatively to meet the needs of students with disabilities, and to consider

practices, “such as distance instruction, teletherapy ... [and] meetings held on digital platforms,” and noted “there are low-tech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects and written assignments.” (*Ibid.*)

The U.S. Department of Education acknowledged during the national emergency schools may not be able to provide all services in the same manner as typically provided, including some in-person services such as hands-on physical therapy, occupational therapy, or tactile sign language educational services. (OSERS Supplemental Fact Sheet, *supra*, at pp. 1-2.) It advised that many disability-related modifications, and services, may be effectively provided online, including “for instance, extensions of time for assignments, videos ..., accessible reading materials, and many speech or language services through video conferencing.” (*Ibid.*) The U.S. Department of Education encouraged parents and educators to collaborate creatively to meet the needs of students with disabilities, and to consider practices, “such as distance instruction, teletherapy ... [and] meetings held on digital platforms,” and noted “there are low-tech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects and written assignments.” (*Ibid.*)

On March 26, 2020, Hesperia emailed and mailed a letter to all families of enrolled students with IEPs and plans of accommodations under section 504 of the Rehabilitation Act of 1973, called Section 504, titled “Prior Written Notice regarding Services During School Closure.” At hearing, Father denied receiving the March 26, 2020 letter. However, he acknowledged he and Mother shared an email account and that Mother might have opened that email and the physical letter. Father recalled Mother

told him in-person instruction was “shutting down” based on a letter she received. Consequently, the evidence established Parents received Hesperia’s March 26, 2020 written correspondence notifying families of children with disabilities that Hesperia closed its schools as a precaution to avoid spreading the COVID-19 virus.

Hesperia’s March 26, 2020 prior written notice informed Parents and all families of students with disabilities that Hesperia anticipated it would re-open on May 4, 2020, subject to change due to the pandemic. The letter stated, among other things,

On April 6, the district will begin providing distance learning opportunities to students. General and special education teachers will provide supplemental instruction, activities, and resources online, over the phone, or through instructional packets and activities to continue learning during school closure. Chromebooks will be distributed to elementary students on April 2 & 3 through your child’s school site as appropriate.

Despite the language of the March 26, 2020 letter regarding Hesperia’s plans for distance learning for general and special education students, the evidence at hearing established Oak Hills High did not implement any distance learning program for the remainder of the school year, which ended on May 28, 2020. From mid-March 2020 through the end of May 2020, Hesperia only allowed Oak Hills High students to improve their grades by completing and submitting any assignments they had not done before spring break and thereby earn additional points or credit. No new instruction or assignments were provided to either general education or special education students. Student failed to present any evidence regarding the educational services provided to any students at any other Hesperia high school.

The U.S. Department of Education advised school districts in its March 2020 guidance that closing to all students because of the pandemic did not violate the IDEA by closing to special education students. (OSERS Q & A, *supra*, p. 2, Answer A-1). The Department of Education's guidance was consistent with the Ninth Circuit's decision in *N.D. v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116-1117 (*N.D.*), which upheld a district court's denial of a motion by special education students to enjoin the state's shutdown of all schools on Fridays during a fiscal emergency. In Hawaii, all the schools on all the islands of the state are in one, whole-state, school district called the Hawaii State Department of Education. The Ninth Circuit rejected the students' arguments that ceasing services owed to them under their IEP's constituted a change of placement and violated IDEA's stay-put rule. The Ninth Circuit explained, "Congress did not intend for the IDEA to apply to system wide administrative decisions[;] Hawaii's furloughs affect all public schools and all students, disabled and non-disabled alike" and "[a]n across the board reduction of school days such as the one here does not conflict with Congress's intent of protecting disabled children from being singled out." (*Id.* at p. 1116.) The Court reasoned that the IDEA does not "give the parents of disabled children veto power over a state's decisions regarding the management of its schools." (*Id.* at p. 1117.)

Student failed to establish Hesperia had a duty to provide services to him while its schools were closed to all students during spring break and the following week, from March 16 through 27, 2020. Therefore, Student did not prove that Hesperia denied him a FAPE for the period March 16 through 27, 2020, in any of the ways Student alleged in Issue 1(a)-(e). Student's claim directly conflicts with the applicable law of *N.D.*

Further, Student failed to establish Hesperia had a duty to provide services to him while Oak Hills High was closed to all students during the remainder of the school year,

from March 30 until May 28, 2020. Again, Student's claim fails under *N.D.* Therefore, Student did not prove that Hesperia denied him a FAPE for the period March 30 through May 28, 2020, in any of the ways Student alleged in Issue 1(a)-(e).

AUGUST 6 THROUGH OCTOBER 27, 2020

Where a student alleges the denial of FAPE based on the failure to implement an IEP, the student must prove that any failure to implement the IEP was material, which means the services provided to the child fell "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822 (*Van Duyn*).)

There is no statutory requirement of perfect adherence to the IEP, and minor failures to implement an IEP do not constitute a denial of FAPE. "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." (*Van Duyn, supra*, F.3d 811 at p. 815.) In *Van Duyn*, the court determined the school district's failure to provide five hours of math tutoring per week out of the ten hours specified in the student's IEP constituted a material failure to implement the IEP. (*Id.* at p. 823.) A student is not required to prove the district's failure to implement the IEP caused him to lose educational benefits. (*Id.* at p. 822.)

Under the newly enacted Education Code section 43501, in effect only during the 2020-2021 school year, the minimum school day was reduced for students in grades 4 through 12 to 240 instructional minutes per day, with definitions for how to calculate those minutes depending on whether students received instruction in person, through distance learning as defined in Education Code section 43500, or a combined day of in-person instruction and distance learning. (Ed. Code, § 43502, subd. (e).)

Hesperia's 2020-2021 school year began on August 6, 2020. All students of Oak Hills High, general and special education alike, received instruction through distance education methods as a matter of district policy and federal guidance because the campus was closed due to the COVID-19 pandemic. Oak Hills High shifted from its prior scheduling system of every class/period, every day, to a system called block scheduling, with fewer classes daily and each of longer duration, on an alternating schedule, by videoconference from their homes in compliance with Executive Order N-33-20 directing Californians to stay home unless specifically exempted.

For the 2020-2021 school year, on Mondays and Thursdays, students of Oak Hills High logged into their first, third, and fifth period classes for one and a half hours each, with a five-minute break between classes. On Tuesdays and Fridays, they logged into their second, fourth, and sixth period classes for one and a half hours each, with a five-minute break between classes. Oak Hills High teachers used Google Classroom, with either Google Meets or Zoom for real-time/synchronous instruction. Drop-in online tutoring was available after the day's classes ended, from 1:30 to 2:25 p.m. on Mondays, Tuesdays, Thursdays, and Fridays, even with teachers the students normally would not see on any specific day due to the block scheduling.

Wednesdays did not have new lectures/instruction and were used by students to complete unfinished classroom assignments and study. Oak Hills High teachers were available online on Wednesdays on a drop-in basis for two and a half hours, from noon to 2:30 p.m., to answer students' questions and provide support during these student workdays. It was also possible to schedule appointments with teachers during other hours on Wednesdays. For example, on September 23, 2020, the IEP team suggested Student schedule additional math support on Wednesdays from 10:00 to 11:00 a.m., using a Zoom link posted in Student's math Google Classroom.

The collaboration classrooms in which Student was placed by his March 4, 2020 IEP provided instruction to general and special education students via real-time/synchronous Google Meet or Zoom videoconferences, with the general and special education teachers, and classroom aide as applicable, physically in their own locations and all students physically in their respective homes. Student received his specialized academic instruction in the group videoconference. The fact that Student was not in the same physical room as the other students of his collaboration classes, that he was alone at home, does not mean his specialized academic instruction was no longer in "group" and was instead "individual."

Case carriers for students with IEPs reached out to the special education students and, in consultation with the students, offered instructional materials on paper and offered to and printed all assignments for them, providing them either for pick-up in the front office or mailing if students needed them.

The IDEA does not explicitly require an IEP to include a plan for how special education and related services will be delivered if a school closure requires distance learning.

On June 29, 2020, Governor Newsom signed the 2020 Budget Act and accompanying budget implementing legislation, including Senate Bill 98, called SB 98 (Chapter 24, Statutes of 2020). SB 98 included important changes related to special education and distance learning. SB 98 amended Education Code section 56345 to require IEP teams to make an individualized determination about how an IEP would be provided under emergency conditions, in which instruction or services, or both, cannot be provided to the student either at the school or in person for more than 10 school days. (Ed. Code, § 56345, subd. (a)(9)(A).) This description must be included

in the development of each initial IEP or addressed during the regularly scheduled revision of an IEP and must take public health orders into account. (Ed. Code, § 56345, subd. (a)(9)(B).)

Hesperia convened an IEP team meeting for Student on August 6, 2020, by videoconference. The evidence did not establish what happened that date, other than that Parents refused to sign. The IEP team meeting reconvened by videoconference on September 23, 2020, the day before Student's 18th birthday. The document that resulted after the September 23, 2020 IEP team meeting still bore the date of August 6, 2020, and is called the August 6, 2020 IEP in this Decision.

Father attended on September 23, 2020. The IEP team discussed difficulty Student had accessing the online classes at the beginning of the school year, which was resolved prior to the IEP team meeting.

The August 6, 2020 IEP added an Emergency Circumstances Consideration page, also called an Individualized Emergency Services Plan, addressing how Student's individual needs might impact the provision of services in emergency circumstances. In the event instruction or services, or both, could not be provided either at the school or in person for more than 10 school days due to a qualifying state of emergency – caused by

- fire,
- flood,
- impassable roads,
- epidemic,
- earthquake,
- imminent major safety hazard as determined by local law enforcement,

- transportation services strike by a non-school entity, or
- other official order issued to meet a state of emergency or war

– the IEP would be provided by alternate means, depending on emergency conditions and relevant public health orders/directives, as required by Education Code section 56345, subdivision (a)(9).

For Student, the means of delivering special education and related services, specifically speech therapy and transition services, in emergency circumstances could include any of the following:

- asynchronous, teacher-posted lessons online or other media;
- synchronous virtual class meetings;
- personalized learning tools of virtual or paper packets as available;
- drop-in virtual office hours for parent or student;
- scheduled email check-ins for parent or student; and
- scheduled teacher appointments, virtual or in-person as allowable.

These same methods of delivery were indicated for Student's supplementary aids and services. The Individualized Emergency Services Plan indicated it did not "constitute a change to the District's offer of FAPE."

The August 6, 2020 IEP indicated Hesperia's offer of FAPE continued to be "the same" placement and services, with Student's sixth period assignment for a study hall class changed.

On September 28, 2020, four days after Student turned 18 years old, he signed a form, Student Appointment of Educational Representative, appointing Father and

Mother as the holders of his educational rights. Father signed the Acceptance of Appointment portion of the form the next day. Hesperia informed Student and Parents the appointment was a delegation of responsibility authorizing Parents to act on Student's behalf, but it did not divest Student of his own decision-making power and, as an 18-year-old person, he was allowed to make educational decisions for himself unless a court took away Student's educational rights. Hesperia told the family if Student and Parents disagreed about Student's education, Student's choice controlled. Father signed written consent to the August 6, 2020 IEP on October 17, 2020.

On August 7, 2020, Stephanie Chittivaranon, the speech-language pathologist who served students at Oak Hills High, emailed Parents proposing to provide Student's first speech therapy session of the school year on Tuesday August 11, 2020, via Zoom with the speech-language pathology assistant, Michael "Josh" Bell, who had provided Student's speech therapy sessions in the prior school year. Mother replied a few hours later, "That will work for [Student.]" Emails over the next few weeks showed Bell sent Student, and later also Parents at their shared email address as they requested, Zoom meeting links to the speech therapy sessions. It is clear some weeks were for group speech therapy based on Bell sometimes opening his messages with "hey guys" or "hey y'all." Other emails with Zoom links had the salutation "hey [Student's name,]" and those sessions likely were for individual speech therapy.

The group speech therapy called for in Student's March 4, 2020 IEP and August 6, 2020 IEP, consented to by Father on October 17, 2020, was provided via real-time/synchronous Zoom videoconferences, with the speech therapy provider physically in his own location and all students physically in their respective homes. Student received his group speech therapy in the group videoconference. The fact that

Student was not in the same physical room as the other students of his speech therapy group, that he was alone at home, did not mean his group speech therapy was not in "group" and was instead "individual."

The individual speech therapy called for in Student's March 4, 2020 IEP and August 6, 2020 IEP, consented to by father on October 17, 2020, was provided via real-time/synchronous Zoom videoconferences, with the speech therapy provider physically in his own location and Student physically in his home.

Speech therapy logs and data for Student indicated he participated in Zoom sessions on August 11, individual, August 18, group, August 25, group, September 1, individual, September 8, group, September 15, individual when other group members did not show, September 22, individual, and October 6, 2020, individual when other group members did not show. Student did not show for sessions scheduled on October 20 and 27, 2020. Father requested a make-up session for the October 20, 2020 session, and in response to Parents' request, Bell agreed to send Student and Parents the link for the speech therapy the Friday before his Tuesday sessions. Bell also offered to hold a make-up session on a specific date and time the week of October 26, 2020, and Parents agreed.

Student's Issue 1 only concerns implementation of the March 4, 2020 IEP, which was developed at a time when everyone, district representatives and parents alike, assumed education would always be delivered by the means it had continuously been delivered for the prior 10 years – on campus and in-person – despite the existence and availability of distance education technology and methodology during that time. Student's entire case is premised on the idea that despite the global outbreak of a highly contagious and too-often fatal virus resulting in multiple State and local

executive officers declaring a state of emergency and ordering citizens and residents to stay at home, he was entitled to continue to receive his education exactly the way he previously had and any change to the location in which he sat while being educated was illegal unless Parents agreed.

Student's claims are inconsistent with existing law under *N.D., supra*, and *Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131 (superseded on other grounds by statute) (*Ms. S.*), as well as the federal and state guidance provided to local educational agencies at the beginning of the pandemic. It was not possible to implement Student's IEP as written, and Hesperia was obligated to offer a temporary placement and program that "closely approximated" Student's last educational placement. (*Ibid.*) Student's primary complaint across all Issues in this case is that Parents did not like and did not consent to distance education. But as explained in *N.D.*, the IDEA does not "give the parents of disabled children veto power over a [school district's] decisions regarding the management of its schools." (*N.D., supra*, F.3d at p. 1117.) CDE encouraged local educational agencies to continue providing special education and related services as outlined in a student's IEP through a distance learning model. (CDE March 20, 2020 Guidance, *supra*, Frequently asked Question 1.) CDE acknowledged that the unprecedented COVID-19 pandemic might lead to learning being provided that did not mirror the offer of FAPE in a student's IEP. While CDE guidance is not binding on school districts, it is instructive when considering a school district's obligations during this time period. (See *Cyrus Csutoras v. Paradise High School* (9th Cir. 2021) 12 F.4th 960.)

Hesperia delivered distance learning and instruction to Student during the COVID-19 school closure in the 2020-2021 school year. Hesperia sent a prior written

notice to all parents of children with IEPs and Section 504 plans on March 26, 2020. The notice informed parents of special education students that special education and related services would be delivered during the school closure. Learning materials would be provided either through internet-based instruction or other means if the special education teachers determined, in consultation with a student's parents, alternate assignments and materials were more appropriate under the current circumstances, virtually or through printed materials. Service providers would contact parents to discuss options for providing related services such as speech therapy while students were learning in the home. Special education teachers would provide "office hours" and "outreach" online or over the phone to parents and students to ensure learning support specific to each student's individual needs was taken into consideration.

Accommodations and modifications in a student's IEP or Section 504 plan would continue to be provided "to the extent possible in the home setting." The notice included parents' rights and procedural safeguards. Student's Parents received this general notice. Hesperia remained physically closed to all students through the end of the 2019-2020 regular and extended school year, and at Oak Hills High from the start of the 2020-2021 school year until approximately sometime in the spring semester.

Student's collaboration classroom for senior English, also called English 4, had Heidi Martinez as the special education teacher, and there was also a special education assistant. During distance learning, Martinez observed students enter the online classroom and asked them a quick question to confirm their attendance, and did a lecture or some whole group activity. Students stayed online while doing their individual work, and there often was an "exit ticket" activity to confirm students were present the entire class period. Martinez delivered instruction, provided input to

students through the chat function of the online classroom, and monitored students' activities through a computer program called BLOCKSI that allowed teachers to see what the students were interacting with in the Google Classroom while they provided instruction, so Martinez could see the assignment the students were completing and what they were struggling with so she could provide additional support where appropriate. Martinez also held separate office hours to meet with students and provide support.

In the online classroom, students were able to respond to Martinez via online chat, by sending an email, or speaking up and verbally stating they wanted help. Student mostly responded to Martinez using online chat, and not by voice. Martinez announced during the class period that office hours were available, put the information in the Google Classroom stream, and when the regular office hours fluctuated, she announced it in class and on the Google Classroom stream. Student did not come to Martinez's office hours for individual help.

The United States District Court for the Central District of California denied a student's request for a temporary restraining order and rejected her request for in-person IEP services during the COVID-19 pandemic. (*E.M.C. v. Ventura Unified School District* (C.D.Cal. October 14, 2020, No. 2:20-CV-09024-SVW-PD) 2020 WL 7094071 (*E.M.C.*)). Like Student alleges in this case, the student in *E.M.C.* experienced difficulties with distance learning and alleged she regressed academically and behaviorally. Relying on the Ninth Circuit's decision in *N.D.*, *supra*, the court reasoned even if the student's IEP provided for in-person services, the program had been modified by the statewide public health restrictions prohibiting in-person instruction. (*E.M.C.*, *supra*, at *6.) The

court rejected student's argument that restrictions on in-person learning in counties on the statewide monitoring list did not excuse a school district from its obligation to provide in-person IEP services.

The court's reasoning in *E.M.C.* is instructive for this case. Here, Student's IEP was modified by the statewide public health restrictions prohibiting in-person instruction. The fact that Parents did not like, want, or believe they, or Student, ever explicitly agreed to distance instruction is not determinative of Student's claims. The adaptation to alternative means of delivering education to all students, along with special education and related services for students with IEP's, based on lawful orders of the Governor defeats Student's claim that Hesperia denied him a FAPE by failing to provide his educational program in the exact same manner as before March 13, 2020.

Providing Student the group specialized academic instruction in his collaboration classrooms placement specified in the March 4, 2020 IEP by means of distance education through synchronous instruction using Google Meet and Zoom while Student was physically located in his home did not result in a material failure to implement Student's May 4, 2020 IEP. And providing speech therapy called for in the March 4, 2020 IEP by distance education through Zoom for both group and individual services while Student was physically located in his home did not result in a material failure to implement Student's May 4, 2020 IEP. Hesperia provided Student a program that closely approximated his last educational placement as required by *Ms. S.*, using methodologies implemented in public schools nearly statewide due to the COVID-19 pandemic and in compliance with lawful orders of the governor and public health officials, and applied equally to general and special education students as permitted by *N.D.*

Student failed to establish Hesperia materially failed to implement Student's March 4, 2020 IEP, from August 6 through October 27, 2020. Therefore, Student did not prove that Hesperia denied him a FAPE for the period August 6 through October 27, 2020, by changing the location of services from a school campus to Student's home, changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual, changing the delivery method of related services from in-person to remotely, changing the location and delivery method of special education and related services without notice to Parent, or changing the location and delivery method of special education and related services without consent by Parent.

ISSUE 2: FAILING TO IMPLEMENT STUDENT'S OCTOBER 27, 2020 IEP

Student contends Hesperia denied him a FAPE by failing to implement his October 27, 2020 IEP by changing the location of services from a school campus to Student's home, changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual, changing the delivery method of related services from in person to remotely, changing the location and delivery method of special education and related services without notice to Parent, and changing the location and delivery method of special education and related services without consent by Parent.

Hesperia contends it did not deny Student a FAPE because it provided Student access to his program of special education and related services stated in the October 27, 2020 IEP via distance learning, in conformity with federal and state laws and guidance issued by federal and state education departments.

Hesperia conducted a triennial assessment of Student during the months of August, September, and October 2020. The results of the psychoeducational and speech-language/communication assessments were reported in a combined document called a Multidisciplinary Evaluation Triennial Assessment dated October 27, 2020.

Hesperia convened an IEP team meeting for Student on October 27, 2020, by videoconference. The IEP team reviewed the recent psychoeducational and speech assessments and Student's continued eligibility for special education. The IEP team determined Student was eligible under the categories of specific learning disability and speech/language impairment. The school psychologist recommended additional supports for Student. Student's special education teacher Sers reported how Student was doing in his classes, including the Study Skills class. The special education coordinator shared additional transition resources would be provided to Student to support him after graduation. The school counselor reviewed Student's progress towards graduation and the courses he needed to pass to graduate. The counselor from Desert Mountain Children's Center reported Student was participating in his counseling sessions, interacting and engaging with her. The speech-language pathologist reported how speech therapy was being provided due to school closure during the pandemic.

The IEP team discussed Student's program and, in addition to other services not specifically raised by Student's issues for hearing and about which Student presented no evidence at hearing, Hesperia offered Student specialized academic instruction of 250 minutes per week in a separate special education classroom for the Study Skills class. Hesperia offered Student specialized academic instruction of 750 minutes per

week in a general education collaboration class. Hesperia offered Student two 30-minute individual speech therapy sessions per month, and two 30-minute group speech therapy sessions per month. The October 27, 2020 IEP contained an Individualized Emergency Services Plan that was the same as the one contained in the August 6, 2020 IEP.

Student himself signed consent to the October 27, 2020 IEP on November 9, 2020.

Speech therapy logs and data for Student indicate he did not show up for a Zoom session on October 29, 2020, which was scheduled as a make-up session for the session he missed on October 20, 2020. Father had agreed Student would be available at the offered date and time. After not appearing as scheduled, Student emailed speech-language pathology assistant Bell apologizing for missing the session and explaining he had needed to finish an art project.

Student participated in speech therapy by Zoom on November 3 and 12 in group, November 17 and December 3 individually, and December 4, 2020 in group. Student did not show up for a scheduled Zoom session on December 11, 2020. After winter break, Student attended an individual Zoom session on January 12, 2021, but did not show up for the group sessions scheduled for January 14 and 21, 2021. Student participated in a group Zoom session on January 28, and did not show up for sessions on February 4, 11, and 18, 2021. He participated in an individual session on February 25, 2021, and did not appear for sessions on March 4, 11, 18, and 30, and April 22, 2021.

From October 27, 2020, through April 22, 2021, Student continued to receive his specialized academic instruction in group along with the general education students in his collaboration classrooms via Google Classroom with Google Meet or Zoom for real-time/synchronous instruction.

In November 2020, Father asked Hesperia for three specific additional accommodations, and Hesperia repeatedly attempted to convene an IEP team meeting to discuss Father's requests. The IEP team initially met on January 5, 2021, and reconvened on March 29, 2021. Student and Mother attended on January 5, 2021. The IEP team agreed to modify one of Student's existing accommodations to address Father's concern regarding additional time to complete assignments under the block schedule system. The IEP team discussed ways Student could better use some of his existing accommodations to address Father's two other concerns. Neither Student nor Parents signed consent to the January 5, 2021 IEP, which continued the same offer of placement and services contained in the October 27, 2020 IEP.

At some time during November or December 2020, Oak Hills High began to open, in stages, for on-campus learning. First, special education students were invited to come to campus in groups called cohorts, to their Study Skills classes or other self-contained special education classrooms for some in-person instruction, while continuing to receive other instruction by distance education methods. Student was invited to come to campus for his Study Skills class with special education teacher Mandy Notarianni in November or December 2020. He did not return to campus initially, but Hesperia held his spot in the on-campus, in-person class open for him. The evidence suggested Student began coming to school for Study Skills class in early February 2021. Over time, more students, including general education students,

returned to campus for a hybrid of in-person and distance learning on different days. Eventually, about six weeks before the end of the school year, Student came to campus some days, and stayed home and participated in distance learning other days.

The IEP team reconvened on March 29, 2021. Father attended, but Student and Mother did not. Hesperia reconvened the meeting because Parents stated the finalized addendum provided to them after the January 5, 2021 IEP team meeting was not discussed and agreed to, and they refused to sign. Hesperia asserted Parents had scanned and returned to the special education coordinator the January 5, 2021 IEP with revisions Student initialed, which had not been discussed and agreed to by the IEP team on January 5, 2021, and a further IEP team meeting was required to discuss Student's suggested revisions. The IEP team met again to review what was discussed and agreed to on January 5, 2021, and address Parents' concerns.

Parents asserted a reason for the January 5, 2021 IEP team meeting had been because Parents "continue to object to remote learning which was never approved." Hesperia added a notation to the IEP on March 29, 2020, that Parents objected to remote learning "and never approved it."

The IEP team agreed to further revise Student's accommodation regarding additional time to submit assignments making it unlimited time to submit late assignments, with a final due day of May 20, 2021, so the school counselor could complete the final grade check for the following week's graduation ceremony.

The IEP team discussed that Student would return to school in a hybrid format on Tuesdays and Fridays beginning the week of April 5, 2021.

Nelson met with Student and Mother by Zoom two days later on March 31, 2021, to get their input regarding the items discussed during the March 29, 2021 IEP team meeting. Among other things, Student was informed his last day of school would be May 18, 2021, as a graduating senior. Student signed consent to the March 29, 2021 IEP on April 1, 2021.

For all the reasons explained above regarding Issue 1, providing Student the group specialized academic instruction in his collaboration classrooms placement specified in the October 27, 2020 IEP by means of distance education through synchronous instruction using Google Meet and Zoom while Student was physically located in his home did not result in a material failure to implement Student's October 27, 2020. And providing speech therapy called for in the October 27, 2020 IEP by distance education through Zoom for both group and individual services while Student was physically located in his home did not result in a material failure to implement Student's October 27, 2020 IEP. Hesperia provided Student a program that closely approximated his last educational placement as required by *Ms. S.*, using methodologies implemented in public schools nearly statewide due to the COVID-19 pandemic and in compliance with lawful orders of the governor and public health officials, and applied equally to general and special education students, as permitted by *N.D.*

Student failed to establish Hesperia materially failed to implement Student's October 27, 2020 IEP, from October 28, 2020, through April 22, 2021. Therefore, Student did not prove that Hesperia denied him a FAPE for the period October 28, 2020, through April 22, 2021, by changing the location of services from a school campus to

Student's home, changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual, changing the delivery method of related services from in-person to remotely, or changing the location and delivery method of special education and related services without consent by Parent.

ISSUE 3: FAILING TO IMPLEMENT STUDENT'S APRIL 22, 2021 IEP

Student contends Hesperia denied him a FAPE by failing to implement his April 22, 2021 IEP by changing the location of services from a school campus to Student's home, changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual, changing the delivery method of related services from in person to remotely, changing the location and delivery method of special education and related services without notice to Parent, and changing the location and delivery method of special education and related services without consent by Parent.

Hesperia contends it did not deny Student a FAPE because neither Student nor Parents consented to the April 22, 2021 IEP, and it provided Student access to his program of special education and related services stated in the operative October 27, 2020 IEP, as amended on January 5 and March 29, 2021, via distance learning, in conformity with federal and state laws and guidance issued by federal and state education departments.

In December 2020, Father requested an independent educational evaluation in psychoeducation. Hesperia agreed to fund at public expense an independent evaluation and Parents selected Desert Mountain Children's Center to complete the evaluation. Frederick Carpio, school psychologist, evaluated Student on February 26, March 3, and March 19, 2021.

Hesperia convened an IEP team meeting on April 22, 2021, to review the independent evaluation, and conduct an exit IEP because Student was going to graduate with a regular high school diploma in one month, which would end his eligibility for special education and related services. Student, Mother, and Father attended.

The IEP team reviewed the accommodations already in Student's IEP that aligned with the recommendations of the independent evaluation, and agreed to add seven more accommodations to Student's IEP where the independent evaluator's recommendations were not already addressed by an existing accommodation.

No other changes were made to Student's placement or related services.

Neither Student nor either Parent signed consent to the April 22, 2021 IEP, and the family wanted it noted during the IEP team meeting, "We still do not agree to remote learning." Without Student's or Parents' consent, the last agreed-upon and implemented IEP, dated October 27, 2020, as amended on January 5 and March 29, 2021, and consented to on April 1, 2021, continued to be the IEP in effect.

Speech therapy logs and data for Student indicate he participated in an individual speech therapy session on April 29, 2021. Speech therapy sessions never reverted to in-person and remained in the distance learning mode for the remainder of the 2020-2021 school year.

For all the reasons explained above regarding Issue 1, providing Student the group specialized academic instruction in his collaboration classrooms placement specified in the October 27, 2020 IEP by means of distance education through synchronous instruction using Google Meet and Zoom while Student was physically located in his home did not result in a material failure to implement Student's October 27, 2020 IEP. And providing speech therapy called for in the October 27, 2020 IEP by distance education through Zoom for both group and individual services while Student was physically located in his home did not result in a material failure to implement Student's October 27, 2020 IEP. Hesperia provided Student a program that closely approximated his last educational placement as required by *Ms. S.*, using methodologies implemented in public schools nearly statewide due to the COVID-19 pandemic and in compliance with lawful orders of the governor and public health officials, and applied equally to general and special education students, as permitted by *N.D.*

Student failed to establish Hesperia materially failed to implement Student's April 22, 2021 IEP, from April 22 through May 12, 2021, specifically due to lack of Student's or either Parent's consent to the April 22, 2021 IEP. Further, Student failed to establish Hesperia materially failed to implement Student's October 27, 2020 IEP, from

April 22 through May 12, 2021. Therefore, Student did not prove that Hesperia denied him a FAPE for the period April 22 through May 12, 2021, by changing the location of services from a school campus to Student's home, changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual, changing the delivery method of related services from in-person to remotely, or changing the location and delivery method of special education and related services without consent by Parent.

ISSUE 4: FAILING TO IMPLEMENT STUDENT'S MAY 12, 2021 IEP

Student contends Hesperia denied him a FAPE by failing to implement his May 12, 2021 IEP by changing the:

- location of services from a school campus to Student's home;
- delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual;
- delivery method of related services from in person to remotely;
- location and delivery method of special education and related services without notice to Parent; and
- location and delivery method of special education and related services without consent by Parent.

Hesperia contends it did not deny Student a FAPE because neither Student nor Parents consented to the May 12, 2021 IEP until May 25, 2021, after Student's instructional period ended and two days before his diploma was awarded, and it provided Student access to his program of special education and related services stated

in the operative October 27, 2020 IEP, as amended on January 5 and March 29, 2021, and consented to on April 1, 2021, via distance learning, in conformity with federal and state laws and guidance issued by federal and state education departments.

On May 10, 2021, Father spoke to Hesperia's special education coordinator. Father wanted all the recommendations of the independent psycho-education evaluator added to Student's IEP. The coordinator added those to the accommodations pages, bringing the total number of accommodations from 18 in the October 27, 2020 IEP, to 19 on January 5, 2021, to 26 on April 22, 2021, to 67 on May 11, 2021.

Hesperia convened an IEP team meeting on May 12, 2021, to review an independent evaluation in speech-language, as an amendment to Student's exit IEP. Student and Mother attended. No evidence was presented at hearing regarding the independent speech-language evaluation, and the May 12, 2021 IEP does not contain meeting notes. The "results of meeting" section indicates only that the IEP reviewed the independent speech evaluation and "[r]ecommendations were added to the IEP as accommodations. [Student's] services and placement remain the same." Three new accommodations were added related to speech/communication. Student signed consent to the May 12, 2021 IEP on May 25, 2021.

Speech therapy logs and data for Student indicate he did not show up for a Zoom speech therapy session on May 13, 2021.

Student completed all requirements to graduate with a regular high school diploma, and he was awarded his diploma on May 27, 2021.

For all the reasons explained above regarding Issue 1, providing Student the group specialized academic instruction in his collaboration classrooms placement specified in the October 27, 2020 IEP, as amended on January 5, March 29, and May 13, 2021, by means of distance education through synchronous instruction using Google Meet and Zoom while Student was physically located in his home did not result in a material failure to implement Student's October 27, 2020 IEP, as amended on January 5, March 29, and May 13, 2021. And providing speech therapy called for in the October 27, 2020 IEP, as amended on January 5, March 29, and May 13, 2021, by distance education through Zoom for both group and individual services while Student was physically located in his home did not result in a material failure to implement Student's October 27, 2020 IEP, as amended on January 5, March 29, and May 13, 2021. Hesperia provided Student a program that closely approximated his last educational placement as required by *Ms. S.*, using methodologies implemented in public schools nearly statewide due to the COVID-19 pandemic and in compliance with lawful orders of the governor and public health officials, and applied equally to general and special education students, as permitted by *N.D.* Further, once a student graduates with a regular diploma, the student no longer has a right to a FAPE. (Ed. Code, § 56026.1; 34 C.F.R. 300.102(a)(3)(i).) A student's eligibility for a FAPE ends when the student satisfies state requirements for a regular diploma, regardless of whether he receives an actual document. (See *T.M. and J.M. Kingston City School Dist.* (N.D.N.Y. 2012) 891 F.Supp.2d 289, 294.)

Student failed to establish Hesperia materially failed to implement Student's May 12, 2021 IEP, from May 13 through May 27, 2021, as Student did not consent to the May 12, 2021 IEP until May 25, 2021. Further Student failed to establish Hesperia

materially failed to implement Student's October 27, 2020 IEP, as amended on January 5 and March 29, 2021, and consented to on April 1, 2021, from May 13 through May 27, 2021. Therefore, Student did not prove that Hesperia denied him a FAPE for the period May 13 through May 27, 2021, by changing the:

- location of services from a school campus to Student's home;
- delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual;
- delivery method of related services from in-person to remotely; or
- location and delivery method of special education and related services without consent by Parent.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1:

Hesperia did not deny Student a FAPE by failing from mid-March 2020 to implement Student's March 4, 2020 IEP, specifically by:

- a. Changing the location of services from a school campus to Student's home;
- b. Changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual;

- c. Changing the delivery method of related services from in-person to remotely;
- d. Changing the location and delivery method of special education and related services without notice to Parent; and
- e. Changing the location and delivery method of special education and related services without consent by Parent.

Hesperia prevailed on all parts of Issue 1.

ISSUE 2:

Hesperia did not deny Student a FAPE by failing to implement Student's October 27, 2020 IEP, specifically by:

- a. Changing the location of services from a school campus to Student's home;
- b. Changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual;
- c. Changing the delivery method of related services from in-person to remotely; and
- d. Changing the location and delivery method of special education and related services without consent by Parent.

Hesperia prevailed on all parts of Issue 2.

ISSUE 3:

Hesperia did not deny Student a FAPE by failing to implement Student's April 22, 2021 IEP, specifically by:

- a. Changing the location of services from a school campus to Student's home;
- b. Changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual;
- c. Changing the delivery method of related services from in-person to remotely; and
- d. Changing the location and delivery method of special education and related services without consent by Parent.

Hesperia prevailed on all parts of Issue 3.

ISSUE 4:

Hesperia did not deny Student a FAPE by failing to implement Student's May 12, 2021 IEP, specifically by:

- a. Changing the location of services from a school campus to Student's home;
- b. Changing the delivery method of specialized academic instruction and some speech therapy from in-person and group to remotely and individual;

- c. Changing the delivery method of related services from in-person to remotely; and
- d. Changing the location and delivery method of special education and related services without consent by Parent.

Hesperia prevailed on all parts of Issue 4.

ORDER

All Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

/s/

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings