

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022030378

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.

DECISION

SEPTEMBER 30, 2022

On March 11, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student naming San Dieguito Union High School District, called San Dieguito. OAH granted Student's motions to amend the due process complaint on March 24, April 7, May 5, and June 8, 2022. Administrative Law Judge Jennifer Kelly heard the matter via videoconference on July 26, 27, and 28, and August 2, 15, 16, 17,18, and 23, 2022.

Parents attended all hearing days on Student's behalf. Attorney Jennifer Fant represented San Dieguito. San Dieguito's Director of School and Student Services, Tiffany Hazelwood, attended all hearing days on San Dieguito's behalf.

At the parties' request, the matter was continued to September 12, 2022, for written closing briefs. The record was closed and the matter was submitted on September 12, 2022.

ISSUES

The issues have been reorganized for clarity. The ALJ did not make any substantive changes to the issues. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189.)

1. Did San Dieguito deny Student a free appropriate public education, known as FAPE, in the 2021-2022 school year by failing to provide speech and language services as set out in his June 2, 2021 individualized education program, referred to as an IEP?
2. Did San Dieguito deny Student a FAPE in the 2021-2022 school year by failing to provide specialized academic instruction as set out in his June 2, 2021 IEP?
3. Did San Dieguito deny Student a FAPE in the 2021-2022 school year by failing to:
 - A. implement the Self and Match system for Student's independent functioning;

- B. implement the fading plan for the special circumstances instructional aide support; or
 - C. provide an appropriately trained one-to-one special circumstances instructional aide?
4. Did San Dieguito deny Student a FAPE by failing to include sufficient specialized academic instruction and speech therapy services in the March 11, 2022 IEP?
 5. Did San Dieguito deny Student a FAPE by committing procedural violations in development of the March 11, 2022 IEP by failing to have adequate, appropriate, and complete goals in listening comprehension, mathematics, independent functioning, writing, perspective, behavior, and event sequencing?
 6. Did San Dieguito deny Student a FAPE by committing procedural violations in the development of the March 11, 2022 IEP by failing to correctly report Student's progress on his goals in mathematics, speech (story communication), and executive functioning (engagement in work in the general education environment), thereby materially impeding parental participation in the formulation of Student's educational program?
 7. Did San Dieguito deny Student a FAPE from December 2021 by allowing persons without credentials required by Student's June 2, 2021 IEP to provide speech therapy services?
 8. Did San Dieguito commit procedural violations that denied Student a FAPE in the 2021-2022 school year by:
 - A. unilaterally substituting Workability and Social-Emotional Learning for part of his agreed-upon specialized academic instruction services;

- B. failing to provide prior written notice for its decision at the December 10, 2021 IEP team meeting to deny Parents' request for more specialized academic instruction support and to remove Student from the Workability program; or
 - C. failing to provide Student's first semester progress reports in a timely manner?
9. Did San Dieguito deny Student a FAPE in the 2021-2022 school year by failing to provide meaningful specialized academic instruction support in his co-taught English class?
 10. Did San Dieguito deny Student a FAPE in the 2021-2022 school year by failing to provide meaningful specialized academic instruction support for him to meet his reading and listening comprehension goals?
 11. Did San Dieguito deny Student a FAPE in the 2021-2022 school year by failing to respond to the decline in his reading skills?
 12. Did San Dieguito commit a procedural violation that denied Student a FAPE in the 2021-2022 school year by failing to inform Parents that there was a reading intervention class being offered to other students, thereby materially impeding parental participation in the development of Student's IEP?
 13. Did San Dieguito fail to provide Student's educational record in response to Parent's request on April 19, 2022, thereby materially impeding parental participation at the May 26, 2022 IEP team meeting?

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 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 13 years old at the time of hearing and entering eighth grade for the 2022-2023 school year. Student attended seventh grade at Pacific Trails. Student resided with Parents within San Dieguito's geographic boundaries at all relevant times. Since 2012, Student was eligible for special education and related services under the category of autism.

BACKGROUND

DEL MAR'S FEBRUARY 27, 2020 IEP

Student attended elementary school in Del Mar Union School District, called Del Mar, during fifth and sixth grades in the 2019-2020 and 2020-2021 school years. Autism is a neurodevelopmental disorder characterized by social, behavioral, and learning delays. (Cal. Code Regs., tit. 5, § 3030.) Due to his disability, Student had difficulty with academics, pragmatic language, functional independence, and off-task behaviors. Student attended Del Mar's Social-Emotional Learning Foundations program taught by a special education teacher who provided grade level core content instruction for students requiring therapeutic behavioral and emotional support to access curriculum.

Del Mar's February 27, 2020 IEP, developed when Student was in fifth grade, was the last IEP Parents consented to at the time Student entered San Dieguito for seventh grade in August 2021. The February 27, 2020 IEP provided for 585 minutes weekly specialized academic instruction in the Social-Emotional Learning Foundations separate classroom. It offered 900 minutes yearly group speech and language services and 900 minutes yearly individual speech and language services. The speech and language services were each to be evenly distributed in weekly 30-minute sessions throughout the

school year. The February 27, 2020 IEP also offered 1,200 minutes yearly behavior intervention consultation services and 30 minutes weekly group counseling. The IEP provided Student 1,155 minutes per week of support by a special circumstances instructional assistance aide, called an instructional aide, in the regular classroom setting.

The February 27, 2020 IEP's offer of specialized academic instruction placement amounted to 37 percent of the time outside the regular class, extracurricular and non-academic activities, and 67 percent in the regular class, extracurricular and non-academic activities. Student did not participate in regular class for the core academic subjects of English language arts, science, and social studies because he required substantial supports to access the grade level curriculum. The February 27, 2020 IEP also provided Student extended school year services.

During the 2020-2021 school year when Student was in sixth grade, Del Mar conducted Student's Triennial and Annual IEP team meeting commencing on February 26, 2021 and continuing on May 13, 2021. The Del Mar IEP team considered a Multidisciplinary Evaluation and Report dated February 26, 2021 prepared by Del Mar's school psychologist, education specialist, and speech and language pathologist, as well as independent assessments obtained by Parents. Del Mar's IEP team determined Student was achieving academically within the average or better range in all areas except reading and listening comprehension.

SAN DIEGUITO'S JUNE 2, 2021 TRANSITION TO MIDDLE SCHOOL IEP AND OFFER OF FAPE

On May 6, 2021, Del Mar convened Part 1 of a transition IEP team meeting with San Dieguito. Part 2 of the transition IEP team meeting was held on June 2, 2021.

San Dieguito attended Student' transition IEP team meetings on May 6 and June 2, 2021 for the purpose of making an offer of FAPE and to assist with Student's transition to middle school for seventh grade for the 2021-2022 school year. Following the May 6, 2021 and June 2, 2021 Transition IEP team meetings, San Dieguito made an offer of FAPE.

The June 2, 2021 Transition IEP offered Student the following:

- 230 minutes weekly specialized academic instruction in a special education academic support class;
- 115 minutes weekly specialized academic instruction in co-taught English 7 in a regular classroom;
- 90 minutes weekly specialized academic instruction in a general education homeroom;
- 1,800 minutes yearly group speech and language services in separate setting distributed weekly in two 30-minute group sessions; and
- Extended school year services.

The total minutes of specialized academic instruction offered in the June 2, 2021 IEP was 435 minutes weekly. The IEP included one-to-one support by an instructional aide in the general education setting. It provided Student extensive program accommodations including

- breaking assignments into smaller parts,
- shortening, and simplifying verbal instructions and checking for understanding,
- visual supports, including check lists and organizers,
- preferential seating,

- notes,
- outlines, and
- instructions.

The IEP also provided a self-monitoring system with clear behavior expectations as an accommodation such as Self and Match. Self and Match is a self-monitoring and motivational system grounded in principals of applied behavior analysis.

Parents did not consent to San Dieguito's June 2, 2021 Transition IEP offer of special education and related services. Therefore, San Dieguito implemented the February 27, 2020 IEP at the start of the 2021-2022 school which began on August 17, 2021. Specialized academic instruction was implemented in a special education classroom. Student received instructional aide support in his general education classes, and group and individual speech and language services.

Parents partially consented to the June 2, 2021 Transition IEP on September 10, 2021. Following discussions between Parents and Director Hazelwood, Parents signed another consent on September 15, 2021. Parents agreed to all components of the IEP but disagreed with Student's placement in the co-taught English class. Parents also disagreed with the offer of 1,800 minutes yearly group speech and language services.

San Dieguito implemented the June 2, 2021 IEP on September 15, 2021. More specifically, Student remained in the special education homeroom for 35 minutes daily with a special education teacher. Student was placed in Education Specialist Nicole Kirchner's Academic Support class in a separate setting for 45 minutes on Mondays and 100 minutes on Wednesdays and Fridays, totaling 245 minutes weekly. Student was placed in a co-taught English 7 class for 245 minutes weekly, 115 minutes of which was

devoted to specialized academic instruction. Parents disagreed with Student's schedule changes. Parents did not want Student to remain in a special education homeroom taught by a special education teacher.

SEPTEMBER 24, 2021 IEP AMENDMENT

San Dieguito convened an IEP amendment team meeting on September 24, 2021 to address Parents' concerns about delivery of Student's specialized academic instruction and speech and language services, and to clarify Student's schedule and supports. The IEP team included Parents, Education Specialist Nicole Kirchner, Program Supervisor Monica Davey, and Speech Pathologist Julia Chowdhury. A general education teacher did not attend.

The IEP team had a robust discussion about how Student's specialized academic instruction and speech and language services would be delivered. The IEP team agreed Student's homeroom would change from a special education to a general education homeroom. A special education teacher would deliver Student 30 minutes weekly specialized academic instruction in the general educational homeroom. Student's instructional aides would deliver Student 60 minutes of weekly specialized academic instruction in two, 30-minute sessions under the special education teacher's direct supervision. The instructional aides would be trained on Student's needs and provided instructional materials by the special education teacher. San Dieguito documented the agreed upon changes to Student's program in the September 24, 2021 IEP amendment as follows:

- 230 minutes weekly specialized academic instruction in the Academic Support class in a separate setting;

- 90 minutes weekly specialized academic instruction during regular homeroom delivered in three, 30-minute sessions, delivered in one weekly 30-minute session by a special education teacher and two weekly 30-minute sessions by Student's instruction aides under the special education teacher's supervision; and
- 115 minutes weekly specialized academic instruction in the co-taught English class in the regular classroom.

Parents partially consented to the September 24, 2021 IEP amendment on September 26, 2021. Parents did not consent to the 1,800 minutes yearly speech and language services in a group setting. The June 2, 2021 IEP, as amended on September 24, 2021, remained the operative IEP for the balance of the 2021-2022 school year. Because Parents did not consent to San Dieguito's offer of speech and language services, San Dieguito continued to implement the speech and language services called for in the February 27, 2020 IEP.

ISSUE 1: DID SAN DIEGUITO DENY STUDENT A FAPE IN THE 2021-2022 SCHOOL YEAR BY FAILING TO PROVIDE SPEECH AND LANGUAGE THERAPY AS SET OUT IN HIS JUNE 2, 2021 IEP?

ISSUE 7: DID SAN DIEGUITO DENY STUDENT A FAPE FROM DECEMBER 2021 BY ALLOWING PERSONS WITHOUT CREDENTIALS REQUIRED BY STUDENT'S JUNE 2, 2021 IEP TO PROVIDE SPEECH THERAPY SERVICES?

In Issue 1, Student contends San Dieguito failed to provide Student the required number of speech and language minutes called for in the June 2, 2021 IEP. Student

argues San Dieguito did not implement the required number of speech and language minutes and improperly allowed speech and language interns to deliver some of the service minutes.

San Dieguito maintains Parents did not consent to the speech and language services offered in the June 2, 2021 IEP, and therefore it implemented the speech and language services called for in the February 27, 2020 IEP during the entirety of the 2021-2022 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 (2006).) All subsequent references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted. 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 that are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000] (*Endrew F.*)) Language and speech development and remediation services are included among the related services which "may be required to assist a child with a disability to benefit from special education." (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(a); Ed. Code, § 56363, subd. (a) and (b)(1); Cal. Code of Regs., tit. 5, § 3051.1.)

An IEP must contain a statement of the special education and related services and supplementary aids and services to be provided to the pupil, or on behalf of the pupil, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to advance appropriately toward attaining the annual goals and to be involved in and make progress in the regular education curriculum and participate in nonacademic activities, and to be educated and participate with other individuals with exceptional needs and nondisabled pupils. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345, subd. (a)(4).)

The educational benefit to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

A district is required to provide special education and related services in conformity with an IEP. (20 U.S.C. § 1414(d).) As soon as possible following the development of an IEP, special education, and related services "shall be made available" to the student in accordance with the IEP. (Ed. Code, § 56344, subd. (b).) If a parent consents to some, but not all, of the components of an IEP, the school district must implement the components of the program to which the parents consented so as not to delay providing instruction and services to the child. (Ed. Code, § 56346, subd. (e).)

Student failed to sustain his burden of proof on Issue 1. Student did not consent to the speech and language services offered by San Dieguito in the June 2 2021 IEP, as amended on September 24, 2021. Student's Issues 1 and 7 were limited to the June 2, 2021 IEP. San Dieguito had no obligation to implement the speech and language services offered in the June 2, 2021 IEP because Parents did not consent to the offered services. Therefore, Student did not meet his burden of proof on Issues 1 and 7.

ISSUE 2: DID SAN DIEGUITO DENY STUDENT A FAPE IN THE 2021-2022 SCHOOL YEAR BY FAILING TO PROVIDE SPECIALIZED ACADEMIC INSTRUCTION IN CONFORMITY WITH HIS JUNE 2, 2021 IEP?

ISSUE 8(A): DID SAN DIEGUITO COMMIT A PROCEDURAL VIOLATION THAT DENIED STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR BY UNILATERALLY SUBSTITUTING WORKABILITY AND SOCIAL-EMOTIONAL LEARNING FOR SPECIALIZED ACADEMIC INSTRUCTION?

Student contends San Dieguito failed to implement the June 2, 2021 IEP's specialized academic instruction in the Academic Support class. Student argues the workability and social emotional learning lessons and assignments did not constitute specialized academic instruction because they were not designed to meet Student's needs and ensure access to the general curriculum. Student also generally challenges the methodologies used by San Dieguito to implement Student's specialized academic instruction across all settings.

San Dieguito contends it implemented Student's specialized academic instruction in conformance with the June 2, 2021 IEP and that any failure to implement was not material. San Dieguito contends Parents consented to the June 2, 2021 IEP on September 15, 2022, and it was implemented through September 26, 2021, when Parent consented to the September 24, 2021 IEP amendment. San Dieguito argues the June 2, 2021 IEP, as modified by the September 24, 2021 IEP amendment, was Student's operative IEP for the remainder of the school year and was not at issue in this proceeding. Finally, San Dieguito argues the workability and social-emotional learning lessons were embedded in the Academic Support class curriculum and were reasonably calculated to support Student's goals in independence and behavior.

Special education is defined as "specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability ..." (20 U.S.C. § 1401(29).) Title 34 Code of Federal Regulations part 300.39(b)(3) defines specially designed instruction, used interchangeably with the term specialized academic instruction, as adapting, as appropriate to the needs of a child eligible for special education, the content, methodology, or delivery of instruction to address the unique needs of the child, and ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. (34 C.F.R. § 300.39(b)(3).)

California law also defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.)

Related services are transportation and other developmental, corrective, and supportive services as may be required to assist the child in benefitting from special education. (20 U.S.C. § 1401(26).)

To provide a student a FAPE, a school district must deliver special education and related services “in conformity” with the student’s IEP. (20 U.S.C. § 1401(9).)

“IEPs are clearly binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to the statute – not to decide on its own no longer to implement part or all of the IEP.” (*Van Duyn v. Baker Sch. Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 821, citing 20 U.S.C. §§ 1414(d)(3)(F), 1415(b)(3).)

A school district that fails to implement an IEP exactly does not violate the IDEA

“unless it is shown to have materially failed to implement the child’s IEP. 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”. (*Id.* at p. 815.)

In *Van Duyn*, the court found the district’s failure to provide five hours of math tutoring per week out of the 10 hours specified in the student’s IEP was a material failure to implement the IEP. (*Id.* at p. 823.) The court rejected the student’s argument the district’s failure to implement the student’s IEP as specified was a procedural violation amounting to re-writing the IEP without parental participation. (*Id.* at p. 819.) The court also rejected the district’s argument that the student was required to prove the district’s failure to implement his IEP caused him to lose educational benefits. (*Id.* at p. 822.) However, the court noted a student’s educational progress, or lack of progress,

may be indicative of whether there was more than a minor discrepancy in the services provided. (*Ibid.*) There is no statutory requirement of perfect adherence to the IEP, nor are minor implementation failures denials of FAPE. (*Id.* at p. 821.)

According to the Supreme Court, "courts must be careful to avoid imposing their view of preferable educational methods upon the States." (*Rowley, supra*, 458 U.S. at p. 207.) School districts are not required to put a particular methodology in an IEP. (*Id.* at p. at 204; 71 Fed. Reg. 46, 665 (2006); 34 C.F.R. § 300.320(d)(1); see also *S.M. and G.M. v. State of Hawaii, Dep't of Educ.* (D. Hawaii 2011) 808 F.Supp.2d 1269, 1278 [determining a child's IEP was not required to specify what methodology his school would use].) The IDEA accords educators the discretion to select from various methods for meeting the individualized needs of a student, "provided those practices are reasonably calculated to provide him with educational benefit." (*R.P. ex rel. C.P. .v. Prescott Sch. Dist.* (9th Cir. 2011) 631 F.3d 1117, 1122.) There are some circumstances in which a particular methodology is integral to an IEP. (Fed. Reg. Vol. 64, No. 48 (March 12, 1999).) In those cases where a student requires a specific methodology to receive a FAPE and a school district refuses to place the methodology on the IEP the student may bring a FAPE claim.

SPECIALIZED ACADEMIC INSTRUCTION IN STUDENT'S ACADEMIC SUPPORT CLASS

The June 2, 2021 IEP, as amended on September 24, 2021, provided Student 230 minutes weekly specialized academic instruction in a special education Academic Support class. At hearing, San Dieguito's witnesses including Education Specialist Nicole Kirchner, Program Supervisor for Special Education Monica Davey, and Program Supervisor Jennifer Havlat described the Academic Support class. Academic Support

was an elective class taught by a special education teacher designed to help students develop executive functioning skills through class discussions, journal prompts, routines to help with organization, and planning. Students worked on test-taking skills, note-taking skills, vocabulary skills and increased independence through planning, organizing, and completing assignments.

Student's Academic Support class met on Mondays for approximately 30 minutes and on Wednesdays and Fridays for 100 minutes, a total of 230 minutes. On Mondays, the class checked their class grades in San Dieguito's computerized system called Aries and worked on their IEP goals. On Wednesdays and Fridays, the class began with a 30-to-40-minute lesson taught by Kirchner or a guest speaker, and the remaining time was spent working on IEP goals or skill development related to IEP goals or initiating or completing assignments for their grade level core classes as time allowed. On some days, the entire class was devoted to homework and IEP goal support. The lessons taught by Kirchner or guest speakers included study skills, goal planning, social-emotional learning, and workability. The workability lessons were taught by guest speaker Dr. Mary Ellen Cummings on a bi-weekly basis and lasted about 30 to 40 minutes. These lessons supported development of students' career awareness by, among other things, offering educational and career-related projects and activities, conducting career and vocational assessments, and attending career exploration field trips.

VOCATIONAL/WORKABILITY LESSONS

Vocational lessons, called workability by San Dieguito, were imbedded in the curriculum for Student's Academic Support class during the 2021-2022 school year. Throughout the hearing, the parties referred to the workability lessons but did not

define the term. Workability is not a term defined under the IDEA. The California Education Code refers to workability as a model transition program for youth with disabilities. The state of California has determined school based preparatory experiences, career preparation and work-based learning experiences and collaboration/youth development and leadership are critical elements of an effective delivery system for transition services as mandated by the IDEA. (Ed. Code, §§ 56470-56474.) California developed the workability program to provide local educational agencies maximum flexibility to secure and utilize available federal funds to meet the career and vocational needs of individuals with exceptional needs. (Ed. Code, § 56454.)

At hearing, the evidence proved the workability lessons were vocational and career-based lessons. The preponderance of the evidence proved the workability lessons and assignments did not address Student's unique educational needs or contribute to Student making progress on Student's IEP goals. San Dieguito's witnesses testified workability lessons can constitute specialized academic instruction because these lessons generally support students' goals in executive functioning and independence, however, this testimony was vague and unpersuasive. Program Supervisor Havlat opined workability lessons supported executive functioning and employment skills. With respect to Student, Havlat unconvincingly suggested workability related to Student's independence goal. She asserted skills learned through the workability lessons could translate in the general education setting.

Program Supervisor Davey and Education Specialist Kirchner also generally opined workability lessons related to Student's IEP behavior and independence goals, but they did not articulate how. Student's executive functioning goal in the June 2, 2021 IEP required Student to read, interpret, and solve multi-step word problems. Student's

independence goal called for Student to independently follow directions presented to the whole class in the general education setting. San Dieguito did not offer convincing testimony how workability lessons contributed to these goals.

A partial IEP team composed of Parents, Kirchner, Davey, and Speech Pathologist Julia Chowdhury met on November 11 and December 10, 2021 to discuss Parents' concerns about Student's lack of progress towards his IEP goals. A general education teacher did not attend. Parents wanted Student's physical education class removed and an additional academic support class added to Student's schedule. Parents also wanted social-emotional learning and workability lessons removed from the Academic Support class. At the November 10, 2021 IEP team meeting, Kirchner told Parents transition and social emotional learning were embedded in the class curriculum and designed to address Student's IEP goals and therefore could not be removed. Kirchner did not explain how workability lessons addressed Student's IEP goals. At the December 10, 2021 IEP team meeting, Davey told Parents transition and social emotional learning lessons were embedded in the Academic Support class curriculum. The IEP team members did not discuss how the workability lessons supported Student's progress towards his IEP goals.

Throughout the remainder of the 2021-2022 school year, Parents continued to object to workability being appropriate for Student to make progress towards his IEP goals. Parents sent Davey an email on April 17, 2022 and inquired about whether workability lessons were required for special education students in other schools within San Dieguito. Davey responded all students with IEPs must have an independent transition plan with related college, career, and independent living goals by the time they turn age 16. She stated the inclusion of transition services in Academic Support class was a precursor to the independent transition plan and designed to support and

prepare students for secondary and postsecondary life skills. This response did not explain how Student, a seventh-grade student, needed vocational lessons when this need had not been identified by his IEP team. Further, at hearing, Davey explained the issue of whether a Student can opt out of workability lessons is an IEP decision.

A disabled student younger than age 16 is not required to have post-secondary goals and transition services unless the IEP team determines this is necessary. (Ed. Code, § 56043, subd. (a)(8)(A).) While vocational lessons can align to a student's IEP goals, here the weight of the evidence established the June 2, September 24, November 12, and December 10, 2021 IEP teams did not determine Student had areas of need in transition or vocational services. (Ed. Code, § 56043, subd. (a)(8)(A).) No evidence was offered these teams determined Student needed appropriate measurable postsecondary goals and transition services to assist Student in reaching his goals. (Ed. Code, § 56043, subd. (a)(8)(A).) Student's annual 2022 IEP team meeting was held on February 25, 2022 and continued on March 4, March 11, and May 26, 2022. The annual 2022 IEP team also did not determine Student had areas of need in transition or vocational services and did not develop any goals in these areas.

Further, San Dieguito implicitly acknowledged workability was not necessary for Student to make progress towards his goals when it, despite the statements made by Davey to Parents, voluntarily removed Student from some workability lessons after the December 10, 2021 IEP team meeting. Kirchner admitted she removed Student from some workability lessons following the December 10, 2021 IEP team meeting because Parents did not want Student to participate. Kirchner's testimony reflected a tacit agreement the workability lessons did not constitute specialized academic instruction.

In applying the standards of *Van Duyn*, the workability lessons delivered in Academic Support class from September 26, 2021 through June 3, 2022 did not constitute specialized academic instruction and fell materially short of adequately implementing Student's IEP by providing Student the number of minutes of instruction required by Student's June 2, 2021 IEP, as amended on September 24, 2021, and the type of instruction required for Student to make meaningful progress on his academic, functional independence and behavior goals.

Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled child. (*Rowley, supra*, 458 U.S. at p. 208.) Rather, school districts are entitled to select teaching methods and programs that will permit the student to make meaningful educational benefit, as a matter of educational policy. (*J.L. v. Mercer Island Sch. Dist.* (9th Cir. 2010) 592 F.3d 938, 945 n. 5; see also *Rowley, supra*, 458 U.S. at p. 208

"[O]nce a court determines that the requirements of the [IDEA] have been met, questions of methodology are for resolution by the States]; *Prescott Sch. Dist., supra*, 631 F.3d 1117, 1122 [The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit"]; 71 Fed. Reg. 46, 665 (2006); 34 C.F.R. § 300.320(d)(1).)

In its closing brief, San Dieguito argues it was entitled to determine the curriculum in Student's Academic Support class. San Dieguito is correct the IDEA affords educators the discretion to select from various methods for meeting the

individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit. (*Prescott Sch. Dist., supra*, 631 F.3d at p. 1122.) However, here the issue of choice of program methodology or content is not at issue because the workability lessons did not pertain to one of Student's areas of need, and therefore were not reasonably calculated to provide him with educational benefit. (34 C.F.R. § 300.320(d)(1).) Student's June 2, September 24, November 12 December 10, 2021, and February 25, March 4, and March 11, 2022 IEP teams did not determine Student had a vocational area of need and did not develop a goal in this area. As a result, the workability lessons were not designed to address Student's unique needs and ensure access to the general curriculum. (34 C.F.R. § 300.39(b)(3).)

Student was not required to show the workability lessons deprived Student of educational benefit, and he did not do so. (*Van Duyn, supra*, 502 F.3d at p. 822.) As is discussed further herein, Student did not show he failed to make meaningful progress towards his June 2, 2021 IEP goals. However, this Decision finds San Dieguito failed to implement Student's specialized academic instruction during Academic Support class and this failure was material. The amount of time spent on workability was not de minimis. The evidence established workability lessons occurred bi-weekly, and generally lasted 30 to 45 minutes. Students also completed workability assignments. These lessons and classwork reduced the specialized academic minutes Student had to work on his IEP goals and areas of need. Based on Kirchner's testimony, workability lessons and classwork totaled approximately 30 to 40 minutes per week. The preponderance of the evidence established Student did not receive all the required specialized academic instruction in Academic Support because he was given workability lessons and assignments some of the time, which did not comport with his June 2, 2021 IEP goals.

SOCIAL-EMOTIONAL LEARNING LESSONS

Social-emotional learning lessons also were embedded in the Academic Support class. Student contends Parents did not consent to Student receiving social-emotional lessons. Student further argues social-emotional learning lessons reduced Student's specialized academic instruction minutes.

San Dieguito contends all students at San Dieguito received social-emotional lessons and it had the discretion to determine the content of class curriculum.

Student's June 2, 2021 IEP contained a behavior goal for demonstrating independence in the general education environment. Further, the June 2, 2021 IEP team determined Student's behavior impeded his learning and the IEP contained a special factors page. Student's inattention at times impacted his ability to function independently in the classroom environment. Student also perseverated on a situation or problem and needed strategies to acknowledge his feelings and learn how to problem-solve.

At hearing, Kirchner described social-emotional learning as developing self-management and relationship skills, acquiring skills to interact with other students, and engaging in self-awareness and managing emotions for effective problem-solving and responsible decision making. Kirchner explained all students at Pacific Trails received social-emotional lessons, typically in physical education class. Student did not receive all the social emotional lessons in physical education because he sometimes was pulled out for speech and language services.

Social-emotional learning was embedded in the Academic Support class. Kirchner or a guest speaker delivered a 30-minute social-emotional learning lesson

approximately one time per month. Students also completed class assignments on social-emotional learning. San Dieguito's witnesses, including Kirchner, Davey and Board-Certified Behavior Analyst Victoria Steck opined Student benefitted from the social-emotional learning lessons. Student had pragmatic language deficiencies and lacked skills for interacting with other students. Student required prompts from adults, including his instructional aide, to remain on task and needed to understand expectations. Student also benefitted from study strategies, including managing multiple tasks, planning ahead, and working independently.

At hearing, Student did not dispute he had social-emotional needs. Rather, Parents mistakenly believed they had the right to determine which programs and methodologies San Dieguito employed to address Student's areas of need. An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education designed according to the parent's desires"].) The IDEA does not empower parents to make unilateral decisions about programs funded by the public. (*Slama v. Independent School Dist. No. 2580* (D.Minn. 2003) 259 F. Supp.2d 880, 885 [refusal to assign service providers of parent's choice does not result in a denial of a FAPE]; *N.R. v. San Ramon Valley Unified School Dist.* (N.D.Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323, *7 [parents are not entitled to their preferred provider].) Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled child. (*Rowley, supra*, 458 U.S. at p. 208.)

The evidence proved the social-emotional learning lessons constituted specialized academic instruction and enabled Student to making progress towards his June 2, 2021 IEP annual goals. These lessons also supported Student's involvement in

the regular education curriculum and participation in nonacademic activities. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345, subd. (a)(4).) Student did not meet his burden of proving the social-emotional learning lessons did not constitute specialized academic instruction.

SPECIALIZED ACADEMIC INSTRUCTION IN STUDENT'S CO-TAUGHT ENGLISH CLASS

The June 2, 2021 IEP, as amended on September 24, 2021, called for 115 minutes weekly specialized instruction in the co-taught English 7 class. Student's co-taught English class was taught at grade level using state standard curriculum. The June 2, 2021 IEP's present levels of performance determined Student was below grade level compared to his general education classmates in reading and listening comprehension. Student's basic reading skills, including fluency, decoding and phonics, written expression, math and math fluency, and phonological processing were at grade level. Student could make appropriate academic progress in a classroom taught above his comprehension level with the support of specialized academic instruction, accommodations, and instructional aide support.

Student's co-taught English class was taught by Kirchner and general education teacher Andrea Grillot. Student was supported in his co-taught English class, and all core academic subjects, by an instructional aide. At hearing, Kirchner and Grillot described the co-taught English class, explained how specialized academic instruction was delivered, and persuasively described Student's academic progress. Kirchner and Grillot opined Student accessed the curriculum in the co-taught English class. Student had occasional off-task behaviors and therefore required prompting and redirection. This was adequately performed by his instructional aides.

GENERAL EDUCATION TEACHER ANDREA GRILLOT'S OPINIONS

Grillot was a credentialed teacher with over 20 years of experience. She held a bachelor's degree in English and a master's degree in teaching with a specialization in reading. Grillot had substantial experience implementing individualized reading instruction and interventions. Grillot's extensive experience as an English teacher, detailed recollection of Student and candid testimony rendered her testimony persuasive. Her testimony was given substantial weight.

The class was comprised of general education students, as well as students who had IEPs. Novels and stories were delivered to the class visually and auditorily. Portions of the readings were presented through audio excerpts. The short stories or novels were projected on the screen, and the students had copies of the readings to follow along. Grillot would check for class understanding by asking questions and having the students stop and talk to their classmates about the text.

Grillot had a detailed recollection of Student. Student was funny, and an avid drawer. Student read novels and short stories along with the class. When instructed to stop and talk about the content of the readings, Student would stop, and talk to a classmate. Student willingly participated in stop and talk moments to check understanding as well as engaged in group presentations. Student participated in the class by reading the texts, responding to questions, working in paired and small groups with classmates, and making presentations to the class. Grillot opined Student accessed the seventh-grade English curriculum with the support of specialized academic instruction delivered by special education teacher Kirchner and Student's instructional aide support.

Grillot earnestly opined she worked collaboratively with Kirchner to address Student's needs. They monitored his progress, frequently checked Student's understanding of the materials covered in class and communicated with Student's instructional aides. In Grillot's view, Student participated in class, did not display any negative behaviors, and met grade level standards.

Homework was assigned to be completed independently and designed to practice the skills covered in class. If a student did not finish classwork, they were not required to complete it as homework. Classwork could be completed in Academic Support, or a student could complete the work at a different time. Grillot built in extra days at the end of the term for students to complete any missing classwork. Grillot did not recall Student being unable to complete classwork on a frequent basis or Parents contacting her about concerns Student was not completing his classwork. Student did not offer evidence to the contrary.

Student turned in solid work and participated both independently and in small group classroom projects. Grillot provided examples. Grillot described two class presentations conducted by Student. Student was able to decode and read fluently from his presentation slides. He worked on a group project with his classmates and delivered a presentation on a Shakespeare passage.

Grillot described Student as focused. He performed well on quizzes and tests and turned in quality assignments. Student did not need more repetition to learn, did not lose any concepts once acquired, and performed in the top portion of his class in the area of literature and in the bottom 15 percent for writing. Although his overall

reading ability was below grade level, he could access the seventh-grade curriculum with supports. Student earned a grade of B+ the fall semester and a grade of A the spring semester.

EDUCATION SPECIALIST NICOLE KIRCHNER'S OPINIONS

Kirchner was Student's special education teacher in the co-taught English class, as well as his case manager and Academic Support teacher. Kirchner testified at hearing. Kirchner held a bachelor's degree in health science and a master's degree in education. She held a multiple subject teaching credential and mild to moderate and moderate to severe special education credentials. Kirchner attended Student's seven IEP team meetings held during the 2021-2022 school year totaling approximately 14 hours. Kirchner communicated with Parents through email on a frequent basis, and often daily.

Kirchner delivered full class specialized academic instruction to support delivery of the English language arts core curriculum in alignment with state standards. Kirchner repeated concepts, wrote on the board, and regularly checked with Student and his instructional aide to confirm his understanding of the concepts. Kirchner trained Student's instructional aides on the strategies contained in the June 2, 2021 IEP to support Student's academic goals in the areas of reading and listening comprehension. These strategies included summarizing and re-teaching key concepts following whole-group instruction. The June 2021 IEP accommodations permitted the instructional aides to use the teacher's notes or the aide's notes as a model for Student to take his own notes. The instructional aides checked Student's understanding by having Student paraphrase concepts and engaged in guided practice for new concepts.

Finally, following Student's independent work completion, the instructional aides checked Student's responses and corrected errors with Student. Kirchner communicated daily with Student's instructional aides regarding Student's progress and made suggestions and corrections.

Student did not offer compelling evidence that San Dieguito did not implement the required minutes of specialized academic instruction in the co-taught English class. Parents mistakenly believed Student was left out of small group instruction within the classroom because some students were pulled out from time to time to work with Kirchner. Kirchner explained only students who were significantly behind in their classwork were pulled out for these small group activities, but not Student. Parents confused the small group and paired activities which all students participated in, with some small groups Kirchner worked with who were struggling in class. Grillot and Kirchner persuasively opined Student participated in small group and paired activities within the co-taught English class. Student offered no compelling evidence to the contrary.

MOTHER'S OPINIONS

Student only called Mother to testify at hearing. Mother was a caring and diligent advocate for Student. Mother was concerned Student sometimes came home with English classwork that had not been completed. However, the example of incomplete classwork offered by Mother was an assignment not meant to be completed in one class. Student had difficulty initiating homework and preparing for tests. As in the school environment, Student required adult assistance to remain on task. Mother

also believed Student came home with too much homework. Mother spent a substantial amount of time helping Student complete classwork and homework and study for tests.

Mother had no personal knowledge how San Dieguito delivered specialized academic instruction. She offered no evidence refuting the appropriateness of San Dieguito's methodology for delivering specialized academic instruction in the co-taught English class or other settings. As such, Mother's testimony was not persuasive.

The weight of the evidence proved San Dieguito provided Student 115 minutes weekly specialized academic instruction in the co-taught English class in conformity with the June 2, 2021 IEP, as amended on September 24, 2021. Student did not meet his burden of proving San Dieguito failed to implement specialized academic instruction in his co-taught English class.

90 MINUTES OF WEEKLY SPECIALIZED ACADEMIC INSTRUCTION IN HOMEROOM

The June 2, 2021 IEP, as amended on September 24, 2021, called for 90 minutes of weekly specialized academic instruction in homeroom to support Student's English language arts goals. Kirchner delivered individual specialized academic instruction to Student each week for 30 minutes in homeroom and oversaw the instructional aide's delivery of specialized academic instruction for two additional weekly 30-minute sessions.

At hearing, Kirchner persuasively explained she provided Student 30 minutes of weekly specialized academic instruction in the general education homeroom during the 2021-2022 school year. Student's instructional aides delivered Student 60 minutes of weekly specialized academic instruction under Kirchner's direct supervision.

During Kirchner's weekly one-to-one sessions with Student in homeroom, she worked with Student on his reading goals. Kirchner employed a variety of strategies to work on Student's reading comprehension goal, including reviewing vocabulary, pre-teaching chapters in novels, and checking for understanding. Kirchner used visualization techniques and helped Student make inferences from texts by making connections between the story and the real world. Student's instructional aides were trained on using the same strategies.

Kirchner used at least two differentiated learning platforms to work on Student's reading skills, including two computerized software programs called Renaissance Freckles and ReadWorks. At the start of the 2021-2022 school year Kirchner worked with Student on the Renaissance Freckles program and switched to the ReadWorks program in approximately December 2021. She explained the ReadWorks program focused on making inferences, which was an area of need for Student. Kirchner reviewed the vocabulary of text with Student before Student commenced reading. Student and Kirchner read the text, and Kirchner would ask questions to verify Student's comprehension. Student struggled with recall and sequencing. Kirchner used visualization techniques to help Student create an image in his mind to represent what he was reading. Kirchner opined Student's instructional aides delivered specialized academic instruction under Kirchner's supervision twice weekly in 30-minute sessions.

Student did not dispute the 90 minute weekly individual specialized academic instruction in the general education homeroom was implemented in conformity with the June 2, 2021 IEP, as amended on September 24, 2021. Rather, Student disputed the methodologies used by San Dieguito to deliver Student's specialized academic instruction, as discussed in Issue 10 below. However, Student did not offer compelling evidence Student did not receive the 90 minutes of weekly specialized academic instruction required by his IEP. The preponderance of the evidence proved San Dieguito implemented specialized academic instruction in conformity with Student's IEP in the 90-minute weekly sessions.

Student did not meet his burden of proof on Issue 2. Student did not prevail on this Issue.

ISSUES 3 (A), (B) & (C): DID SAN DIEGUITO DENY STUDENT A FAPE IN THE 2021-2022 SCHOOL YEAR BY FAILING TO IMPLEMENT STUDENT'S SELF AND MATCH SYSTEM FOR HIS INDEPENDENT FUNCTIONING; IMPLEMENT A FADING PLAN FOR SPECIAL CIRCUMSTANCES INSTRUCTIONAL AIDE SUPPORT, OR PROVIDE AN APPROPRIATELY TRAINED ONE-TO-ONE SPECIAL CIRCUMSTANCES INSTRUCTIONAL AIDE?

Student contends San Dieguito denied Student a FAPE during the 2021-2022 school year by failing to implement the self and match self-monitoring accommodation with clear behavior expectations called for in the June 2, 2021 IEP. Student argues the failure to provide this accommodation resulted in Student failing to meet his independent functioning goal. Student further contends San Dieguito failed to implement a fading plan to reduce Student's reliance on his instructional aide required

by the June 2, 2021 IEP. Finally, Student asserts his instructional aides were not qualified or properly trained, which resulted in Student coming home with assignments that were completed incorrectly. Thus, Student contends San Dieguito failed to implement the June 2, 2021 IEP.

San Dieguito contends it was not required to use the specific program called Self and Match, as long as it implemented a similar self-monitoring system. San Dieguito argues Student's grade checks in his Academic Support class was equivalent to the self and match system or was otherwise an appropriate behavior monitoring system. San Dieguito disagrees the self-monitoring accommodation was tied to Student's independent functioning goal. San Dieguito argues the June 2, 2021 IEP did not have a fading plan, and therefore it was not required under the IEP to fade out the instructional aide. Finally, San Dieguito contends the instructional aides were qualified in accordance with applicable law and appropriately trained to work with Student on his IEP goals.

SELF-MONITORING ACCOMMODATION

The June 2, 2021 IEP contained extensive supports and accommodations to support Student across school environments. The June 2, 2021 IEP's accommodations were needed in general education classes and other education settings. The accommodations included a self-monitoring system with clear behavior expectations. The IEP gave an example of a behavioral system called Self and Match. The IEP did not state this was the only appropriate self-monitoring system. Del Mar previously implemented a self and match accommodation for Student during the 2020-2021 school year. The February 26, 2021 Del Mar IEP team determined Student benefitted

from the self and match system with check-ins after each class subject. A self-monitoring system with clear behavior expectations, such as Self and Match, was included in the June 2, 2021 IEP's program accommodations.

A school district must implement all components of a student's IEP. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(c).) A minor discrepancy between the services provided and the services required in the IEP is not enough to amount to a denial of FAPE. (*Van Duyn, supra*, 502 F.3d at p. 822.) A brief gap in the delivery of services may not be a material failure. (*Sarah Z. v. Menlo Park City School Dist.* (N.D.Cal., May 30, 2007, No. C06-4098 PJH) 2007 WL 1574569, *7.) The methodology used to implement an IEP is left to the district's discretion so long as it meets a student's needs and is reasonably calculated to provide meaningful educational benefit to the child. (*Rowley, supra*, 458 U.S. at p. 208.) However, once a service, system, or device is included in a student's IEP, then the district is obligated to provide that component. (Ed. Code, § 56345, subd. (c).) Following the development of the IEP, the district must provide the required services as soon as possible. (34 C.F.R. § 300.323(c)(2).)

San Dieguito argued its grade check-in system was equivalent to a self-monitoring system with clear expectations. Kirchner explained all students in Academic Support class were required to input their grades into the Aries grading system on a weekly basis. Students would enter their grades in the Aries grading system for each academic subject by checking the Aries gradebook and verifying whether they had missing or incomplete assignments. If they had missing or incomplete assignments or poor test or quiz scores, the students would check a box explaining what they would do to correct the problem,

such as emailing Kirchner or working on the assignment during the week. San Dieguito did not establish the grade checks were equivalent to the June 2, 2021, IEP's self-monitoring accommodation.

BOARD-CERTIFIED BEHAVIOR ANALYST VICTORIA STECK'S OPINIONS

San Dieguito's Board-Certified Behavior Analyst Victoria Steck testified at hearing. Steck was a board-certified behavior analyst since 2018. She held a bachelor's degree in special education and a master's in education in autism studies. Steck previously worked as a credentialed teacher for children with severe disabilities in the state of Massachusetts. She had over 10 years of experience working in special education. Steck provided supports to students with behavior deficits at nine schools within San Dieguito. Her responsibilities included consulting on behavior intervention plans, collecting data for behavioral goals and training staff. Steck attended Student's March 4 and March 11, 2022 IEP team meetings. Steck was familiar with Student through attending these meetings, observing him in the classroom setting on a bi-weekly basis, and providing behavior consultation services to Kirchner, Student's instructional aides and general education teachers during the 2021-2022 school year.

Steck was responsible for training Kirchner and Student's instructional aides on strategies to help Student make progress on his independence and behavior goals. Steck also worked with Kirchner and Student's instructional aides on the positive behavior intervention, strategies and supports contained in the special factors section of the June 2, 2021 IEP. Steck opined the instructional aides were trained to wait and give Student time to respond to a direction before providing him a verbal prompt. They also were directed to use less restrictive prompts, such as visual or gestural prompts, before a verbal prompt. Student's aides were directed to frontload Student's behavioral

expectations. During breaks, they provided positive verbal reinforcements when Student engaged with his peers and followed directions, as well as made suggested corrections. To fade Student's dependence on the instructional aides, the aides were trained to sit away from Student when possible and when a prompt was needed, to use the least restrictive prompt. The instructional aides were taught to encourage Student to shift his questions from the instructional aides to the classroom teacher. They modeled behavior and used visuals.

Steck opined at hearing an appropriate behavior monitoring system requires students to rate their own behavior, receive feedback from the teacher, and earn a reward for demonstrating appropriate behaviors. On direct examination, Steck initially opined she did not consider a grade check-in system as an appropriate self-monitoring system. On further examination, Steck equivocated and testified the grade check-in-system used by Kirchner was a self-monitoring system. Steck acknowledged at the March 4, 2022 IEP team meeting San Dieguito had not implemented the IEP's self and match system and recommended San Dieguito implement a self-monitoring system to fade Student's prompt dependency. Steck was unaware at the time of the March 4, 2022 IEP team meeting the June 2, 2021 IEP contained a self-monitoring accommodation. Steck's statements to the March 4, 2022 IEP team was consistent with Kirchner's statements. Kirchner told the February 25, 2022 and March 4, 2022 IEP teams Student did not have a self-monitoring system in place.

San Dieguito did not prove the weekly grade checks created a clear list of behavioral expectations or have a consistent method to rate or reward Student's progress. The grade checks were done in the special education Academic Support class, and not in Student's general education classes as required by the June 2, 2021 IEP's accommodation requirements. The grade checks did not have a collaborative

component with timely feedback from the teacher or an accompanying reward for successfully completing this task. The grade checks were not equivalent to a self-monitoring system with a clear list of behavioral expectations with a contemporaneous method to rate or reward Student's progress. San Dieguito did not establish the weekly grade checks provided a timely and consistent measure of measuring Student's progress, and therefore was not equivalent to the self-monitoring accommodation required by the June 2, 2021 IEP.

The February 25, March 4, and March 11, 2022 IEP teams discussed progress on Student's independence goal. Goal 7 required Student to independently participate or follow directions within 30 seconds in 60 percent of measured opportunities across one week. The baseline for this goal reflected Student would independently participate or follow whole class directions within 30 seconds in zero percent of measured opportunities across one week. San Dieguito's December 10, 2021 progress report on Goal 7 showed Student would follow directions within 30 seconds 25 percent of the time. However, at the time of the initial annual IEP team meeting on February 25, 2022, San Dieguito did not have updated progress on Student's independence goal. San Dieguito's failure to have updated progress on Student's independence goal indicates it had not implemented the self-monitoring accommodation, or otherwise tracked Student's progress towards this goal.

At hearing, Steck opined the December 10, 2021 progress report established Student made fantastic progress towards his independence goal. However, this conflicted with the concerns expressed by the March 4, 2022 IEP team. Steck's testimony on this issue, therefore, was unpersuasive. The March 4, 2022 IEP team believed Student's progress on his independence goal was a concern. Student would answer questions when asked by the teacher, but he missed whole classroom prompts

and directions. Student appeared dependent on verbal prompts. The March 4 and March 11, 2022 IEP teams took immediate steps to increase Student's independence. The IEP team offered to conduct a Special Circumstances Instructional Assistance assessment to evaluate Student's independent functioning and to develop opportunities to fade Student's instructional aide. The IEP team also developed a new independence goal using a self and match behavior support.

Following the March 4, 2022, IEP team meeting, Steck created a self-matching system with clear expectations based on applied behavior analysis principals. This robust system required Student to rate his progress daily after each class whether he was on task and learning, ready and prepared for class, and used expected social behaviors after each class. Student's teachers rated whether he met the expectations and Student earned points to be used for a preferred task. Steck conducted a preference assessment with Student to determine a reward for earning points in the self and match system. Following implementation of the self-monitoring system with clear expectations, Student's independence improved. By the end of the 2021-2022 school year Student met his goal of independently participating or following directions within 30 seconds in all subjects on four out of five days per week.

In its closing brief, San Dieguito argued the weekly grade checks in Academic Support class satisfied the June 2, 2021 IEP's self-monitoring accommodation, and further the self-monitoring accommodation was not tied to Student's independence goal. San Dieguito's argument was not persuasive. San Dieguito was obligated to implement an accommodation comparable to the June 2, 2021 IEP's self and match accommodation. (Ed. Code, § 56345, subd. (c).) Steck conceded the grade checks were not equivalent to a self-monitoring system. The self-monitoring system developed by Steck following the March 11, 2022, IEP team meetings was implemented on a daily

basis with contemporaneous feedback from Student's instructional aides and teachers. Student worked towards a reward based upon a preference assessment conducted by Steck. This accommodation, together with the support provided by Kirchner and Student's instructional aides, resulted in Student meeting his independence goal by the end of the 2021-2022 school year.

Student proved San Dieguito failed to implement a self-monitoring system with clear expectations from September 10, 2021, the date Parents partially consented to the June 2, 2021 IEP, through March 11, 2022, the date San Dieguito began implementing the self-monitoring accommodation. Student met his burden of proving San Dieguito's failure to implement the self-and match system between September 10, 2021, and March 11, 2022 was a material failure that denied Student a FAPE. Student prevailed on Issue 3(A).

FADING PLAN

Student contends San Dieguito failed to implement a fading plan to reduce Student's dependence on his instructional aides. San Dieguito contends the June 2, 2021 IEP did not contain a fading plan.

A fading plan is generally described as a strategic plan to reduce a student's reliance on a one-to-one instructional aide. A student should eventually receive less direct assistance, with the goal of increasing the student's independence.

Student mistakenly believed the June 2, 2021 IEP contained a fading plan. Student's belief was based on the recommendation from Del Mar's triennial multidisciplinary evaluation of Student and report dated March 11, 2021. The March 11,

2021 multidisciplinary report determined Student had needs in the area of independence and recommended that Student's IEP team develop an independence goal and a strategic fading plan to promote and sustain Student's independence.

Parents mistakenly believed the fading plan was included in Student's June 2, 2021 IEP. As discussed in Issue 3(A) above, the June 2, 2021 IEP contained an independence goal. However, the June 2, 2021 IEP did not contain a fading plan requiring San Dieguito to systematically fade Student's dependence on his instructional aides. Therefore, Student did not meet his burden of proof on Issue 3(B). Student did not prevail on this issue.

SPECIAL CIRCUMSTANCES INSTRUCTIONAL ASSISTANCE AIDES

Students contends his instructional aides during the 2021-2022 school year were not academically qualified to act as aides, were not trained on strategies to reduce Student's dependence, and engaged in activities that increased Student's dependence, including writing in his agenda, and completing his class assignments.

San Dieguito maintains Student's instructional aides were qualified to act as paraprofessionals, were appropriately trained on Student's areas of needs and strategies to reduce his dependence, and followed the accommodations contained in the June 2, 2021 IEP.

The IDEA does not indicate an IEP must specify the qualifications or training of service providers. (20 U.S.C. § 1414(d)(1)(A)(i)(IV) [requiring only that an IEP include a statement of the "supplementary aides and services ... to be provided to the child"].) Paraprofessionals, also known as paraeducators, teacher aides, or instructional aides, are an important component of California's education system. A paraprofessional includes

an instructional aide. (Ed. Code, § 45343.) A paraprofessional means an individual who is employed in a preschool, elementary school, or secondary school under the supervision of a certified or licensed teacher, including individuals employed in special education. (Every Student Succeeds Act [ESSA], Section 3201, 20 U.S.C. § 7011(11).) A paraprofessional shall only perform duties that, in the judgment of the certificated personnel to whom the instructional aide is assigned, may be performed by a person not licensed as a classroom teacher. These duties shall not include assignment of grades to pupils. (Ed. Code, § 45330, subd. (b).)

Paraprofessionals at Title 1 schools whose duties include instructional support must have a high school diploma or the equivalent and two years of college (48 units) or an Associates of Arts degree or pass a local assessment of knowledge and skills in assisting instruction as developed by the local educational agency. (20 U.S.C. § 1112(c)(6); Ed. Code, § 45330.) San Dieguito Program Supervisor Monica Davey testified at hearing. Davey opined each instructional aide who worked with Student during the 2021-2022 school met the necessary qualifications. Student offered no persuasive evidence to the contrary. Student did not prove the instructional aides who worked with Student were unqualified.

School districts must ensure the teachers who work with a disabled student have access to the student's IEP, are knowledgeable about its content, and are informed of their specific responsibilities related to implementing the student's IEP. (Ed. Code, § 56347.) The weight of the evidence proved Student's instructional aides received upfront and ongoing training, monitoring, and supervision specific to Student's IEP. They were trained to track data, understand Student's needs, and learned behavioral strategies to promote Student's independence. San Dieguito's witnesses, including Kirchner, Grillot, Steck, and Davey consistently and credibly opined Student's

instructional aides were trained to work with Student on his academic, independence and behavior goals, implemented strategies to accomplish these goals, and worked on decreasing dependence.

Parents believed Student's instructional aides completed work for Student.. Parents argued the aides wrote sentences, completed assignments, and reworded test questions. Parents argued these accommodations were not permitted by the June 2, 2021 IEP and increased Student's dependence on his instructional aides.

Parents had no personal knowledge of the instructional aide's training or how they implemented behavioral strategies to increase Student's independence and academic strategies to meet Student's goals. Parents did not observe the instructional aides working with Student, nor did they call the instructional aides to testify at hearing. Parents' argument was inconsistent with the June 2, 2021 IEP accommodations, which permitted the instructional aides to write sentences, copy notes, or re-teach concepts. Student's accommodations allowed for Student to receive notes, outlines, and instruction. Student could use visual supports including checklists and organizers. It provided for verbal discussion of writing content prior to independent writing and visual supports, including schedules and lists of materials, and checking Student had written down his homework correctly. The special factors section of the June 2, 2021 IEP allowed the instructional aides to summarize and re-teach concepts following whole-group instruction. The instructional aides could use the teacher's notes or their own notes as a model for Student or have Student take his own notes. They could check Student's understanding by having Student paraphrase, engage in guided practice for new concepts, and check Student's responses and correct errors. In summary, the

June 2, 2021 IEP contained extensive accommodations to be implemented by the special education teacher and instructional aides for Student to access the general education curriculum.

San Dieguito's witnesses persuasively opined Student's instructional aides appropriately implemented Student's IEP accommodations. Steck observed Student's instructional aides on a bi-weekly basis. Steck observed Student and his aides across different class settings. During her observations, Steck sat at the back of the class and took notes. During breaks, she talked with Student's instructional aides to answer questions and provide corrections. Steck emailed Student's general education teachers after her observations to inquire if they had questions or concerns. Steck met with Kirchner on a monthly basis and engaged in ongoing consultation with Kirchner as needed.

Steck observed the instructional aides write down instructions, verbally instruct Student to write, or allow Student to dictate to them. Steck did not believe this conduct increased Student's dependence and opined it was consistent with the June 2, 2021 IEP's accommodations. Kirchner's testimony aligned with Steck. Kirchner and the instructional aides would sometimes write on Student's papers for various reasons, including to writes notes or instructions and to start sentences. Kirchner did not believe the instructional aides supplanted her authority, including delivering content and instruction. Kirchner did not have concerns the instructional aides were increasing Student's dependence.

General education teacher Grillot had a detailed recollection of her interactions with Student's instructional aides in the co-taught English class. She would frequently check in with the instructional aides to monitor Student's progress. Grillot and Kirchner

responded to the instructional aide's questions about how to keep Student focused, appropriate levels of prompting, and whether the aide could read while Student typed responses. In Grillot's view, Student engaged in independent and group work throughout the school year with the support of his instructional aides.

Program Supervisor Davey attended all seven IEP team meetings and was familiar with Student. Davey was responsible for conducting performance reviews for the instructional aides. Davey opined each instructional aide who worked with Student met San Dieguito's performance requirements. She opined they were effective, promoted independence, and implemented the tools and strategies learned from Steck and Kirchner. The instructional aides collaborated with the general education teachers and staff, and Davey received no questions or concerns. Davey observed them working with Student and obtained staff input. Davey observed the instructional aides prompting Student's independence by giving a prompt and then walking away.

Student did not offer compelling evidence refuting the testimony offered by San Dieguito's witnesses. Student did not meet his burden of proof on Issue 3(C). Student did not prevail on this issue.

ISSUE 5: DID SAN DIEGUITO DENY STATE A FAPE BY COMMITTING PROCEDURAL VIOLATIONS IN THE DEVELOPMENT OF THE MARCH 11, 2022 IEP BY FAILING TO HAVE ADEQUATE, APPROPRIATE, AND COMPLETE GOALS IN LISTENING COMPREHENSION, MATHEMATICS, INDEPENDENT FUNCTIONING, WRITING, PERSPECTIVE, BEHAVIOR, AND EVENT SEQUENCING?

ISSUE 6: DID SAN DIEGUITO DENY STATE A FAPE BY COMMITTING PROCEDURAL VIOLATIONS IN THE DEVELOPMENT OF THE MARCH 11, 2022 IEP BY FAILING TO CORRECTLY REPORT STUDENT'S PROGRESS ON HIS GOALS IN MATHEMATICS, SPEECH (STORY COMMUNICATION), AND EXECUTIVE FUNCTIONING (ENGAGEMENT IN WORK IN THE GENERAL EDUCATION ENVIRONMENT), THEREBY MATERIALLY IMPEDING PARENTAL PARTICIPATION IN THE FORMULATION OF STUDENT'S EDUCATIONAL PROGRAM?

Student contends San Dieguito's March 11, 2022 IEP team failed to correctly report Student's progress on all his goals. Student further contends the new goals had inaccurate baselines and therefore were inappropriate. Student argues the failure to adequately report progress and develop appropriate goals denied Parents' meaningful participation in development of the March 11, 2022 IEP.

San Dieguito contends it correctly reported Student's progress on his goals. San Dieguito further argues it promptly responded to Parents' questions regarding progress towards Student's goals at or after the March 11, 2022 IEP team meeting. San Dieguito maintains it developed adequate goals in all areas of need and Parents meaningfully participated in the development of Student's new goals.

At the time of hearing, Parents had not consented to the February 25, 2022 annual IEP, as continued to March 4, March 11, and May 26, 2022. Student's Issue 5 and

6 were limited to procedural violations in development of the annual IEP goals in the March 11, 2022 IEP. Therefore, Issues 5 and 6 are limited to the progress reported and goals developed on February 25, March 4, and March 11, 2022, collectively called the March 11, 2022, IEP.

THE MARCH 11, 2022 IEP TEAM DEVELOPED ADEQUATE ANNUAL GOALS IN STUDENT'S AREAS OF NEED

In each area in which a special education student has an identified need, the IEP team must develop annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345, subd. (a)(2); *Letter to Butler*, U.S. Dept. of Education, Office of Special Education and Rehabilitative Services Mar. 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) An IEP must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

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

- the strengths of the child,
- the concerns of the parents for enhancing the education of their child,
- the results of the initial evaluation or most recent evaluation of the child and
- the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a).)

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

A procedural violation results in a denial of a FAPE only if the violation:

- (1) impeded the child's right to a FAPE;
- (2) significantly impeded the parent's opportunity to participate in the decision-making process; or
- (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2).)

The IDEA's procedural safeguards are intended to protect the informed involvement of parents in the development of an education for their child. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S. Ct. 1994].) "[T]he informed involvement of parents" is central to the IEP process. (*Ibid.*) Protection of parental participation is

"[a]mong the most important procedural safeguards" in the IDEA. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882 ("*Amanda J.*").) Parents not only represent the best interests of their child in the IEP development process, but also "provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know." (*Ibid.*)

A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1485 ("*Target Range*"), *superseded in part by statute on other grounds.*) "Participation must be more than mere form; it must be meaningful." (*Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F.3d 840, 858 [citations omitted] (*Deal*')).) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subd. (a)(2), (d)(3) & (f).)

A parent has meaningfully participated in the development of an IEP when the parent has been 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 v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1036 ("*Fuhrmann*") [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 appropriateness of the March 11, 2022 IEP goals must be evaluated in light of the information the IEP team had at the time the IEP was developed. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (“*Adams*”).) The February 25, March 4, and March 11, 2022 IEP teams included

- Parents,
- Education Specialist teacher Kirchner,
- Speech Pathologist Julia Chowdhury,
- San Dieguito’s school, and
- Program Supervisor Davey.

Board-Certified Behavior Analyst Steck attended the March 4 and March 11, 2022 IEP team meetings. No general education teacher attended. The IEP team carefully reviewed Student’s strengths, areas of difficulty, Parents’ concerns, and present levels of performance. Student was able to complete grade level work with extra support. Student struggled with lengthy writing assignments and he was not reading at grade level. Student was hard-working and mostly stayed on task during class. He generally stayed to himself but was willing to work with others. He relied on his instructional aide to help with executive functioning, task completion, and writing assignments. Student benefited from extended time on assignments and checks for understanding. Student progressed in general education and at the end of the fall semester of 2021 Student earned a B+ in English language arts, a B in science, an A- in World History, and a B in math. Student used age-appropriate vocabulary and grammar but struggled with social skills. Student got along well with peers and adults. He could follow class daily schedules, follow classroom and school rules, and usually timely completed his homework and assignments.

Student still had reading deficits and read below grade level. Parents believed test scores from the STAR Reading tests administered during the 2021-2022 school year demonstrated Student had regressed in his reading comprehension abilities, as discussed in Issue 11 below.

STUDENT'S PROGRESS ON THE JUNE 2, 2021 IEP GOALS

Student had nine goals. Student had two reading goals. Goal 1 was in reading comprehension and Goal 2 was in listening comprehension. The district members of the IEP team determined Student made some progress on his reading comprehension goal, Goal 1, which required Student to read a multi-paragraph passage at a fifth-grade instructional level and independently answer open-ended inferential comprehension questions with 80 percent accuracy in four of five opportunities. Student averaged 65 percent accuracy and continued to need adult support to understand inferences from texts. Student made progress on his listening comprehension goal, Goal 2, which required him to listen to a fifth-grade level story and independently identify four of five events from the story with 100 percent accuracy on four of five occasions over a two-week period. Student's accuracy had improved to 80 percent from 75 percent from the prior annual IEP in June 2021.

Student met his writing goal, Goal 3, which required him to write a piece including three details and elaboration. Student met his executive functioning goal in solving a math problem, Goal 4, by reading and interpreting a multi-step word problem and writing the correct solution in 80 percent of the problems in four of five opportunities.

Student made meaningful progress towards or achieved all of his speech and language goals. Goal 5 concerned non-literal language, Goal 6 involved social communication/narrative language, and Goal 9 concerned pragmatic language/social communication. By the annual IEP team meeting on February 25, 2022, Student met Goal 5 by identifying and interpreting the meanings of idioms, similes, and double-meaning words, but continued to require additional scaffolding to identify the meaning of indirect language and use inferencing skills to identify the meaning of unknown vocabulary terms. Student met Goal 6, a social communication/narrative language goal. Student could independently retell a story or event including key details in the correct sequences while using adverbials with 86 percent accuracy. Student met Goal 9, the pragmatic language/social communication goal, by the annual IEP team meeting on February 25, 2022. Student could make an inference and describe a visual clue given a hypothetical social scenario with 82 percent accuracy on four out of five opportunities.

Student made some progress on his independence goal, Goal 7, and as of December 10, 2021, Student could independently participate or follow directions within 30 seconds in 25 percent of measured opportunities across one week. As discussed in Issue 3(A) above, the March 4, 2022 IEP team agreed Student's independent functioning was an area of concern. Student met Goal 8, a behavior goal, by engaging in work for a 40-minute period by requiring no more than five verbal prompts. Student averaged four to five prompts in a 40-minute period. This showed improvement since the annual June 2021 IEP in which Student required an average of four verbal prompts and 15 gestural prompts to stay engaged in work over a 40-minute period.

The preponderance of the evidence established Student met or made meaningful progress towards each his nine annual goals, with the exception of Student's independence goal. The March 11, 2022 IEP team identified Student's areas of need as

- independently solving mathematical equations,
- reading comprehension,
- listening comprehension,
- writing, pragmatic language and social communication,
- nonliteral language, and
- independence.

The IEP team developed 10 new annual goals to address those needs. Parents disagreed Student met or made meaningful progress towards Goal 4, an executive functioning goal for solving multi-step math problems, Goal 6, a social communication/narrative language goal, and Goal 8, a behavior goal.

NEW GOALS

Student's IEP team developed nine annual goals at the February 25, March 4, and March 11, 2022, IEP team meetings. The March 11, 2022 IEP team also developed a new Goal 10, a reading comprehension goal, which was discussed at the March 11, 2022 IEP team meetings but not finalized until the continued IEP team meeting on May 27, 2022, and therefore is not analyzed in this Decision. New Goal 1, a mathematics goal, called for Student to independently solve linear equations with rational number coefficients using supported notes and access to a timer with at least 80 percent accuracy in four trials as measured by Student's work and teacher records. The goal identified general

education and special education staff as the people responsible for implementing this goal, and a baseline showing Student was 76 percent accurate in this area. The goal was appropriately ambitious.

New Goal 2, a reading comprehension goal, required Student to answer 10 multiple-choice and open-ended inferential questions after reading a sixth-grade level text including the main idea and character motivations, citing support details and text with an average of 80 percent accuracy in three out of three trials as measured by Student work samples. The goal identified the special education teacher as responsible for implementing this goal. The goal was appropriately ambitious and called for Student to make a one-year's gain in reading.

New Goal 3, a listening comprehension goal, called for Student to independently identify four events or facts after listening to a sixth-grade level text which was two to three minutes in length and answer one short open-ended question with 80 percent accuracy in three of three trials as measured by student work samples and teacher charted data. The goal identified the special education teacher as responsible for implementing this goal.

New Goal 4, a writing goal, aimed for Student to independently plan, revise, edit, and rewrite a paragraph with five appropriate and specific corrections, focusing on purpose or audience as measured by work samples or curriculum-based assessments on three of three trials with 85 percent accuracy. The goal identified the special education teacher, general education teacher, and special education staff as the persons responsible for implementing this goal. The goal contained a baseline showing Student was averaging 84 percent accuracy in writing and did not edit his work without adult prompting.

New Goal 5, a pragmatic language /social communication goal, required Student to provide perspectives of two people when given a social problem either hypothetical or real life and identify how different solutions might influence their perspectives with no more than two prompts with 80 percent accuracy in four of five opportunities as measured by data collected by the speech and language pathologist. The speech and language pathologist was designated as the person responsible for implementing this goal. The goal's baseline showed Student identified perspectives of others with over 80 percent accuracy in one of three opportunities.

New Goal 6 also was a pragmatic language/social communication goal. This goal required Student to increase his understanding of social context and related social cues needed to participate in activities and discussions in small groups. New Goal 6 required Student to discover clues in contexts, acknowledge another's comment or questions within 15 seconds either verbally or nonverbally and get a partner's attention before beginning a conversation as measured by a score of three or higher on an incorporated rubric in three of four trials. The speech and language pathologist was designated as the person responsible for implementing this goal. The goal contained a baseline showing Student required constant adult prompt for discovering clues in contexts.

New Goal 7, a pragmatic language/social communication goal, required Student to select an appropriate comment or question starter and then ask a question or make an additional comment to further conversation when given printed visual options of questions and comment starters and when provided with no more than one additional prompt with 80 percent accuracy as measured by the speech and language pathologists records. The speech and language pathologist was designated as the person responsible for implementing this goal. The goal's baseline showed Student required multiple prompts to ask questions or make comments to further social communication.

New Goal 8, a nonliteral language goal, required Student when given a reading task to independently identify and interpret the meaning of unfamiliar words and indirect language using context clues with 80 percent accuracy in three of three opportunities as measured by the speech and language pathologist's records. The speech and language pathologist was designated as the person responsible for implementing this goal. The baseline showed Student averaged 70 percent accuracy over three sessions with multiple prompts.

New Goal 9, an independence goal, required Student to follow specified behavioral expectations, stay on task and follow directions when given a self and match behavior support with no more than two prompts per period and following directions within 15 seconds in 80 percent of opportunities over 60 consecutive school days. The behavior specialist and instructional aide were identified as the persons responsible for implementing this goal. The goal's baseline showed Student needed an average of four to five prompts to engage in a 40-minute class period.

In sum, each of the nine new IEP goals was measurable, appropriately ambitious, and sought to improve an identified area of deficit for Student. Each goal identified school personnel who were responsible for Student meeting the goal. Each goal included a baseline that described Student's present level of performance when the goal was formulated, either through a quantitative percentage or by a qualitative narrative describing the baseline. As drafted on March 11, 2022, the goals were appropriate and measurable. San Dieguito's witnesses, including Kirchner, Chowdhury, and Steck persuasively opined the goals addressed Student's unique areas of need and contained a statement of how the goals would be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).)

Student did not offer evidence the March 11, 2022 IEP failed to offer goals in Student's unique areas of need. Student did not disagree the goals were appropriate to meet his needs in reading and listening comprehension, speech and language, executive functioning, behavior, and independence. Rather, Parents challenged the accuracy of Student's progress towards his goals and concluded the new goals could not be developed without additional information on Student's baselines. The IDEA does not require an IEP adopt the specific form of data collection preferred by a child's parents. (*Capistrano Unified Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1135 ("*Capistrano*").) Any inconsistencies in past data collection does not render new IEP goals themselves inadequate. (*Id.* at p. 1135.)

Student failed to show by a preponderance of evidence San Dieguito denied him a FAPE by failing to offer appropriate goals in the March 11, 2022 IEP. The evidence established the March 11, 2022 IEP team developed appropriate goals in the areas of

- listening comprehension,
- mathematics,
- independent functioning,
- writing,
- perspective,
- behavior, and
- event sequencing.

Student did not prevail on Issue 5.

PROGRESS ON GOALS

An IEP must contain a description of the manner in which the progress of the Student toward meeting the annual goals will be measured and when periodic reports

on the progress the student is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of a report card, will be provided. (20 U.S.C. § 1414(d)(1)(A)(iii); Ed. Code, § 56345, subd. (a)(3).) The failure to provide progress on goals is a procedural violation of the IDEA.

Student challenged the accuracy of San Dieguito's data collection and argued Student did not make the progress claimed by San Dieguito. Student believed San Dieguito was not rigorous in collecting data and reported and interpreted the data incorrectly. Student questioned multiple witnesses about when, how and by whom written data was collected. Student pointed out minor deviations in points calculation and critiqued the data collected on many of Student's goals. However, any inconsistencies in past data collection does not render the IEP goals themselves inadequate. (*Capistrano, supra*, 21 F.4th at p. 1135.)

In developing the IEP, the IEP team must consider several factors including the "strengths of the child," "the concerns of the parents," and the "results of the initial [or most recent] evaluation of the child." (*Ibid.*; 20 U.S.C. § 1414(d)(3)(A).) In *Capistrano*, the Ninth Circuit rejected the parents' argument the IDEA requires the IEP rely on specific kinds of quantitative data. Rather, the IDEA requires that the IEP be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Id.* at p. 1135, citing *Andrew F., supra*, 137 S.Ct. at 999.) Like the parents in *Capistrano*, here Parents essentially argue Student's IEP goals could not be reasonably calculated unless the data on goal collection was consistently collected and interpreted. The Ninth Circuit rejected a similar argument in *Capistrano* and held the IDEA does not provide the data from a prior year can invalidate the goals for the next year's IEP. (*Id.* at p. 1135.)

As convincingly explained by San Dieguito's witnesses, including Kirchner, Grillo, Chowdhury, Steck, and Davey, progress on Student's goals was based not just on data, but also on observations of the teachers and service providers working with Student. San Dieguito's educational professionals had the education, training, and experience to observe and provide a sound description of the success or lack of success of the different strategies used with Student to make progress towards his goals. To the extent daily observation by experienced teachers and staff did not provide a progress report as detailed as written data, the IDEA does not require perfect adherence to an IEP or provide that minor implementation variations constitute a denial of FAPE. (*Van Duyen, supra*, 502 F.3d at p. 821.)

For Goal 4, an executive functioning goal for solving multi-step word problems, Student argued San Dieguito did not accurately measure progress. This goal measured Student's ability to answer multi-step word problems to write a correct solution. The goal targeted answering 80 percent of problems in four of five opportunities as measured by teacher recorded data. Student argued the data showed he could accurately read and solve problems in only 77 percent of the measured opportunities instead of the goal of 80 percent. San Dieguito's progress report presented at the February 25, 2022 IEP team meeting showed Student met this goal with an average of 86 percent based upon reports by Student's math teacher. Student's teacher reported Student was making progress in demonstrating his thinking when working through math steps.

The February 25, 2022 IEP team discussed Student's progress towards Goal 4. Parents relayed they did not believe Student had met this goal because he was struggling with multi-step word problems at home. Parents requested data to support Student's progress. In an attempt to address Parents' concerns, on March 3, 2022,

Kirchner wrote Parents an email explaining she had followed-up with Student's math teacher and confirmed Student's work in Modules 1 and assessment in Module 5 demonstrated Student's executive functioning in the math classroom involving multistep problems. Parents were invited to follow-up with the math teacher or Kirchner with any additional questions.

Goal 6, a social communication/narrative language goal, required Student to retell a story or event by communicating key details, sequencing of events, and adverbials with no more than one cue with 80 percent accuracy as measured by the speech and language pathologist. Speech Pathologist Chowdhury reported to the February 25, 2022 IEP team Student met Goal 6 as he could independently retell a story using key details and in the correct sequence with 100 percent accuracy. Parents believed Student's progress on this goal was inaccurate for various reasons, including the claim Chowdhury collected the data using a familiar story to measure the goal and measured Student's progress after he watched a video of the story.

Regarding Goal 8, Student's behavior goal, Student challenged the data collected to measure the goal. Parents argued they were not provided raw data showing Student's progress towards this goal. Neither the IDEA nor its regulations require school districts to supply parents with raw data about their child's progress. (*T.K. v. Mercer Island School District*) (W.D. Wash. March 17, 2020) 2020 WL 1271519, *9.) Similar to the parents in *Mercer Island*, Parents provided no evidence of special training, education, or experience that would permit them to make use of this information; provided no evidence of how the data might have improved their participation in the process and cited no case law that they are entitled to it. (*Ibid.*) Further, other than

asserting the lack of raw data or San Dieguito's alleged misinterpretation of the data prevented them from meaningful participation, Parents did not articulate how the lack of any such raw data hindered them. (*Ibid.*)

Student's progress was discussed at the February 25, March 4, and March 11, 2022 IEP team meetings. Parents participated in each of these IEP team meetings. They asked questions, expressed concerns, and made suggestions about new goals. San Dieguito listened to Parents' concerns and incorporated some of their suggestions. In response to Parents' concerns, the IEP team added a new independence goal using a self and match system with clear behavior expectations at the March 4, 2022 IEP team meeting and offered a special circumstances instructional assistance assessment at the February 25, 2022 IEP team meeting.

Parents sent San Dieguito an email on March 14, 2022 reiterating their concerns about goal progress and requesting corrections and comments to the March 11, 2022, IEP notes. Parents also asked for a new sequencing goal be added to Student's IEP. In response to Parents' request, San Dieguito made additions and corrections to the goals. The May 27, 2022 IEP team agreed a new goal in sequencing was appropriate to solidify Student's skills in independently retelling stories with appropriate details and sequencing.

The preponderance of the evidence established San Dieguito's witnesses addressed Parents' concerns in each of the IEP team meetings and thereafter, and attempted to provide Parents additional data, although it was not required to do so. (*Mercer Island, supra*, 2020 WL 1271519, *9.) No evidence suggested Parents did not

meaningfully participate, nor that they were deprived of information that significantly impeded their ability to participate. (*Ms. S. ex rel. G. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, 1129.)

Student did not meet his burden of proof on Issues 5 and 6.

ISSUE 4: DID SAN DIEGUITO DENY STUDENT A FAPE BY FAILING TO INCLUDE SUFFICIENT SPECIALIZED ACADEMIC INSTRUCTION AND SPEECH THERAPY SERVICES IN THE MARCH 11, 2022, IEP?

Student's Issues 9, 10, and 11 allege San Dieguito failed to offer sufficient specialized academic instruction during the 2021-2022 school year to address Student's reading deficits. Issue 4 is limited to the adequacy of San Dieguito's offer of specialized academic instruction and speech and language services in the March 11, 2022 IEP.

Student contends the March 11, 2022 IEP's offer of specialized academic instruction was insufficient to allow Student to make meaningful progress towards his reading comprehension and listening comprehension goals. Student argues he did not meet his June 2, 2021 IEP reading comprehension goal, and further that Student's reading comprehension had regressed since his February 2021 IEP. Student asserts San Dieguito's offer of specialized academic was identical to the June 2, 2021 IEP and was insufficient to meet Student's unique needs. Student contends he did not meet Goal 5, the non-literal language goal, and therefore required individual speech services. Student further asserts Student had received individual speech and language services in the past and an independent speech therapy evaluation obtained by Parents recommended individual speech therapy.

San Dieguito contends Student made meaningful progress on his IEP goals, including his reading comprehension goal, and the amount of specialized academic instruction offered was sufficient to provide Student a FAPE. San Dieguito disputes Student regressed in his reading comprehension skills as evidenced by his overall academic progress. San Dieguito further argues the offer of speech and language services in a group setting was appropriate to meet Student's pragmatic and social communication areas of need.

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, not that preferred by the parent. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)) For a school district's offer of special education services to a disabled student to constitute a FAPE under the IDEA, the offer of educational services must be

- designed to meet the student's unique needs,
- comport with the student's IEP, and
- be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*; *Rowley, supra*, 458 U.S. at p. 203.)

A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the child. (*Ibid.*) The IDEA does not require a school district to make significant changes in a Student's IEP from year to year if the student makes appropriate progress and his IEPs align with evaluative data. (*Zachary J. v. Colonial School Dist.* (E.D. Pa. Feb. 24, 2022, CIVIL ACTION NO. 19-652) 2022 WL 580309, *9.)

When conducting a review of a district's proposed program, an ALJ must evaluate the adequacy of the IEP based on information available to the district at the time the IEP was developed, and by what was reasonable at the time and not in hindsight. (*Adams, supra*, 195 F.3d at p. 1149; *Fuhrman, supra*, 993 F.2d at p. 1041.) An IEP is a "snapshot, not a retrospective." (*Adams, supra* 195 F.3d at p. 1149.)

MARCH 11, 2022 IEP'S OFFER OF SPEECH AND LANGUAGE SERVICES

The March 11, 2022 IEP team considered Student's needs in the area of speech and language. Student had age-appropriate vocabulary and grammar skills but struggled significantly with social skills. He met or made progress on his speech and language goals. Student had pragmatic language and social communication needs. The IEP team developed three goals to address these needs, including

- understanding nonliteral language,
- retelling a story using appropriate details and sequencing of events, and
- making inferences in a social scenario.

Speech Pathologist Chowdhury testified at hearing. Chowdhury was a licensed, credentialed, and certificated speech and language pathologist. Chowdhury held a master's degree in communication sciences and disorders. She had been a licensed speech and language pathologist since approximately 2005. She had over 21 years of experience working with children with autism. Chowdhury credibly testified regarding Student's needs in the area of communication. Chowdhury was familiar with Student because she delivered speech and language services to him in the individual and group settings and attended all seven of Student's IEP team meetings during the 2021-2022 school year. Chowdhury was an experienced and knowledgeable speech therapist familiar with Student's needs.

Chowdhury's testimony at hearing was credible and unrefuted by any expert testimony. Chowdhury persuasively explained Student had pragmatic and social communication deficiencies and had no other language or speech delays. Chowdhury was convincing when she explained Student's pragmatic language delay should be addressed in a group setting. Student needed to work on generalizing pragmatic language and this could best be accomplished through group speech and language sessions. Goal 5 focused on the ability to understand non-literal language, which in Chowdhury's view can be difficult for students with autism. Based on Chowdhury's experience, this area of need can take additional time to achieve, particularly for a student with autism. She persuasively opined additional minutes of individual speech therapy were not necessary for Student to make meaningful progress on this goal. Student offered no credible evidence to refute Chowdhury's opinions, which were credible given her substantial experience as a speech-pathologist and familiarity with Student and his pragmatic and social communication needs.

The preponderance of the evidence proved San Dieguito's offer of 1,800 minutes yearly group speech and language services delivered in two weekly 30-minute sessions was appropriate to meet Student's speech and language needs. Student did not meet his burden of proving San Dieguito denied Student a FAPE by failing to include sufficient speech and language services in the March 11, 2022 IEP.

MARCH 11, 2022 IEP'S OFFER OF SPECIALIZED ACADEMIC INSTRUCTION

This Decision is limited to San Dieguito's offer of specialized academic instruction in the March 11, 2022 IEP. It does not consider the offer of specialized academic instruction in the May 26, 2022 IEP, which was not at issue in this hearing.

Along with regular education classes, at the time of the March 11, 2022 IEP team meeting Student had been receiving specialized academic in the co-taught English class, Academic Support, and general education homeroom. Student was earning A's and B's in all classes. Student met or made meaningful progress on all of his IEP goals, with the exception of his independence goal in which he made some progress. Student still struggled with reading comprehension and independence. Student had reading deficits and was reading below grade level as reflected on standardized assessments. Student successfully accessed the general education curriculum with the supports contained in the June 2, 2021 IEP, as amended on September 24, 2021. Parents were concerned Student's reading skills had regressed and he was overly dependent on his instructional aides.

To meet Student's 9 new goals, the March 11, 2022 IEP team offered a variety of supports, accommodations, special education, and related services. Related services included speech and language, behavior intervention consultation services by a board-certified behavior analyst, and a daily instructional aide in Student's general education classes. The offer contained similar extensive supports and accommodations as provided in the June 2, 2021 IEP, including

- breaking assignments into smaller parts,
- visual supports,
- preferential seating,
- a self-monitoring system with clear behavior expectation,
- notes, outlines, and instructions to supplement his own, and
- checking that Student wrote down his homework.

San Dieguito also offered to conduct a special circumstance instructional assistance assessment to determine Student's areas of need for continued instructional support and opportunities to increase Student's independence.

Special education and related services included specialized academic instruction inside and outside regular classes, consisting of

- 115 minutes weekly specialized academic instruction in a co-taught English class,
- 230 minutes specialized academic instruction in the Academic Support class, and
- 90 minutes weekly specialized academic instruction in general education homeroom.

The March 11, 2022 IEP offered 1,800 minutes of yearly group speech and language services, 300 minutes of yearly behavior intervention consultation services and extended school year services. Student would spend 82 percent of his time in the regular class, extracurricular and nonacademic activities, and 18 percent of time outside the regular class, extracurricular and nonacademic activities.

Student did not meet his burden of proving the amount of specialized academic instruction in the March 11, 2022 IEP was inappropriate for Student to make progress in light of his circumstances. Student's only witness on this issue was his Mother. Mother explained she had to provide support to Student at home to help him complete his homework and study for tests. However, Mother failed to describe why the offer of specialized academic instruction was not reasonably calculated to provide Student with

some educational benefit in the least restrictive environment. (*Gregory K., supra*, 811 F.2d at 1314; *Rowley, supra*, 458 U.S. at p. 203.) Parents misunderstood San Dieguito's obligations to Student.

To meet its substantive obligations, a district must merely provide an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Andrew F., supra*, 137 S. Ct. at p. 1001.) No one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203 fn. 25.) A student may derive educational benefit under *Rowley* if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. A student's failure to perform at grade level is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with his abilities. (See e.g., *K.D. v. Downingtown Area School Dist.* (3d Cir. 2018) 904 F.3d 248, 255-256; *Walczak v. Florida Union Free School Dist.* (2d Cir. 1998) 142 F.3d 119, 130; *E.S. v. Independent School Dist., No. 196* (8th Cir. 1998) 135 F.3d 566, 569; *In re Conklin* (4th Cir. 1991) 946 F.2d 306, 313; *El Paso Indep. School Dist. v. Robert W.* (W.D.Tex. 1995) 898 F.Supp. 442, 449-450; *M.P. v. Poway Unified School Dist.* (S.D.Cal. July 12, 2010, No. 09 CV 1627) 2010 WL 2735759, *11.)

Here, the March 11, 2022 IEP offered Student a robust program to address Student's area of need, which included specialized academic instruction in a co-taught English class, Academic Support, and homeroom. Student was offered 90 minutes weekly specialized academic instruction through one-to-one instruction with a special education teacher or aide under their supervision to remediate Student's reading and listening comprehension delays. In addition, the IEP offered Student extensive supports

and accommodations, including an instructional aide, equivalent to the June 2, 2021 IEP. The March 11, 2022 IEP's offer of FAPE was reasonably calculated to provide Student an educational benefit when offered, and did so, as evidenced by Student's progress on his annual IEP goals, classroom grades, and ability to access regular and special education. Student's progress toward goals, and his above-average to high grades, and ability to access regular and special education supported the appropriateness of the March 11, 2022 IEP's offer of specialized academic instruction. A preponderance of the evidence showed the March 11, 2022, IEP offer of specialized academic instruction was reasonably calculated to provide Student appropriate educational benefit in light of his circumstances.

Student did not meet his burden of proof on Issue 4 that San Dieguito denied Student a FAPE by failing to include sufficient specialized academic in the March 11, 2022 IEP. Student did not prevail on this issue.

ISSUE 9: DID SAN DIEGUITO DENY STUDENT A FAPE IN THE 2021-2022 SCHOOL YEAR BY FAILING TO PROVIDE MEANINGFUL SPECIALIZED ACADEMIC INSTRUCTION IN HIS CO-TAUGHT ENGLISH CLASS?

ISSUE 10: DID SAN DIEGUITO DENY STUDENT A FAPE IN THE 2021-2022 SCHOOL YEAR BY FAILING TO PROVIDE MEANINGFUL SPECIALIZED ACADEMIC INSTRUCTION SUPPORT FOR STUDENT TO MEET HIS READING AND LISTENING COMPREHENSION GOALS?

Student contends San Dieguito failed to provide meaningful specialized academic instruction in his co-taught English class during the 2021-2022 school year. Student

argues San Dieguito failed to include Student in small group instruction which prevented Student from making meaningful progress on his reading goals.

San Dieguito contends it implemented the 115 minutes of weekly specialized academic instruction called for in Student's June 2, 2021 IEP, as amended on September 24, 2021, from September 26, 2021, the dated Parents provided consent, through the end of the school year. San Dieguito further contends Student successfully accessed the seventh-grade English language arts curriculum with the supports provided by the June 2, 2021 IEP, as amended on September 24, 2021, including

- specialized academic instruction by a special education teacher,
- support of Student's instructional aides, and
- the additional 90 minutes weekly of specialized academic instruction by Kirchner and the aides in the general education homeroom.

San Dieguito contends Student achieved above-average grades and made progress towards his June 2, 2021 IEP reading goals.

When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. (*Van Duyn, supra*, 502 at p. 815.) A material failure occurs when there is more than a minor discrepancy between the services provided and those required in the IEP. (*Id.* at p. 822.)

General education teacher Grillot described the reading and listening comprehension strategies used in Student's co-taught English class. Novels and stories were delivered to the class visually and auditorily. Grillot asked whole class questions to check for understanding. Grillot checked regularly with Student's instructional aides to confirm Student's understanding of the materials. Students listened to portions of the

reading through audio as they followed along with the novel. Students engaged in whole class or paired discussions. Students listened to other students' class reports and projects and reported on what they learned. Grillot provided an example. On one occasion the class conducted presentations on Greek and Latin roots. Student listened to the presentation, took notes, and successfully passed a test on the subject matter. Grillot persuasively opined Student made progress in reading and listening comprehension over the course of the school year.

As discussed in Issue 2, Kirchner utilized a variety of strategies for reading and listening comprehension, including going through the novels chapter by chapter, pre-teaching the chapters, checking for understanding, and facilitating class discussion. Kirchner highlighted terms in the readings and used visualization techniques. Kirchner and Student's instructional aide reinforced Student's reading and listening comprehension skills through the 90 minutes of weekly specialized academic instruction.

At hearing, Parents suggested Student should have been included in small groups to facilitate his reading and listening skills. Student did not offer any testimony explaining why this was necessary for Student to make progress towards his reading and listening comprehension goals or explain how San Dieguito's teaching methods did not allow Student to obtain educational benefit. Further, this conflicted with Grillot's persuasive testimony Student participated in paired and small group discussions and class presentations. Student relied on the fact his reading was below grade level to support his belief San Dieguito denied him a FAPE. However, there was no question Student was reading below grade level based upon his disability and required special education and related services to access the general education curriculum. Student reading below grade level was not determinative of whether San Dieguito provided Student a FAPE. The IDEA does not require that students with special education services

perform on par with students receiving general education instruction. (*Andrew F., supra*, 137 S.Ct. at p. 1001.) Rather, a Student's program must be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Id.* at pp. 1314-1315; *Rowley, supra*, 458 U.S. at p. 203.)

The overwhelming weight of the evidence proved San Dieguito provided meaningful specialized academic instruction in the seventh-grade English class sufficient to provide Student educational benefit and make progress towards his IEP goals. Student accessed the seventh-grade curriculum and obtained above-average grades. Grillot and Kirchner credibly testified Student accessed regular education, correctly completed classwork and homework, and actively participated during regular education classes. At the time of Student's annual IEP team meeting on February 25, 2022, had Student earned a B+ in English.

By the annual IEP team meeting on February 25, 2022, Student made some progress on his reading comprehension goal, Goal 1. Student averaged 65 percent accuracy and continued to need adult support to understand inferences from texts. By the end of the school year, Student increased his accuracy to 72 percent. Student made progress on his listening comprehension goal, Goal 2, which required him to listen to a fifth-grade level story and independently identify four of five events from the story. Student's accuracy improved to 80 percent from 75 percent from the prior annual IEP in June 2021. By the end of the school year, Student's accuracy increased to 87 percent.

In summary, the weight of the evidence proved San Dieguito provided Student meaningful specialize academic instruction sufficient for Student to receive an educational benefit and to make progress towards his reading goals. Student did not meet his burden of proof on Issues 9 and 10.

ISSUE 11: DID SAN DIEGUITO DENY STUDENT A FAPE IN THE 2021-2022 SCHOOL YEAR BY FAILING TO RESPOND TO STUDENT'S DECLINE IN READING SKILLS?

Student contends San Dieguito should have offered Student additional specialized academic minutes to allow him to make meaningful progress towards his reading goals. Student argues Parents requested additional specialized academic instruction at the December 10, 2021 and February 25, March 4, and March 11, 2022 IEP team meetings, but San Dieguito refused. Student further contends his results on the STAR Reading assessments showed his reading skills regressed over the course of the 2021-2022 school year.

San Dieguito argues an increase of specialized academic minutes was unnecessary in light of Student's progress. San Dieguito contends Student overly relied on his STAR reading assessments scores, which was only one measurement of Student's progress. It asserts Student's progress was more accurately measured by Student's assessments, classwork, homework, quiz and test scores, and teacher and service provider observations.

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, not that preferred by the parent. (*Gregory K., supra*, 811 F.2d at p. 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the child. (*Ibid.*) For a school district's offer of special education services to constitute a FAPE under the IDEA, the offer must

- be designed to meet the student's unique needs,
- comport with his IEP, and

- be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Id.* at pp. 1314-1315; *Rowley, supra*, 458 U.S. at p. 203.)

When conducting a review of a district's proposed program, an ALJ must evaluate the adequacy of the IEP based on information available to the district at the time the IEP was developed, and by what was reasonable at the time and not in hindsight. (*Adams, supra*, 195 F.3d at p. 1149.)

OPINIONS BY PROGRAM SUPERVISOR MONICA DAVEY

Program Supervisor Monica Davey testified at hearing. Davey was San Dieguito's Program Supervisor of Special Education since 2018. Davey was responsible for supporting IEP teams within the district and implementation of services at two school sites. Davey held a bachelor's degree in psychology and a master's degree in educational psychology. Student held a pupil personnel services credential. Davey previously was a school psychologist at San Dieguito. She had 13 years of experience working in special education.

Davey attended all seven IEP team meetings held for Student over the 2021-2022 school year. Davey observed Student and his instructional aides on multiple occasions over the 2021-2022 school year. Davey communicated with Parents on a regular basis, typically at least weekly.

Parents expressed concerns at the December 10, 2021 IEP team meeting Student was not making progress towards his reading and listening comprehension goals. San Dieguito believed Student was making progress in the general education curriculum as evidence by his grades, social engagement, and lack of negative behaviors. Parents

requested additional specialized academic instruction in the Academic Support class by Student's instructional aide in lieu of workability and social-emotional learning lessons. At hearing, Davey testified the December 10, 2021 IEP team agreed Kirchner or Student's instructional aides would work with Student during workability lessons. Further, Kirchner reported she was starting a new computer-based reading program called ReadWorks to support Student's reading goals. At hearing, Kirchner explained she worked with Student on the new reading program, particularly in the area of inferences, following the December 10, 2021, IEP team meeting.

At the February 25, 2022 IEP team meeting, Parents reiterated Student had not made progress on his reading and listening comprehension skills. The February 25, 2022 IEP team meeting considered Parents' concerns about Student's progress towards his reading goals. At the time, Student had a B+ in English. The IEP team, with the exception of Parents, determined Student had made progress towards his reading and listening comprehension goals. The February 25, 2022 IEP team determined Student's comprehension was stronger when he was provided audio versions of the text along with written text. The IEP team agreed to conduct additional reading trials with audio to determine if Student required this accommodation in his IEP to support his reading comprehension goal. The IEP team also advised Parents of a Learning Recovery Matrix program taught by a special education teacher available to Student to support potential learning loss and executive functioning for students with disabilities due to the COVID-19 school closures. Student participated in six of the eight sessions offered.

At the March 4, 2022, IEP team meeting, Parents reported Student's reading had regressed based on Student's January 24, 2022 score on the STAR Reading assessment.

Student's score reflected his overall reading was at the third-grade, fourth month level. The STAR Reading assessment was a computer-based reading assessment administered to students at Pacific Trails three times over the course of the school year.

At hearing, Davey explained Student's STAR reading assessments were not indicative of Student's overall reading abilities or his ability to access the seventh-grade curriculum. Student consistently scored below average in reading and listening comprehension assessments throughout his education, as indicated by the Del Mar IEP team's March 2021 Multidisciplinary Assessment and Report. Student's first STAR assessment at San Dieguito was administered on August 30, 2021, only 10 days into the 2021-2022 school year. Student scored at the third-grade, nine-month level. In January 2022, Student's STAR Reading assessment was also at a third-grade level. Davey opined these scores under-represented Student's reading skills. Student accessed the seventh-grade English curriculum, and by the May 26, 2022 IEP team meeting Student's baseline reading ability was at the sixth-grade level. By the end of the school year, Student increased the accuracy on his reading comprehension goal, Goal 1, from 73 percent as of February 25, 2022, to 80 percent by June 9, 2022. Davey's testimony that Student made steady progress on his reading and listening comprehension goals was credible and uncontradicted by any expert testimony.

At the March 4, 2022, IEP team meeting, Parents requested a new reading comprehension goal targeting Student's area of need in sequencing events. The IEP team agreed to gather additional data to establish the need and a baseline. Following the March 4, 2022, IEP team meeting, Kirchner gathered reading comprehension data

for Student. The IEP team reconvened on March 11, 2022. Kirchner shared the reading comprehension data with the IEP team. Based on the baseline data, the IEP team recommended developing a new reading comprehension goal in sequencing. The new reading comprehension goal was subsequently added at part four of the IEP held on May 27, 2022.

Throughout the hearing, Student questioned San Dieguito's witnesses about the basis for Student's low scores on the STAR Reading assessments. At the IEP team meetings and at hearing, San Dieguito's witnesses did not demonstrate an understanding of how to interpret the STAR Reading assessment results, other than to agree Student was reading below grade level. However, Student performing below grade level was not determinative of whether San Dieguito provided Student a FAPE. The IDEA does not require that students with special education services perform on par with students receiving general education instruction. (*Andrew F., supra.*) Instead, it requires that an IEP be tailored to a student's circumstances and reasonably calculated to help that student progress in light of those circumstances. San Dieguito met that standard here.

The testimony of San Dieguito's witnesses including Grillot, Kirchner, and Davey was persuasive on this point. Student's scores on the STAR Reading assessment was only one measure of Student's reading abilities. The STAR Reading assessment was a timed, computer-based test which Student took without instructional aide support. In Grillot's view, Student could access seventh-grade level texts with appropriate fluency, intonation, and accuracy despite the STAR Reading assessment results. With the

support of his specialized academic instruction, instructional aide and his IEP supports, Student accessed the seventh-grade general education curriculum. Grillot's opinions were persuasive based on her credentials, experience and familiarity with Student and his abilities.

Like Grillot, Kirchner believed the STAR Reading assessments did not depict a complete picture of Student's reading abilities. Kirchner opined Student's reading and listening comprehension skills improved through the specialized instruction provided to Student. She opined Student made progress on making inferences and achieved his reading comprehension goal with 72 percent accuracy reading fifth-grade text and 71 percent accuracy reading sixth-grade text. In listening comprehension, Student did not meet the annual goal which required 100 percent accuracy but achieved 80 percent accuracy by the annual review and 87 percent accuracy by the end of the school year.

The IEP teams considered

- Parents, concerns,
- reviewed Student's progress towards his reading goals,
- gathered data and
- developed a new reading comprehension goal.

The weight of the evidence established the December 10, 2021 and February 25, March 4, and March 11, 2022 IEP teams acted reasonably in responding to Parents concerns Student had regressed in his reading skills based on the information available at the time and not in hindsight. (*Adams, supra*, 195 F.3d at p. 1149.)

Student did not meet his burden of proof on Issue 11. Student did not prevail on this issue.

ISSUE 12: DID SAN DIEGUITO COMMIT A PROCEDURAL VIOLATION THAT DENIED STUDENT A FAPE IN THE 2021-2022 SCHOOL YEAR BY FAILING TO INFORM PARENTS THERE WAS READING INTERVENTION CLASS BEING OFFERED TO OTHER STUDENTS, THEREBY MATERIALLY IMPEDING PARENTAL PARTICIPATION IN THE DEVELOPMENT OF STUDENT'S IEP?

Student argues San Dieguito should have told Parents about a reading intervention program, specifically, the READ 180 Program, available to general education students, depriving them of meaningful participation in the development of the March 11, 2022 IEP.

San Dieguito contends the general education READ 180 program was not an appropriate class for Student because he required specialized academic instruction to meet his reading and listening comprehension goals.

Student believed his disability required a research-based reading intervention program, such as READ 180. Student offered no expert opinion or other persuasive evidence to support this contention. Student also believed San Dieguito should have told Parents about the READ 180 program and this omission denied Parents' meaningful participation in the development of Student's IEP. The evidence proved Student's IEP teams did not tell Parents about this program.

Student did not offer any evidence explaining how San Dieguito's failure to advise Parents of the general education READ 180 program impeded their participation, impeded Student's right to a FAPE or denied Student educational benefit. (Ed. Code, § 56505, subd. (f)(2); *Target Range, supra*, 960 F.2d 1479, 1484.) Student did not demonstrate the READ 180 program was necessary for Student to make progress towards his educational goals.

Although Parents preferred the READ 180 program, the preponderance of evidence proved Student required specialized academic instruction to make progress towards his reading goals, but not necessarily the READ 180 program. The READ 180 program was an intensive computer-based reading program offered to general education students at Pacific Trails. At hearing all the witnesses, including Mother, testified Student had difficulties working independently on computer-based programs due to his off-task behavior and required one-on-one support. Student required the support of his special education teacher or instructional aide to remain on task and provide Student reading comprehension supports including pre-teaching vocabulary, using visualization, and checking for understanding. Student introduced no evidence the methods selected for Student by San Dieguito were inappropriate under the IDEA, nor that Student did not receive educational benefit. Student also did not prove the failure of San Dieguito to tell Parents about the READ 180 program denied Parents meaningful participation in development of the March 11, 2022 IEP. Student did not meet his burden of proof on Issue 12.

ISSUES 8(B) AND (C): DID SAN DIEGUITO COMMIT PROCEDURAL VIOLATIONS THAT DENIED STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR BY FAILING TO PROVIDE PRIOR WRITTEN NOTICE FOR ITS

DECISION AT THE DECEMBER 10, 2021 IEP TEAM MEETING TO DENY PARENTS' REQUEST FOR SPECIALIZED ACADEMIC INSTRUCTION AND TO REMOVE STUDENT FROM THE WORKABILITY PROGRAM OR FAILING TO PROVIDE STUDENT'S FIRST SEMESTER PROGRESS REPORTS IN A TIMELY MANNER?

Student contends San Dieguito committed procedural violations during the 2021-2022 school year which denied Student a FAPE. San Dieguito denies it committed any procedural violations, and contends to the extent any procedural violations occurred, they did not impede Student's right to a FAPE, deny Parents' meaningful participation, or cause a loss of educational benefit.

FAILING TO SEND PRIOR WRITTEN NOTICE AFTER THE DECEMBER 2021 IEP

Student contends San Dieguito failed to provide Parents a prior written notice following Parents' requests at the November 12 and December 10, 2021 IEP amendment meetings to increase his specialized academic instruction.

San Dieguito concedes it did not issue a prior written notice following the December 10, 2021 IEP team meeting but argues this did not deny Parents' meaningful participation in the IEP process or deprive Student of educational benefit.

A school district must provide prior written notice to the parents of a student whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the student, or the provision of a

FAPE to a student. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (a).) The notice must contain:

1. a description of the action proposed or refused by the agency,
2. an explanation for the action, and
3. a description of the assessment, procedure or report which is the basis of the action. (34 C.F.R. § 300.503(a); Ed. Code, § 56400.4, subd. (b).)

A prior written notice must meet these specific requirements to protect parents' rights and participation. (20 U.S.C. § 1415(c)(1); 34 C.F.R. § 300.503(b).) A prior written notice must be sent at a "reasonable time" before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a FAPE. (34 C.F.R. § 300.503(a).) An IEP document can serve as a prior written notice as long as the IEP contains the required content of a prior written notice. (71 Fed. Reg. 46,540, 46,691 (2006).)

As discussed in Issue 8(A) above, Parents requested Student be removed from the workability and social-emotional learning components of the Academic Support class and to increase Student's specialized academic instruction minutes. The December 10, 2021, IEP team declined to remove Student from workability and social-emotional learning lessons because they were embedded the class curriculum. The IEP team further believed these lessons contributed to Student making progress towards his IEP goals. San Dieguito did not provide Parents a copy of the November 12, 2021 IEP until April 2022. San Dieguito did not provide Parents a copy of the December 10, 2021 IEP documents during the 2021-2022 school year. The November 12 and December 10, 2021 IEP documents therefore did not serve as prior written notice.

San Dieguito also did not provide a prior written notice following the November 12 or December 10, 2021 IEP team meetings. San Dieguito issued a prior written notice on March 8, 2022 following further requests by Parents that Student's specialized academic minutes be increased and Student not participate in workability and social-emotional lessons. While San Dieguito was not required to agree to Parents' requests, San Dieguito was still required to provide written notice to Parents explaining why it was refusing these requests. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a); Ed. Code, § 56500.4.)

San Dieguito's failure to timely provide prior written notice in response to Parents' request to increase Student's specialized academic instruction and remove him from workability and social-emotional learning lessons constituted a procedural violation of the IDEA. However, Student did not prove San Dieguito's failure to provide a prior written notice impeded Student's right to a FAPE or caused a deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2); *Target Range, supra*, 960 F.2d at p. 1484.) Student also did not establish the failure to provide Parents a prior written notice seriously infringed on Parents' opportunity to participate in the IEP formation process. (*R.B., ex rel. F.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 938 [citations omitted].)

Parents were actively involved in the November 12 and December 10, 2021 IEP team meetings where the issue of increasing Student's specialized academic instruction and removing Student from social-emotional learning and vocational lessons was discussed. The IEP team listened to Parents' concerns, explained why they did not believe it was appropriate to increase Student's specialized academic instruction, and explained why they believed the workability and social-emotional learning were appropriate. Student did not offer any evidence explaining how the failure to receive a prior written notice impeded their participation, impeded Student's right to a FAPE or

denied Student educational benefit. (Ed. Code, § 56505, subd. (f)(2); *Target Range*, *supra*, 960 F.2d 1479, 1484.) While Parents disagreed with San Dieguito's decision not to increase Student's specialized academic instruction or remove Student from social-emotional learning and vocational lessons, this was not sufficient to establish the failure to send prior written notice significantly impeded their IEP participation. Further, the denial of educational benefit to Student was based on San Dieguito's delivery of workability lessons to Student in place of specialized academic instruction as discussed in Issue 8(A) and was not the result of San Dieguito's failure to provide a prior written notice in response to Parents' questions. Student did not meet his burden of proof on this issue.

FAILING TO PROVIDE FIRST SEMESTER PROGRESS REPORTS IN A TIMELY MANNER

Student contends San Dieguito failed to timely provide Student's first semester progress reports on Student's IEP goals in a timely manner. Student contends he received progress reports in mid-November of each year while enrolled in Del Mar but did not receive San Dieguito's first semester progress report until December 2021. Parents argued this denied them meaningful participation in the IEP process.

San Dieguito contends it timely provided Student's first semester goal progress report on December 14, 2021.

Student's June 2, 2021 IEP required San Dieguito to provide Parents progress reports on a trimester basis. The evidence proved San Dieguito sent Parents a goal progress report on each of Student's June 2, 2021 IEP goals on December 14, 2021. Student offered no evidence disputing this fact or explaining why he believes the goal progress reports were required to be sent earlier. Further the overwhelming weight of

the evidence proved Parents communicated with members of Student's IEP team, including Kirchner, Chowdhury, and Davey on a frequent basis; sometime as often as daily during the 2021-2022 school year. No evidence was offered suggesting Parents were unaware of Student's progress or denied meaningful participation in the IEP process based on the alleged failure to timely receive Student's first semester IEP progress reports. (*Target Range, supra*, 960 F.2d at p. 1484.)

Student did not prevail on this issue.

ISSUE 13: DID SAN DIEGUITO FAIL TO PROVIDE STUDENT'S EDUCATIONAL RECORD IN RESPONSE TO PARENT'S REQUEST ON APRIL 19, 2022 THEREBY MATERIALLY IMPEDING PARENTAL PARTICIPATION AT THE MAY 26, 2022, IEP TEAM MEETING?

Student contends San Dieguito denied Parents meaningful participation in the May 26, 2022, IEP team meeting by failing to provide speech-therapist Chowdhury's personal notes within five business days of Parents' written request on April 19, 2022. San Dieguito contends it timely provided Parents copies of Student's educational records. San Dieguito further argues it was not required to provide Parents copies of Chowdhury's personal notes, but in a good faith attempt to address Parents' concerns it provided Parents an opportunity to review Chowdhury's personal notes on May 5, 2022.

Parents have the right to request and receive a student's education records within five business of their request. (Ed. Code, § 56504.) Pupil or educational records do not include personal notes which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute. (Ed. Code, § 49061(b).)

On April 19, 2022, Parents requested copies of all speech and language data sheets created for Student for the 2021-2022 school year. Parents requested that each data sheet contain the date of the session, the therapists who worked with Student, what was worked on, and Student's progress notes. At hearing, Student offered no evidence suggesting San Dieguito did not timely respond to the request. Student also requested copies of Chowdhury's personal notes. At hearing, Chowdhury explained the notes were personal to her and were meant to jog her memory. Chowdhury's personal notes did not have Student's name on them, were not put in Student's educational file, and were not given to other therapists or third parties. She explained she provided Parents an opportunity to review her notes following their observation of Chowdhury's speech and language session on May 5, 2022.

At hearing, Student failed to introduce any evidence of how some allegedly missing information from Chowdhury's personal notes not only affected Parents' participation in educational decision-making but rose to the level of significantly impeding Parent's participation. Only Mother testified. Mother offered no testimony explaining how the impact of any allegedly missing documents adversely affected her ability to understand Student's educational or other developmental needs and to be involved in Student's educational decision-making.

Student failed to carry his burden of production and persuasion on this issue and did not prove by a preponderance of the evidence San Dieguito denied Student a FAPE by failing to timely produce Chowdhury's personal notes. Student did not prevail on Issue 13.

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:

San Dieguito did not deny Student a FAPE during the 2021-2022 school year by failing to provide the speech and language services set out in Student's June 2, 2021 IEP.

San Dieguito prevailed on Issue 1.

ISSUE 2:

San Dieguito did not deny Student a FAPE during the 2021-2022 school year by failing to provide specialized academic instruction as set out in Student's June 2, 2021 IEP.

San Dieguito prevailed on Issue 2.

ISSUE 3(A):

San Dieguito denied Student a FAPE during the 2021-2022 school year by failing to implement a Self and Match system for Student's independent functioning.

Student prevailed on Issue 3(A).

ISSUE 3(B):

Dieguito did not deny Student a FAPE during the 2021-2022 school year by failing to implement a fading plan for the special circumstances instructional aide support.

San Dieguito prevailed on Issue 3(B).

ISSUE 3(C):

San Dieguito did not deny Student a FAPE during the 2021-2022 school year by failing to provide an appropriately trained one-to-one special circumstances instruction aide.

San Dieguito prevailed on Issue 3(C).

ISSUE 4:

San Dieguito did not deny Student a FAPE during the 2021-2022 school year by failing to include sufficient specialized academic instruction and speech and language services in the March 11, 2022 IEP.

San Dieguito prevailed on Issue 4.

ISSUE 5:

San Dieguito did not deny Student a FAPE by committing procedural violations in development of the March 11, 2022 IEP by failing to have adequate, appropriate, and complete goals in

- listening comprehension,
- mathematics,

- independent functioning,
- writing,
- perspective,
- behavior, and
- event sequencing.

San Dieguito prevailed on Issue 5.

ISSUE 6:

San Dieguito did not deny Student a FAPE by committing procedural violations in the development of the March 11, 2022 IEP by failing to correctly report Student's progress on his goals in mathematics, speech (story communication), and executive functioning (engagement in work in the general education environment), thereby materially impeding parental participation in the formulation of Student's educational program.

San Dieguito prevailed on Issue 6.

ISSUE 7:

San Dieguito did not deny Student a FAPE from December 2021 by allowing persons without credentials required by Student's June 2, 2021 IEP to provide speech therapy services.

San Dieguito prevailed on Issue 7.

ISSUE 8(A):

San Dieguito substantively denied Student a FAPE in the 2021-2022 school year by unilaterally substituting workability for part of his agreed-upon specialized academic instruction services. San Dieguito did not commit a substantive violation that denied Student a FAPE by providing social-emotional learning for part of his agreed upon-specialized academic instruction services.

Student partially prevailed on Issue 8(A).

ISSUE 8(B):

San Dieguito did not commit a procedural violation that denied Student a FAPE in the 2021-2022 school year by failing to provide prior written notice for its decision at the December 10, 2021 IEP team meeting to deny Parents' request for more specialized academic instruction support and to remove Student from the Workability program.

San Dieguito prevailed on Issue 8(B).

ISSUE 8(C):

San Dieguito did not commit a procedural violation that denied Student a FAPE in the 2021-2022 school year by failing to provide Student's first semester progress reports in a timely manner.

San Dieguito prevailed on Issue 8(C).

ISSUE 9:

San Dieguito did not deny Student a FAPE in the 2021-2022 school year by failing to provide meaningful specialized academic instruction support in his co-taught English class.

San Dieguito prevailed on Issue 9.

ISSUE 10:

San Dieguito did not deny Student a FAPE in the 2021-2022 school year by failing to provide meaningful specialized academic instruction support for him to meet his reading and listening comprehension goals.

San Dieguito prevailed on Issue 10.

ISSUE 11:

San Dieguito did not deny Student a FAPE in the 2021-2022 school year by failing to respond to the decline in his reading skills.

San Dieguito prevailed on Issue 11.

ISSUE 12:

San Dieguito did not commit a procedural violation that denied Student a FAPE in the 2021-2022 school year by failing to inform Parents that there was a reading intervention class being offered to other students, thereby materially impeding parental participation in the development of Student's IEP.

San Dieguito prevailed on Issue 12.

ISSUE 13:

San Dieguito did not fail to provide Student's educational record in response to Parent's request on April 19, 2022, thereby materially impeding parental participation at the May 26, 2022 IEP team meeting.

San Dieguito prevailed on Issue 13.

REMEDIES

Student prevailed on Issue 3(A) and partially prevailed on Issue 8(A), regarding workability. As a remedy, for Issue 3(A) Student requests San Dieguito implement an evidence-based intervention to increase Student's independence. For Issue 8(A), Student seeks reimbursement in the amount of \$6,290 for private speech and language and academic tutoring services to address Student's reading comprehension needs. Student further seeks reimbursement in the amount of \$8,500 for an intensive summer program from the Encinitas Learning Center focused on independent function, cognitive processing skills and reading comprehension.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were proper under the IDEA and replaced services that the district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *Burlington, supra*, 471 U.S. at pp. 369-371.)

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*)). An award of compensatory education need not provide a day-for-day compensation. (*Id.* at pp. 1496-1497.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531 F.Supp.2d 245, 265; *Orange Unified School Dist. v. C.K.* (C.D.Cal. June 4, 2012, No. SACV 11-1253 JVS(MLGx) 2012 WL 247839, *12.) A student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3).) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Puyallup, supra*, 31 F.3d at pp. 1496-1497.)

An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524 citing *Puyallup, supra*, 31 F.3d at p. 1497.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid ex rel. Reid, supra*, 401 F.3d at p. 524.)

As discussed in Issues 3(A) and 8(A), San Dieguito denied Student a FAPE by failing to implement Student's self-monitoring accommodation and by including vocational lessons as part of Student's specialized academic instruction. (Ed. Code, § 56505, subd. (f)(1).) Student is therefore entitled to a remedy. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific student involved, or to remedy violations that may benefit other students. (*Ibid.*)

As a remedy for Issue 3(A), Student requests San Dieguito implement an evidence-based intervention to increase Student's independence. However, San Dieguito implemented the self-monitoring system based in applied behavior analysis after March 11, 2022 and Student met his independence goal. As a remedy for Issue 8(A), Student requests reimbursement of tutoring expenses for services provided by a speech and language pathologist from another state as well as other providers, whose qualifications were not established at hearing. Further, many of the tutoring hours were incurred prior to the start of the 2021-2022 school year. Student offered no evidence establishing these services provided Student educational benefit in his areas of need. Student's request for reimbursement of private tutoring expenses is denied.

Student provided no basis to support his request for reimbursement of \$8,500 for a summer program at the Encinitas Learning Center. Student offered no witness or expert testimony explaining how this program related to Student's unique needs or addressed the violations in Issue 8(A). Student's request for reimbursement for the summer program at Encinitas Learning Center is denied.

Student's other remedy requests are denied as being too remote from the narrow denial of FAPE found in this Decision. For purpose of calculating a remedy for Issue 3(A) and Issue 8(A), the ALJ relied on San Dieguito's school calendar for the 2021-2022 school year.

San Dieguito's staff demonstrated confusion about the existence of Student's self-monitoring accommodation or how to implement the accommodation in the general education setting at Pacific Trails. Accordingly, as a remedy for Issue 3(A), training of Pacific Trail's administrators and staff on implementing accommodations is warranted.

For Issue 8(A), the ALJ determined there were 31 weeks of school between Student's consent to the June 2, 2021 IEP, as amended on September 24, 2021, and the end of the 2021-2022 school year. Viewing the evidence most favorably to Student, Student missed approximately 1 hour per week of specialized academic instruction in his Academic Support class during workability lessons. As a remedy for this denial of FAPE, Student is entitled to a total of 31 hours of compensatory education in the area of academics.

ORDER

1. San Dieguito shall provide two hours of training to staff and administrators to ensure that teachers and staff who implement IEPs are trained in the implementation of IEP accommodations. Training participants shall include administrators and staff who oversaw Student's special education

program during the 2021-2022 school year, and all general education teachers who taught Student during the 2021-2022 school year. The training shall be completed by August 31, 2023.

2. San Dieguito shall provide Student with a total of 31 hours of compensatory education in the area of academics.
3. San Dieguito shall provide and fund the services through its Special Education Local Plan Area contractors or a certified non-public agency with whom San Dieguito contracts, at Parents' discretion and choice. Any services not used by December 31, 2023 shall be forfeited.
4. All other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

/s/

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings