

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED SCHOOL DISTRICT.

CASE NO. 2023020915

DECISION

OCTOBER 18, 2023

On February 28, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming the Placentia-Yorba Linda Unified School District. OAH continued the matter for good cause on April 6, 2023. Administrative Law Judge Charles Marson heard this matter by videoconference on August 15, 16, 17, 18, 22, 23, 24 and 25, 2023.

Attorneys Timothy A. Adams and Andrea M. Blair represented Student. Student's Mother attended the hearing each day on behalf of Student. Student did not attend the hearing. Attorneys S. Daniel Harbottle and Tori Hirsch represented Placentia-Yorba Linda. Renee Gray, Placentia-Yorba Linda's Executive Director of Special Education, attended the hearing each day on behalf of Placentia-Yorba Linda.

At the parties' request, the matter was continued to September 18, 2023, for written closing briefs. The record was closed, and the matter was submitted on September 18, 2023.

## ISSUES

1. Did Placentia-Yorba Linda deny Student a FAPE in the school year 2019-2020, starting on March 13, 2020, by failing to provide to Parents prior written notice of changes in Student's program in response to the March 2020 school closures related to the COVID-19 pandemic?
2. Did Placentia-Yorba Linda deny Student a FAPE by failing to implement Student's then-current IEP during the COVID-19 pandemic?
3. Did Placentia-Yorba Linda deny Student a FAPE by failing to have an IEP in place for him at the beginning of the 2020-2021 school year, failing to provide a legally compliant IEP, and failing to provide an appropriate education during the COVID-19 closure of school, specifically because the then-effective IEP did not address:
  - A. Student's inability to work independently;
  - B. Student's need for Parent to sit next to him during learning;
  - C. Student's frustration, anger and sense of being overwhelmed;
  - D. The failure to address his goals;
  - E. His struggles with math; and
  - F. His refusal to cooperate with occupational therapy?

4. Did Placentia-Yorba Linda deny Student a FAPE by failing to make an appropriate offer of placement, services and goals in the IEP's developed on May 20, October 8, October 13, and December 3, 2020, specifically because each IEP failed to provide:
- A. Legally compliant goals to address:
    - Reading;
    - Writing;
    - Math;
    - Sensory processing;
    - Fine motor skills;
    - Social/emotional needs;
    - Communication;
    - Assistive technology;
    - Attention;
    - Pragmatics;
    - Perspective taking;
    - Sensory processing deficits; and
    - Behavior?
  - B. Adequate aide support services;
  - C. Adequate counseling services;
  - D. Adequate Parent training services; and
  - E. Services and placement adequate to address and support goals in the areas identified above?

5. Did Placentia-Yorba Linda deny Student a FAPE by failing to file for due process when Student's mother did not consent to the September 24, December 8, and 13, 2021 IEP's? Did Placentia-Yorba Linda deny Student a FAPE by failing to provide prior written notice in response to Parent's requests throughout the 2021-2022 school year, specifically:
  - A. Parent's request on September 24, 2021, for a change of placement to general education science and social studies classes;
  - B. Parent's request on October 8, 2021, for a change of placement to general education science and social studies classes; and
  - C. Parent's request on January 3, 2022, for multisensory instruction?
6. Did Placentia-Yorba Linda deny Student a FAPE by failing to address the fact that Student was being bullied over the course of the 2020-2021 and 2021-2022 school years?
7. Did Placentia-Yorba Linda deny Student a FAPE in the IEP's developed on December 8 and 13, 2021, and by failing to make an appropriate offer of placement, services and goals, specifically because each IEP failed to offer:
  - A. Legally compliant goals to address:
    - Word reading;
    - Numerical operations;
    - Pseudoword decoding;
    - Oral reading fluency
    - Addition math fluency;
    - Visual perception;

- Working memory;
- Organization of materials;
- Emotional regulation;
- Emotional control;
- Behavioral regulation;
- Planning/organization;
- Shifting;
- Hyperactivity;
- Depression;
- Somatization;
- Internalizing problems;
- Attention;
- Atypicality;
- Withdrawal;
- Behavioral symptoms;
- Semantic relationships;
- Speech intelligibility-volume;
- Over articulation;
- Verbal problem solving;
- Organization of information;
- Understanding lengthy and complex information;
- Producing complex sentences with appropriate structure and morphology;
- Self-monitoring;
- Task monitoring;

- Cognitive regulation; and
  - Graphomotor concerns in the areas of speed of production, legibility, letter formation consistency, pressure and effortfulness, line adherence and case errors?
- B. Adequate services and placement to appropriately address and support goals in the areas identified immediately above?
8. Did Placentia-Yorba Linda deny Student a FAPE in the IEP's developed on May 12, June 8, September 9, and December 9, 2022, and by failing to make an appropriate offer of placement, services, and goals, specifically because each IEP failed to offer:
- A. Legally compliant goals to address:
- Word reading;
  - Numerical operations;
  - Pseudoword decoding;
  - Oral reading fluency;
  - Addition math fluency;
  - Visual perception;
  - Working memory;
  - Organization of materials;
  - Emotional regulation;
  - Emotional control;
  - Behavioral regulation;
  - Planning/organization;
  - Shifting;

- Hyperactivity;
- Depression;
- Somatization;
- Internalizing problems;
- Attention;
- Atypicality;
- Withdrawal;
- Behavioral symptoms;
- Semantic relationships;
- Speech intelligibility-volume;
- Over articulation;
- Verbal problem solving;
- Organization of information;
- Understanding lengthy and complex information;
- Producing complex sentences with appropriate structure and morphology;
- Self-monitoring;
- Task monitoring;
- Cognitive regulation; and
- Graphomotor concerns in the areas of speed of production, legibility, letter formation consistency, pressure and effortfulness, line adherence and case errors?

B. Adequate services and placement to appropriately address and support goals in the areas identified immediately above?

9. Did Placentia-Yorba Linda Unified deny Student a FAPE in the IEP developed on May 3, 4, 23, and 30, 2023 by failing to make an appropriate offer of placement, services and goals, specifically by failing to offer:

A. Legally compliant goals to adequately address:

- Withdrawal;
- Behavioral symptoms;
- Semantic relationships;
- Speech Numerical operations;
- Pseudoword decoding;
- Oral reading fluency;
- Addition math fluency;
- Visual perception;
- Working memory;
- Organization of materials;
- Emotional regulation;
- Emotional control;
- Behavioral regulation;
- Planning/organization;
- Shifting;
- Hyperactivity;
- Depression;
- Somatization;
- Internalizing problems;
- Attention;
- Atypicality;



- intelligibility-volume;
- Over articulation;
- Verbal problem solving;
- Organization of information;
- Understanding lengthy and complex information;
- Producing complex sentences with appropriate structure and morphology;
- Self-monitoring;
- Task monitoring;
- Cognitive regulation;
- Graphomotor concerns in the areas of speed of production, legibility, letter formation consistency, pressure and effortfulness, line adherence and case errors;
- Recognition memory;
- Visual recall memory;
- Visually directed tasks for eyes guiding hand;
- Numerical number printing;
- Word recognition and comprehension;
- Comparing fractions;
- Multiplication and division;
- Converting fractions and mixed numbers;
- Simplifying fractions;
- Simplifying expressions;
- Ordering integers;
- Dividing decimals;

- Order of operations;
- Writing;
- Editing;
- Social interactions with peers and adults;
- Visual/spatial organization challenges;
- Speech intelligibility;
- Conversational skills;
- Perspective-taking;
- Auditory processing;
- Social skills; and
- Anxiety?

B. Appropriate services and placement to adequately address and support goals in the areas identified immediately above?

During the discussion of issues at the prehearing conference, the ALJ invited Student to file a clarification of issues before the hearing. Student filed a clarification on August 10, 2023. Placentia-Yorba Linda did not object to the clarification, and later stipulated to its accuracy. The issues statement in this Decision has been revised accordingly to include the following issues, which were addressed at hearing:

- Did Placentia-Yorba Linda deny Student a FAPE by failing to have an IEP in place for him at the beginning of the 2020-2021 school year and to provide him an appropriate education during the COVID-19 closure of school?

- Did Placentia-Yorba Linda deny Student a FAPE by failing to make an appropriate offer of placement, services, and goals in the IEP's developed on May 3 and 4, June 18, September 24, and December 8 and 13, 2021?

## JURISDICTION

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

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. §§ 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); 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]; see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this matter, Student had the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was thirteen years old and in seventh grade at the time of hearing. He resided within Placentia-Yorba Linda's geographic boundaries at all relevant times. Student was eligible for special education in the categories of Specific Learning Disability and Other Health Impaired.

ISSUE NO. 1: DID PLACENTIA-YORBA LINDA DENY STUDENT A FAPE IN THE SCHOOL YEAR 2019-2020, STARTING ON MARCH 13, 2020, BY FAILING TO PROVIDE PARENTS PRIOR WRITTEN NOTICE OF CHANGES IN STUDENT'S PROGRAM IN RESPONSE TO THE MARCH 2020 SCHOOL CLOSURES RELATED TO THE COVID-19 PANDEMIC?

Because Student's request for due process hearing was filed on February 28, 2023, this issue would normally be barred by the two-year statute of limitations. (Ed. Code, § 56505, subd. (l).) However, in September 2022, Student agreed to dismiss a previous due process filing without prejudice in return for Placentia-Yorba Linda's agreement to regard any future due process request in this dispute as having been filed on March 9, 2022. Since the parties executed this agreement during a period of instability and uncertainty caused by the COVID-19 pandemic, and in anticipation that pending independent assessments would resolve their dispute, the ALJ agreed to treat

the instant action as having been filed on March 9, 2022. This ruling was made only in the particular circumstances of this case and does not constitute a ruling or express a view on the validity of any other tolling agreement.

Placentia-Yorba Linda closed its schools on March 13, 2020, because of the COVID-19 pandemic. On March 27, 2020, it sent a prior written notice to all parents announcing that its schools would be closed through April 20, 2023. Student argues that the prior written notice was legally insufficient, but Placentia-Yorba Linda disagrees.

The IDEA requires that a district send a prior written notice to a parent whenever it proposes or refuses to initiate or change "the identification, evaluation or educational placement of the child, or the provision of" a FAPE. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a)(2006).) The notice must include:

- a description of the action proposed or refused by the agency;
- an explanation of why the agency made the decision;
- a description of each evaluation procedure, assessment, record, or report on which the decision was based;
- a reminder of parents' procedural safeguards;
- sources for assistance;
- the options considered and the reasons for rejecting the others; and
- a description of other factors relevant to the decision.

Student contends that the letter did not comply with the statute because it was generic, not individualized to Student and his IEP, and did not state how Placentia-Yorba Linda planned to implement Student's IEP. Student does not identify any statutory language or offer any authority that would require those elements in the notice. The

letter was generic because it addressed matters relevant to all students, including Student. The letter announced that teachers were reaching out to parents “regarding the individual and classroom Distance Learning Plans” that would be implemented starting March 30, 2020. The letter contained all the elements the statute requires, with the possible exception of a discussion of options considered.

At that point in the pandemic, closing the schools was the only option available, so that shortcoming made no difference. Realistically, the prior written notice contained all the elements the statute requires. Placentia Yorba Linda was faced with unique circumstances. It had been ordered to close the schools by state and local health authorities. Its failure to state the options it considered in light of these circumstances was a result of an absence of options to report.

While technically the failure to identify the options considered constituted a procedural violation of the prior written notice statute, it did not rise to a denial of a FAPE. 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 regarding the provision of a FAPE to the parent’s child; or
3. caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subds. (f)(2), (j).)

Student claims that defects in the March 27, 2020 letter caused him to lose educational opportunity because he did not receive the services required by his IEP, but makes no plausible argument that a loss of services was connected in any way to the alleged defects in the letter.

Student also claims that the notice infringed on Parent's ability to monitor the implementation and development of Student's IEP, but does not explain how the letter might have done that. The letter announced that there would be no IEP team meetings or IEP revisions until further notice. Mother was an active monitor of the implementation of Student's IEP, as she remained in nearly constant communication with Student's teachers through email and telephone calls.

Student did not meet his burden to prove that the prior written notice of March 27, 2020, violated the statutory requirements in any significant way. Any violation was harmless because it did not impede Student's right to a FAPE, deny Student educational opportunity, or significantly impede Parent's participatory rights. Placentia-Yorba Linda did not deny Student a FAPE due to any defect in its prior written notice.

## ISSUE NO. 2: DID PLACENTIA-YORBA LINDA DENY STUDENT A FAPE BY FAILING TO IMPLEMENT STUDENT'S THEN-CURRENT IEP DURING THE COVID-19 PANDEMIC?

Placentia-Yorba Linda kept its schools closed until October 2020, when it resumed in-person instruction. It did not resume a full-time instructional schedule until April 2021. Student contends that from March 13, 2020, to April 2021 he received far

less than the approximately six hours a day of instruction and related services his IEP required. Placentia-Yorba Linda admits that it reduced his special education and related services, but argues the reduction was allowed by state law.

A school district violates the IDEA if it materially fails to implement a child's IEP. (20 U.S.C. § 1401(9).) A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker Sch. Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 815, 822.) However, "the materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*)

The evidence confirmed that Placentia-Yorba Linda did not provide Student all the education and services his IEP required. Before the COVID-19 pandemic, Student's governing IEP provided him a full day of instruction, which was approximately six hours. After the COVID-19 closure, Placentia-Yorba Linda reduced his instruction to approximately two hours every school day and did not resume providing Student a full day of instruction until April 2021.

These reductions were announced in advance. Placentia-Yorba Linda's prior written notice letter of March 27, 2020, stated that special education students would receive special education and related services online, virtually, or telephonically. The letter stated that "we will be implementing your child's currently agreed upon IEP, albeit delivered in an alternative manner through distance learning."



Also on March 27, 2020, special day class teacher Cathleena Chavez emailed parents about the District's expectations during distance learning. She advised parents that "we are not expecting Students to be 'working' six hours a day." She added that the recommended time was two hours a day, including support services.

On March 30, 2020, educational specialist Claire Viele, who provided Student's specialized academic instruction from March 2020 to June 2020, confirmed in an email to parents that students were expected to work no more than two hours a day. She added that since students would not be at school, nor would they be expected to work a typical school day, "your child's services will not match the minutes in their IEP."

Testimony at hearing confirmed that Placentia-Yorba Linda staff generally followed the District's instructions concerning reduced hours and service, although there were many variations depending on the staff involved. Resource teacher Viele, for example, provided Student 20-to-30-minute sessions of direct specialized academic instruction twice a week from March 30 to June 16, 2020, but also numerous hours of asynchronous instruction, including assignments and recordings.

It is not possible to determine from the record precisely how much special academic instruction time Student lost during the spring of 2020. In his closing brief, Student requests compensatory education for the loss, but does not attempt to quantify it. However, assuming that Viele followed her employer's instructions, she provided only a portion of the total of two hours a day of instruction that Placentia-Yorba Linda had announced. Weighing Viele's testimony against the testimony of Student's other service providers about their services in spring 2020, the best estimate is that Viele delivered

approximately four hours a week of specialized academic instruction. During the school year 2020-2021, starting on October 1, 2020, the loss was about two hours a week. The record does not support more precise findings.

During spring 2020, speech-language pathologist Karen Schneider provided only 30 minutes a week of speech and language instruction to Student, though his IEP required 60 minutes of group support and 20 minutes of individual support every week. This amounted to a loss of 50 minutes a week, or 10 minutes a day, for the 51 school days from March 30, 2020, to June 16, 2020. The evidence did not clearly show any loss of speech services during the 2020-2021 school year.

Occupational therapist Kara Roberts provided direct occupational therapy services to Student during the COVID-19 closure, though not the 60 minutes a week his IEP required. Roberts did not quantify the shortfall in her testimony, nor does Student in his closing brief. The only reasonable estimate of the lost occupational therapy is to assume that it was proportional to the lost school day as a whole. This would mean that Student lost 40 minutes a week, or eight minutes a day, of occupational therapy services during the 51 school days from March 30, 2020 to June 16, 2020. Once the 2020-2021 school year began, Roberts was able to resume compliance with Student's IEP.

Student did not prove that any other significant amount of instruction was lost to him in the spring of 2020, or in the school year 2020-2021.

These reductions were not authorized by state law. On March 4, 2020, Governor Newsom declared a state of emergency in California due to COVID-19. On March 13, 2020, the Governor issued Executive Order N-26-20, which guaranteed continued

funding for school district operations during public-health-related school closures. Among other things, it expressly authorized distance learning if local districts chose to close their schools.

On June 29, 2020, two new provisions of the Education Code went into effect. Section 43503 authorized distance learning as the result of an order or guideline from a state or local public health official. (*Id.*, subd. (a)(2)(A).) That authorization included the delivery of special education and related services by distance learning, as long as it was accompanied by accommodations necessary to ensure that a student's IEP could be executed in that environment. (*Id.*, subd. (b)(4).)

The other new statute, Education Code section 43500, provided that distance learning could include interaction, instruction, and check-ins between teachers and pupils through the use of a computer or communications technology. (*Id.*, subd. (a)(1).) None of these state law pronouncements or legislation authorized or invited school districts to reduce the number of minutes of instruction required by IEP's.

Placentia-Yorba Linda relies upon Education Code section 53504, as it provided at the time, which set forth various requirements for distance instruction, and provided that a school district "shall not be penalized for instruction provided before September 1, 2020, that fails to meet the requirements of this section." That provision does not affect this case, which involves claims of violation of the IDEA, not Education Code section 53504. It is not plausible that the Legislature intended the word "penalized" to apply to an award of compensatory education made under federal law, and in any event the federal requirements of the IDEA would prevail over state law. (U.S.Const., art. VI, § 2; Cal.Const., art. III, § 1.)

Placentia-Yorba Linda's reduction of special education and services was not authorized by federal law either. In March 2020, the United States Department of Education issued a Fact Sheet assuring school districts that ensuring compliance with the IDEA should not prevent any school from offering educational programs through distance instruction. The Department emphasized that the provision of a FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically. (United States Department of Education, Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities, March 21, 2020, pp. 1-2.)

The Department of Education also advised that, when resuming instruction after a COVID-19 closure districts must "make every effort" to provide special education and related services to the child in accordance with the child's IEP. In addition, a child's IEP team would need to make an individualized determination as to whether compensatory services would be needed under applicable standards and requirements. The Office of Education advised that state and local educational authorities and schools had to ensure that, to the greatest extent possible, each student with a disability was provided the special education and related services identified in the student's IEP. (Questions and Answers on Providing Servs. to Children With Disabilities During the Coronavirus Disease 2019 Outbreak, 76 IDELR 77 (EDU 2020).)

Placentia-Yorba Linda's unauthorized reductions of Student's special education and services by approximately two thirds of required instructional hours during spring 2020 and August and September 2020, and by approximately one third from October 2020 to April 2021, constituted a material failure to conform to Student's governing IEP.

(*Van Duyn v. Baker Sch. Dist. 5J, supra*, 502 F.3d at pp. 815, 822.) Student proved that Placentia-Yorba Linda denied him a FAPE by failing during distance instruction from April 2020 to April 2021 to implement all the special education and related services his IEP required.

ISSUE NO. 3: DID PLACENTIA-YORBA LINDA DENY STUDENT A FAPE BY FAILING TO HAVE AN IEP IN PLACE FOR HIM AT THE BEGINNING OF THE 2020-2021 SCHOOL YEAR, FAILING TO PROVIDE A LEGALLY COMPLIANT IEP, AND FAILING TO PROVIDE AN APPROPRIATE EDUCATION DURING THE COVID-19 CLOSURE OF SCHOOL, SPECIFICALLY BECAUSE THE THEN-EFFECTIVE IEP DID NOT ADDRESS:

- A. STUDENT'S INABILITY TO WORK INDEPENDENTLY;
- B. STUDENT'S NEED FOR PARENT TO SIT NEXT TO HIM DURING LEARNING;
- C. STUDENT'S FRUSTRATION, ANGER AND SENSE OF BEING OVERWHELMED;
- D. THE FAILURE TO ADDRESS HIS GOALS;
- E. HIS STRUGGLES WITH MATH; AND
- F. HIS REFUSAL TO COOPERATE WITH OCCUPATIONAL THERAPY?

It is not necessary to decide these issues because Student has already proved that Placentia-Yorba Linda denied him a FAPE for the same time period, and because he will be awarded appropriate relief for that denial. If Student prevailed on these issues, it would make no difference to the relief granted for that period of time.

ISSUE NO. 4: DID PLACENTIA-YORBA LINDA DENY STUDENT A FAPE BY FAILING TO MAKE AN APPROPRIATE OFFER OF PLACEMENT, SERVICES AND GOALS IN THE IEP'S DEVELOPED ON MAY 20, OCTOBER 8, OCTOBER 13, AND DECEMBER 3, 2020, SPECIFICALLY BECAUSE EACH IEP FAILED TO PROVIDE:

- A. LEGALLY COMPLIANT GOALS TO ADDRESS 13 AREAS OF NEED AS SPECIFIED IN THE ISSUE STATEMENT:
- B. ADEQUATE AIDE SUPPORT SERVICES;
- C. ADEQUATE COUNSELING SERVICES;
- D. ADEQUATE PARENT TRAINING SERVICES; AND
- E. SERVICES AND PLACEMENT ADEQUATE TO ADDRESS AND SUPPORT GOALS IN THE AREAS IDENTIFIED ABOVE?

Student contends that the IEP offers of May 20, October 8, October 13, and December 3, 2020, denied him a FAPE because they failed to contain adequate goals, services, and placement. Placentia-Yorba Linda contends that the goals it offered were adequate, and that Student did not need the additional goals proposed by his experts in order to obtain a FAPE.

The IEP team meetings on May 20, October 8, October 13, and December 3, 2020, did not produce four different offers. They were all part of the same annual meeting and produced only one IEP offer that was finalized on December 3, 2020.

## GOALS

An annual IEP must contain a statement of measurable annual goals designed both to 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 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); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); U.S. Dept. of Educ., Notice of Interpretation, Appendix A to 34 C.F.R., part 300, 64 Fed. Reg., pp. 12,406, 12,471 (1999 regulations).) To provide a FAPE, annual goals must be appropriately ambitious in light of the student's circumstances. (*Endrew F. v. Douglas County School Dist. RE-1*, (2017) 580 U.S. 386, 402; 137 S. Ct. 988; 197 L. Ed. 335.)

Placentia-Yorba Linda's 2020 annual IEP offered 13 goals in the areas of social language, math problem solving, speech fluency, reading fluency, written expression, and math operations. Two of the offered goals addressed reading fluency and reading comprehension. Three addressed math, in the areas of elapsed time, long division, and word problems. One addressed written expression. Two speech and language goals addressed perspective taking, self-awareness of cluttered language, which is a fluency disorder making segments of conversation seem too fast overall, too irregular, or both. These goals also addressed thought organization for cluttered language, and strategies for speech fluency. Two other speech and language goals also addressed Student's difficulties with cluttered language. A final goal addressed organization generally.

The authors of Student's goals in the 2020 annual IEP established at hearing the reasoning behind the offered goals. Angella Prokup, one of Student's special education teachers, drafted Student's academic goals. Prokup earned an educational specialist credential in 2012 and a clear teaching credential in 2014. She had worked with special education students at Woodsboro Elementary School since 2014. Claire Viele, who was also Student's special education teacher, received her mild-moderate educational specialist credential in 2008, and has worked as a resource teacher since then. Prokup and Viele had been Student's principal virtual instructors during April and May 2020 and were aware of his needs as he studied virtually in 2020. Both resource teachers explained the process of writing student's goals and opined at hearing that the goals in the 2020 annual IEP were sufficient to address student's needs and provide him opportunities for progress.

Karen Schneider wrote Student's goals for speech and language. Schneider was a state-licensed speech and language pathologist and a member of the American Speech-Language-Hearing Association with a certificate of clinical competence. She had substantial experience in assessing students as well as in providing direct services. At hearing, she described the process of drafting Student's speech goals, and opined that they were sufficient to bring him educational benefit.

Kara Roberts wrote Student's occupational therapy goals. Roberts was a state-licensed occupational therapist who had served Placentia-Yorba Linda as a school-based occupational therapist since 2009 and who had provided direct services to Student since he was in the fourth grade. Roberts opined at hearing that the three occupational therapy goals she wrote for Student were adequate and sufficient to bring him educational benefit.



In his closing brief, Student contends the 13 offered goals are inadequate in light of Student's needs but does not criticize the specifics of any of them. Instead, he relies entirely on the opinions of the expert witnesses Dr. Kelli Sandman-Hurley and Abby Rozenberg, who testified at hearing.

Reliance on the opinions of Sandman-Hurley and Rozenberg to undermine the adequacy of the 2020 IEP offers is mostly forbidden by the snapshot rule since their views were based primarily on information that could not have been before the IEP team. An IEP is evaluated in light of information available to the IEP team at the time it was developed. It is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041 (citations omitted).) The key is whether the program, at the time it was drafted, was objectively reasonable. (*Adams v. State of Oregon, supra*, 195 F.3d at p. 1149; see also *L.J. v. Pittsburg Unified Sch. Dist.* (9th Cir. 2017) 850 F.3d 996, 1004; *Baquerizo v. Garden Grove Unified Sch. Dist.* (9th Cir. 2016) 826 F.3d 1179, 1187.)

Federal district courts follow a different rule because the IDEA requires a district court to "hear additional evidence at the request of a party." (20 U.S.C. § 1415(i)(2)(C)(ii); see *E.M. v. Pajaro Valley Unified Sch. Dist.* (9th Cir. 2011) 652 F.3d 999, 1004-1005.) Hearing officers and ALJ's in IDEA administrative proceedings have no comparable duty or authority.

Dr. Kelli Sandman-Hurley, a Doctor of Education, observed Student in January 2023 and presented her report to the IEP team at its meeting on May 3 and 4, 2023. Sandman-Hurley's views based on those actions cannot be used to disapprove of decisions made at any meeting before May 3 and 4, 2023.

Abby Rozenberg, an experienced speech and language pathologist, evaluated Student in March 2022, and presented her report to Student's IEP team on May 12, 2022. Rozenberg's views formed by her evaluation cannot be considered in criticizing decisions made at any meeting before May 12, 2022.

Even if the opinions of Rozenberg and Sandman-Hurley had been available to the 2020 IEP team, they would not have been persuasive, and the IEP team would have acted reasonably in declining to act on them. Student in his closing brief assumes that every reference in reports or testimony to a need, a deficit, a challenge, or an area of struggle means that Placentia-Yorba Linda was required to write a separate annual goal for each, or Student was denied a FAPE. That is not the law. An annual IEP must contain annual goals that are measurable, and are designed to "meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum" and "meet each of the child's other educational needs that result from the child's disability ...." (20 U.S.C. § 1414(d)(1)(i)(A)(II)(aa), (bb); 34 C.F.R. § 300.320(a)(2)(i)(A), (B)(2007); Ed. Code, § 56345, subds. (a)(2)(A), (B).) This language does not require that each identifiable need, deficit, or area of struggle or challenge be addressed in a separate goal.

In *Coleman v. Pottstown Sch. Dist.* (E.D.Pa. 2013) 983 F.Supp.2d 543, parents made the same assumption as Student does here, but the District Court disagreed:

Plaintiffs interpret [§ 1414(d)(1)(A)(i)(II)] as requiring a school district to create measurable goals for every recognized educational and functional need of a student with disabilities. ...[I]t would ... be inconsistent with the longstanding interpretation of the IDEA to find that providing a FAPE requires designing specific monitoring goals for every single recognized need of a disabled student. As noted above, a FAPE is a threshold guarantee of services that provide a meaningful educational benefit, not a perfect education.

(*Id.* at pp. 572-573.) The Court of Appeal affirmed that part of the District Court's decision. (*Coleman v. Pottstown Sch. Dist.* (3d Cir. 2014) 581 Fed.Appx. 141, 147-148 [nonpub. opn].)

Many courts have come to the same conclusion. "[A]n IEP is not required to contain every goal from which a student might benefit." (*Capistrano Unified Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1133, cert. denied sub nom. *S.B. v. Capistrano Unified Sch. Dist.* (2022) 143 S.Ct. 98, citing *R.F. v. Cecil Cnty. Pub. Schs.* (4th Cir. 2019) 919 F.3d 237, 251 (citation omitted); *E. R. v. Spring Branch Indep. Sch. Dist.*, (5th Cir. 2018) 909 F.3d 754, 768 (per curiam) (not requiring "excessive goals"); *N.M. v. The School Dist. Of Philadelphia* (3d Cir. 2010) 394 Fed.Appx. 920, 923 [nonpub. opn.]; *L.M. v. Downingtown Area Sch. Dist.* (E.D. Pa., April 15, 2015, No. 12 Cv 5547) 2015 WL 1725091, p. 16; *Benjamin A. v. Unionville-Chadds Ford Sch. Dist.* (E.D. Pa., Aug. 14, 2017, Civ. No. 16-2545) 2017 WL 3482089, pp. 12-13.)

The views of Sandman-Hurley and Rozenberg were also unpersuasive because they failed entirely to consider Student's substantial progress in his education throughout the periods examined here. Their views were formed in part on a selection of documents given them by Parent and her attorney, and there is nothing in their reports or testimony that would indicate they were even aware of his progress. Throughout the time period examined here, Student made significant educational progress under the IEP's that he now attacks. All of Student's current claims that he needed additional or different annual goals must be evaluated in light of the fact that he succeeded in his education without them.

The many assessments of Student, taken together, placed his full-scale IQ at approximately 81. On a bell curve representing his same age peers, he was in the lower 34th percentile. But he was a good student who worked hard and easily advanced from grade to grade. When the COVID-19 pandemic started, he was well below grade level in most subjects, but by September 2021 he was at grade level, or nearly at grade level, in everything but math.

Student's progress in reading is illustrative. Student did not do well on standardized reading assessments administered by Student's expert witnesses, who reported numerous low and very low scores. His low reading scores on their assessment measures gave rise to many recommendations.

In school, however, Student's progress in reading was notable. In first grade, in the 2016-2017 school year, Student had been reading at the rate of 10 words per minute. Three years later, the notes of the annual IEP team meeting on May 20, 2020, shortly after the COVID-19 closure began, reported that Student was reading at 72 words per minute with 94 percent accuracy.

In a December 8, 2021 IEP team meeting, District staff reported that “reading was an area of relative strength” for Student. By that time, he was able to read and understand fifth grade passages and was doing well on sixth grade passages. His present levels of performance showed that his fluency and accuracy on sixth grade passages ranged from 88 to more than 100 correct words per minute. By May 2022, Student’s IEP document reported that Student could read a sixth-grade narrative passage at the rate of 137 words per minute, with 96 percent accuracy.

Student progressed in other ways as well. At the September 24, 2021 meeting, District staff first proposed to assess Student before moving to general education. Parent objected and said she would not send Student to school until he was moved into general education. Accordingly, Student did not attend school from September 27 to approximately October 15, 2021.

At another IEP team meeting on October 15, 2021, Placentia-Yorba Linda acceded to Parent’s demand to put Student in general education immediately, with additional services and supports. Parent agreed to assessments. Student then resumed attending school in the general education class of teacher Michelle Grimsley.

In November 2021, Placentia-Yorba Linda conducted a triennial multidisciplinary assessment of Student’s psychoeducational status, his academic abilities, and his needs for speech and language and occupational therapy. School psychologist Greg Vander Kooy led the team and explained its report at hearing.

The November 2021 multidisciplinary assessment showed that in Student's fifth grade year, the 2020-2021 school year, he earned grades of all A's and B's in all content areas. He had no attendance or behavior problems and worked hard. Teachers reported that he had a great attitude and an eagerness to learn. He was well liked, well behaved, and respectful.

General education teacher Grimsley soon informed the assessors and the IEP team that Student was doing well in general education. He was working on sixth grade math problems. As an accommodation, he was working on reduced assignments because of his slow processing speed. However, he was doing the same homework as his peers. He was on task, followed directions and was comfortable asking questions.

Resource teacher Viele reported the results of her academic testing. Student had made "good progress" in reading. He was working at a sixth-grade level in English language arts and a fourth grade level in math. Student himself stated in an interview that his favorite subject was reading, although he still struggled with math.

Throughout the school years examined here, Student made substantial progress on his annual goals. Two months into the COVID-19 closure, Student's progress on his previous annual goals was reported in his May 20, 2020 IEP document. The present levels of performance stated that Student had met his goals in reading and writing, two out of three math goals, and all four of his speech and language goals.

The IEP documents from the May 2021 annual IEP team meeting, 14 months after the schools were closed, reported that Student had met his annual goals in:

- reading comprehension,
- reading fluency and writing,
- three math goals,
- two out of three occupational therapy goals, and
- one of four speech and language goals.

These notes were not challenged at hearing.

The same success was apparent a year later. The May 2022 annual IEP team documents reported that Student had met his annual goals in reading fluency, reading comprehension and writing, four out of five math goals, and all three speech and language goals. Later reports on his goals do not reflect Student's performance in Placentia-Yorba Linda's school because Parent unilaterally placed him in the non-public Prentice School in the summer of 2022, and he has remained there.

In short, from the beginning of the COVID-19 closure in March 2020 through May 2022, Student performed in school at or above his cognitive capacity. He made substantial progress in reading, writing, and mathematics, he moved successfully from a special day class to general education, and he met most of his annual goals. Student's claim that additional goals were necessary for a FAPE is greatly weakened by this established progress.

Student's progress was confirmed by Parent herself in September 2021, when she successfully insisted on moving Student from a special day class to general education.

Student could have returned to in-person instruction in October 2020, but Parent chose to continue his virtual instruction until the beginning of the next school year out of concerns for family health. When Student finally returned to in-person instruction in August 2021, after a year and a half of virtual instruction, he had not been recently assessed. As a result, he was at first placed in a special day class, as he had been before the pandemic.

Parent soon decided that Student's placement was unsuccessful, that he was higher functioning than the other students in the class, and that he ought to be moved to general education. She requested an immediate IEP team meeting, which Placentia-Yorba Linda held on September 24, 2021. Parent attended with her advocate Anna Laboon.

At the September 24, 2021 IEP team meeting, Parent and Laboon both demanded that Student be moved immediately into a general education classroom, with supports and services. Parent represented to the team that Laboon was an expert in special education. Laboon told the team that she had conducted curriculum-based assessments to determine Student's ability levels and that, "he is at grade level based on her assessments and has the ability to be successful in the general education environment." Later in the meeting Laboon stated that Student was "close" to grade level. In a letter after the meeting, Parent agreed with Laboon. She wrote that Student, "is almost meeting all goals and is currently almost at grade level in all subjects except for math."

Student's only mention of his progress in his closing brief is a reference to Parent's testimony at hearing that without her support, Student "would not have derived any benefit from his education." This concedes he did benefit. Parent, who has been a



general education teacher for 27 years, does deserve considerable credit for her son's success during distance learning. Like many other parents during that period, she made many sacrifices to help him. However, Placentia-Yorba Linda's teachers and staff also deserve credit for adapting to distance learning as quickly and as well as they did, and for making extra efforts to help Student during that difficult time. Student himself deserves the largest portion of credit. In August 2021 he returned to in-person learning, no longer next to Parent, but continued to progress. Without his diligent attendance and effort, apparent throughout the record, he would not have been able to succeed.

In his closing brief, Student makes no other mention of his progress in the years examined here. His failure to explain how he could have done so well without any of the additional goals and services recommended by his experts substantially weakens his case and the opinions of the experts.

Student failed to prove that Placentia-Yorba Linda denied him a FAPE by making offers of goals that did not meet legal standards in the May 20, October 8, October 13, and December 3, 2020 IEP's. Additionally, Student failed to prove goals in other areas were needed to meet his needs.

## SERVICES

Student argues that the District's IEP offers in 2020 denied him a FAPE because they did not offer counseling services. Student relies on the facts that Parent had expressed significant concerns about his anxiety and social-emotional well-being, and that Placentia-Yorba Linda was aware that he was being treated by a private psychiatrist. Placentia-Yorba Linda does not directly address the argument.

A school district must include in an IEP such related services, called designated instruction and services in California, "as may be required to assist an individual with exceptional needs to benefit from special education." (Ed. Code, § 56363, subd. (a); see also 20 U.S.C. § 1401(26)(A).)

The final 2020 annual IEP offered specialized academic instruction in the amount of 1,240 minutes a week for language arts, math, social studies, and science. It offered two 30-minute sessions a week of group speech and language services, and 20 minutes a week of individual speech therapy. It also offered two 30-minute sessions a week of occupational therapy support in class.

Student failed to establish that Placentia-Yorba Linda was required to offer counseling in order to allow Student to access his education. The evidence showed that Student's anxiety manifested at home, not at school. School staff were alert to Parent's claims and looked for signs of anxiety in and out of class but did not find them. Typical reports from Student's teachers described him as calm, happy and involved. Student does not identify any evidence that anxiety interfered with his performance at school.

The fact that Student was under private psychiatric care did not support an assumption that he additionally needed school-based counseling. Student did not prove that school-based counseling would have helped him in his education. His social and emotional difficulties manifested at home. Student's success in school confirmed that school-based counseling was not "required to assist" him in accessing his education. (Ed. Code, § 56363, subd. (a).)

Student argues that the 2020 annual IEP should have included a one-to-one aide. This claim rests entirely on the report and testimony of Dr. Michelle Molina, which is

precluded by the snapshot rule because it was based largely on testing and observation that had not been done in 2020 and was not before the IEP team. The record does not support any need for a one-to-one aide, which Placentia-Yorba Linda reasonably believed was too restrictive.

Student also contends that the 2020 annual IEP should have offered 90 minutes a week of occupational therapy instead of 60 minutes a week. This claim relies entirely on the testimony of Richard Furbush, which is precluded by the snapshot rule because his criticisms also depended on information not available to the IEP team at the time the IEP was drafted. Additionally, any claim that an additional 30 minutes a week of occupational therapy would have assisted Student in accessing his education was not supported by the evidence.

## PLACEMENT

In his closing brief, Student asserts that the placement offered in the 2020 annual IEP was inappropriate because it was virtual. This is factually incorrect. The final version of the IEP offered general education in a regular classroom in a public day school and offered all services in a separate classroom in a public integrated facility. The only reason Student was still learning virtually in December 2020 was because Parent declined to return him to in-person instruction in October 2020, when she could have, or after the winter break, when she also could have, or any other time that school year.

Student failed to prove that Placentia-Yorba Linda denied him a FAPE by failing to make an appropriate offer of placement, services, and goals in the IEP developed on May 20, October 8, October 13, and December 3, 2020.

ISSUE NO. 5: DID PLACENTIA-YORBA LINDA DENY STUDENT A FAPE BY FAILING TO FILE FOR DUE PROCESS WHEN STUDENT'S MOTHER DID NOT CONSENT TO THE SEPTEMBER 24, DECEMBER 8, AND 13, 2021 IEP'S?

Student contends that when Parent turned down Placentia-Yorba Linda's September 24, 2021 offer and insisted on a general education placement instead, Placentia-Yorba Linda was obliged immediately to file for due process to "defend its offer of FAPE." Placentia-Yorba Linda responds that it was under no obligation to do so unless, among other things, it thought that the declined IEP was essential to delivery of a FAPE, and it did not.

In *I.R. v. Los Angeles Unified Sch. Dist.* (9th Cir. 2015) 805 F.3d 1164, 1165, parent had refused to move her child from general education to a special day class, a move the district thought essential to delivery of a FAPE. Rather than filing for due process, the district left the child in general education, knowing it was an inappropriate placement, while it spent several months unsuccessfully trying to convince the parent to relent. The Ninth Circuit held that section 56346, subdivision (f) of the Education Code meant that this delay denied Student a FAPE because, if parent rejects an element of an IEP that is essential for FAPE, the school district must file for due process to receive permission to implement the element in dispute.

*I.R.* has no application here. There was no evidence that Placentia-Yorba Linda concluded that it could not provide Student a FAPE without implementing the September 24, 2021 offer. Parent and Placentia-Yorba Linda were not at a months-long impasse; in less than three weeks they agreed on an IEP moving Student to general

education. Any request for due process Placentia-Yorba Linda might have filed would have been months short of a ruling by the time Placentia-Yorba Linda and Parent reached agreement on an IEP dated October 15, 2021,

Parent consented to the October 15, 2021 IEP, which was an amendment to the May 2021 IEP. Therefore, when Parent declined the offer of December 8 and 13, 2021, an agreed-upon IEP was in place. Placentia-Yorba Linda thought it provided Student a FAPE. There was no reason for Placentia-Yorba Linda to file for due process because it did not believe that Student was not in an inappropriate placement.

Student did not prove that Placentia-Yorba Linda denied Student a FAPE by failing to file a request for due process hearing so that it could implement the September 24 and December 8 and 13, 2021, IEP offers.

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ISSUE NO. 6: DID PLACENTIA-YORBA LINDA DENY STUDENT A FAPE BY FAILING TO PROVIDE PRIOR WRITTEN NOTICE IN RESPONSE TO PARENT'S REQUESTS THROUGHOUT THE 2021-2022 SCHOOL YEAR, SPECIFICALLY:

- A. PARENT'S REQUEST ON SEPTEMBER 24, 2021, FOR A CHANGE OF PLACEMENT TO GENERAL EDUCATION SCIENCE AND SOCIAL STUDIES CLASSES;
- B. PARENT'S REQUEST ON OCTOBER 8, 2021, FOR A CHANGE OF PLACEMENT TO GENERAL EDUCATION SCIENCE AND SOCIAL STUDIES CLASSES; AND
- C. PARENT'S REQUEST ON JANUARY 3, 2022, FOR MULTISENSORY INSTRUCTION?

Student contends that Placentia-Yorba Linda unlawfully failed to provide Parent prior written notice of its refusals of her requests on September 24 and October 8, 2021 to move Student to general education, and her request on January 3, 2022, for multisensory instruction. Placentia-Yorba Linda responds that no prior written notice was required because in each instance the District agreed to the request.

The meeting notes of the September 24, 2021 IEP team meeting showed that Placentia-Yorba Linda had not made a final decision not to move Student to general education. Near the end of the meeting, advocate Laboon asked whether Student

could start the next school day in general education on a trial basis while data was of a placement in general education starting the following Friday. The team would then meet to discuss how to move forward. That was not a rejection of Parent's request and therefore did not fall within the statute requiring prior written notice.

In his closing brief, Student does not identify any decision Placentia-Yorba Linda made on October 8, 2021, that would have required prior written notice, and none is apparent in the record.

At the IEP team meeting on October 15, 2021, Parent again requested that Student be moved to general education, and Placentia-Yorba Linda agreed to the move. Prior written notice is not required for an agreement. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a)(2006).)

On January 3, 2022, Parent emailed the IEP team notifying them of her decision not to sign the December 8, 2021 IEP offer. In the email, she stated that Student needed "direct, explicit and multisensory instruction that needs to be addressed in his IEP."

Parent's request had already been met, at least partially. Both the December IEP proposal and the May 2021 annual IEP, which was in effect, called for "use of multisensory strategies for math and decoding instruction." The 2021 annual IEP contained accommodations for visual/auditory aids, verbal and nonverbal cues, and an option for speech to text/word prediction.

To the extent that the provisions already in the IEP did not satisfy Parent's concern, Student does not identify any specific refusal to put direct, explicit and multisensory instruction in any IEP, and therefore did not prove that prior written notice was required.

Placentia-Yorba Linda did not deny Student a FAPE by failing to provide prior written notice of Parent's requests of September 24 and October 15, 2021, or January 3, 2022.

**ISSUE NO. 7: DID PLACENTIA-YORBA LINDA DENY STUDENT A FAPE BY FAILING TO ADDRESS THE FACT THAT STUDENT WAS BEING BULLIED OVER THE COURSE OF THE 2020-2021 AND 2021-2022 SCHOOL YEARS?**

Student contends that he was being bullied by other students in the 2020-2021 and 2021-2022 school years, and that Placentia-Yorba Linda did not address this fact. Placentia-Yorba Linda contends that it investigated every incidence of claimed bullying and found that the claims were either not factual or did not meet the definition of bullying.

Bullying is defined in California law as a severe or pervasive physical or verbal act or conduct directed toward a pupil that can reasonably be predicted to place a reasonable pupil in fear of harm, have a substantial detrimental effect on a reasonable pupil's physical or mental health, or cause a reasonable pupil to experience substantial interference with the pupil's academic performance. (Ed. Code, § 48900, subd. (r).)



During the school years at issue, Parent frequently reported alleged incidents of bullying to the District and asked for investigation. Parent's reports of bullying included unrelated instances of a small bruise on Student's arm, a chat message from a peer calling Student fat, and the extension of a middle finger. None of these incidents, even if factual, rose to an incident of bullying as defined by California law. In each instance Placentia-Yorba Linda investigated the claim and found that it was insignificant, baseless or the result of a misunderstanding by Student.

The evidence showed that Student was not a reliable reporter. As early as 2019, one teacher described him as a storyteller. Parent was aware that Student would exaggerate, misperceive or simply make up an incident, or report to her as recent something that had happened weeks, months or years before. For example, when another student dropped food at lunch that accidentally spilled on Student, Student told Parent that the food had been smashed in his face. Even Student's expert witness Abby Rozenberg recognized this fact, stating in her report that there was a disconnect between "what is happening and his perspective of how people treat him."

Student would typically report these claims to Parent but not school authorities, illustrating that his behavior in describing bullying was home-based. Parent would usually take such reports literally and repeat them to George Lopez, the director of early and expanded learning and the principal at Woodsburo during most of the times in question. Lopez would investigate every report and find it unsubstantiated.

In his closing brief, Student essentially admits that Student was not bullied within the legal meaning of that term. He fails to describe any claimed instance of bullying that could fit the legal definition of bullying and fails to identify any reported incident that

Placentia-Yorba Linda did not investigate. Instead, Student argues that his misperception of bullying caused him substantial emotional upset that Placentia-Yorba Linda should have sought to ameliorate. That claim is addressed above.

Student did not prove that Placentia-Yorba Linda denied Student a FAPE during the school years 2020-2021 and 2021-2022 by failing to address the fact that he was being bullied.

ISSUE NO. 8: DID PLACENTIA-YORBA LINDA DENY STUDENT A FAPE BY FAILING TO MAKE AN APPROPRIATE OFFER OF PLACEMENT, SERVICES, AND GOALS IN THE IEP'S DEVELOPED ON MAY 3 AND 4, JUNE 18, SEPTEMBER 24, AND DECEMBER 8 AND 13, 2021, SPECIFICALLY BECAUSE EACH IEP FAILED TO OFFER:

- A. LEGALLY COMPLIANT GOALS TO ADDRESS 32 AREAS OF NEED IDENTIFIED IN THE ISSUE STATEMENT; AND
- B. DEQUATE SERVICES AND PLACEMENT TO APPROPRIATELY ADDRESS AND SUPPORT GOALS IN THE AREAS IDENTIFIED IMMEDIATELY ABOVE?

Student contends that the IEP's in 2021 lacked adequate goals, services and placement. Placentia-Yerba Linda argues that the goals, services and placement offered Student a FAPE.

At its annual IEP team meeting on May 3 and 4, 2021, the IEP team extensively discussed Student's goals, his progress toward them, and the possible need to alter or update them in the new IEP. The team provided some new speech goals, continued others, and revised Student's reading goal. Roberts reported that Student had met two of his three occupational therapy goals, and that she was proposing two new ones, for letter formation and organization.

Parent agreed to the May 2021 IEP except that she wanted Student to be mainstreamed in social studies and science. At an amendment IEP team meeting on June 18, 2021, the parties agreed to add that mainstreaming to the May IEP.

Student's claim that the May 2021 annual IEP offer denied him a FAPE because it did not contain adequate and additional goals fails for the same reasons as did the nearly identical claim concerning the 2020 annual IEP. Student relies entirely on the testimony of Rozenberg, Molina and Furbush that additional goals were required. Under the snapshot rule, the opinions of Rosenberg, Molina and Furbush cannot be used to undermine the District's IEP choices in May 2021 because they all were formed based on information that was not available to the IEP team.

Once again Student assumes that anything identified by his witnesses as a need, challenge or struggle must be addressed by an annual goal, or FAPE has been denied. As shown earlier, this is not the law. Placentia-Yorba Linda's obligation was to ensure that the May 2021 annual IEP offered Student a FAPE, not that it contained a goal for each claimed need.

Prokup, Viele and Roberts, the authors of the offered goals, again testified about the process of drafting them, and of their adequacy. Once again, Student does not mention their testimony or offer any reason why it should be discounted.

## SERVICES

The 2021 annual IEP offered services consisting of specialized academic instruction in language arts, math, social studies and science for 248 minutes a day, totaling 1,240 minutes a week; two 30-minute sessions a week of speech and language services; and 60 minutes a week of occupational therapy support. Student's argument that the services should have included a one-to-one aide, and peer-reviewed, research-based structured literacy training depend upon expert opinion primarily formed on the basis of later information not available to the IEP team. Student refers to a passage in the IEP document that he "benefits" from direct instruction in a small group and argues that FAPE was denied because he was not offered direct instruction. Simply because he benefited from direct instruction did not mean it had to be in an IEP. (*S.B. v. Capistrano Unified Sch. Dist.*, *supra*, 21 F.4th at p. 1133.)

## PLACEMENT

Conflating services with placement, Student argues unconvincingly that in the absence of an offer of counseling, a one-to-one aide, and additional speech and occupational therapy services, the offered placement was inadequate. All those elements depended on expert testimony based on information not available to the IEP team when its decisions were made.

Student's substantial progress under the terms of the May 2021 IEP confirms and supports the testimony of Placentia-Yorba Linda staff that the IEP provided him a FAPE without the additional provisions Student now alleges were required. Student did not meet his burden of proving that the IEP developed in the meetings on May 3 and 4, 2021 and amended on June 18, 2021, denied him a FAPE for failure to offer adequate or additional goals and services, for lack of a proper placement, or in any other way.

In a related argument, Student asserts that when he returned to in-person instruction at the beginning of the 2021-2022 school year, Placentia-Yorba Linda denied him a FAPE at the September 24, 2021 IEP team meeting by offering placement in a special day class rather than in general education. This was the meeting at which Parent and her advocate demanded and soon got a transfer to general education, claiming that Student was almost at grade level and was meeting almost all of his goals. However, the encouraging information before the IEP team on that day came only from Parent and her advocate, and from a favorable report concerning his mainstreaming in a single class in the previous four weeks. Student had just returned from more than a year of virtual instruction and he had not been recently assessed. The IEP team proposed assessments and was reasonable in offering him the same special day class placement he had before the COVID-19 shutdown until their information could be made current. In any event, four weeks later Placentia-Yorba Linda moved Student to general education.

Student did not discharge his burden of proving that the IEP developed in the meetings on May 3 and 4, 2021, amended on June 18, 2021, and briefly offered again on September 24, 2021, denied him a FAPE for failure to offer adequate or additional goals and services, for lack of a proper placement, or in any other way.

On December 8 and 13, 2021, Placentia-Yorba Linda held another IEP team meeting. One of its purposes was to hear the report of psychologist Molina on her recent independent assessment. Molina reported her findings that, based on standardized testing, Student had dyslexia and dyscalculia in addition to attention deficit hyperactivity disorder and autism. She recommended a regime of medication, exercise, lifestyle changes, applied behavioral analysis and educational therapy.

The District members of the IEP team did not adopt Molina's recommendations, thinking them unnecessary. Some members were also skeptical of the recommendations because her information was one-sided. Molina relied on rating scales from Parent but had not obtained any from teachers. Student recites Molina's recommendations and concludes that failing to adopt them denied Student a FAPE but does not explain why that would be. The IEP team was reasonable in choosing to rely on its own assessors rather than on Molina's opinion.

At the December 2021 meeting, Placentia-Yorba Linda offered a new annual IEP, but Parent would not approve it due to a dispute over the categories in which Student would be regarded as eligible. The October 2021 IEP remained in effect.

Placentia-Yorba Linda did not deny Student a FAPE by failing to make an appropriate offer of placement, services, and goals in the IEP's developed on May 3 and 4, June 18, September 24, and December 8 and 13, 2021.

ISSUE NO. 9: DID PLACENTIA-YORBA LINDA DENY STUDENT A FAPE IN THE IEP'S DEVELOPED ON MAY 12, JUNE 8, SEPTEMBER 9, AND DECEMBER 9, 2022, BY FAILING TO MAKE AN APPROPRIATE OFFER OF PLACEMENT, SERVICES AND GOALS, SPECIFICALLY BECAUSE EACH IEP FAILED TO OFFER:

- A. LEGALLY COMPLIANT GOALS TO ADDRESS 32 AREAS OF NEED AS LISTED IN THE ISSUE STATEMENT: AND
- B. ADEQUATE SERVICES AND PLACEMENT TO APPROPRIATELY ADDRESS AND SUPPORT GOALS IN THE AREAS IDENTIFIED IMMEDIATELY ABOVE?

In this contention Student repeats the arguments made earlier in connection with the 2020 and 2021 annual IEP's. For the most part, the earlier analyses of those contentions apply here.

## GOALS

At its annual meeting on May 12 and June 8, 2022, Student's IEP team discussed Student's coming transition to middle school for seventh grade and reviewed the recently completed independent assessments by Rozenberg and Furbush.

The 2022 annual IEP produced at the meetings on May 12 and June 8, 2022, offered 12 annual goals. They addressed:

- writing,
- reading decoding,

- reading comprehension,
- writing conventions,
- multiplication,
- nonliteral language,
- perspective taking,
- speech intelligibility, and
- social/emotional problem solving.

Student relies on speech-language pathologist Rozenberg and occupational therapist Furbush in contending that these goals were inadequate. His reliance is misplaced.

Rozenberg evaluated Student's language functioning and communicative ability in her clinic on March 6, 2022. She observed Student on the playground at Woodsboro Elementary on March 21, 2022. She presented her findings at the meeting on May 12, 2022, which included a finding that Student did not have a language disorder because he had language skills but struggled with mental manipulation. She recommended two 30-minute group sessions a week of speech therapy. Rozenberg did not criticize any offered goals or recommend any different or additional goals, either in her report or at the meeting. At hearing, for the first time, she testified she would have added a vocabulary goal. If she did not perceive a need for a vocabulary goal until her testimony in August 2023, the IEP team cannot be charged with failing to perceive it earlier. This suggestion was never before the May and June 2022 IEP team, and the evidence did not show that Student needed a vocabulary goal.



Occupational therapist Furbush assessed Student on March 4, 2022, and observed him for about 50 minutes in his general education class at Woodsboro on March 11, 2022. In his report, Furbush recommended 13 "goal areas" the IEP team should consider and stated that he found the offered level of occupational therapy intervention inadequate. At the May 2022 meeting, he told the IEP team he noticed that Student's writing was very slow and deliberate, and that he had difficulty in visual-spatial tasks. He also found that Student had far less difficulty at school than at home.

The IEP team was justified in being skeptical of Furbush's opinion. It was based in part on measuring Student's occupational therapy needs at home rather than school, on the ground that Student's needs at home were "more realistic." But it was Student's burden to show that Student's occupational therapy needs at school were not met. The meeting notes reported that Furbush, "cannot believe how well he is doing" at school given his sensory processing deficits.

In addition, Furbush administered his primary assessment measure outside of the age range for which it was normed. He used the Sensory Processing Integration Test, a measure that is normed only up to age eight years and 11 months. Student was 12 years old when Furbush assessed him.

The IEP team was reasonable in choosing not to adopt most of Furbush's goal proposals and deferring instead to the opinions of its own occupational therapist, Kara Roberts. She wrote the occupational therapy goals in the 2022 annual IEP and established at hearing that they were adequate and appropriate. Furbush saw Student once in his clinic for three hours, mostly to administer test measures, and once for 50 minutes at school. Roberts, on the other hand, had been providing direct occupational

therapy services to Student since the fourth grade, giving her a much more complete perspective on his needs. A school district must consider the views of an outside assessor, but is under no obligation to accept those views. (See, e.g. *K.E. v. Independent Sch. Dist. No. 15* (8th Cir. 2011) 647 F.3d 795, 806.)

Otherwise, Student's claim that the May 2021 annual IEP offer denied him a FAPE because it did not contain adequate and additional goals fails for most of the same reasons as did the nearly identical claims concerning the 2020 and 2021 annual IEP's. Once again Student assumes that anything identified by his witnesses as a need, challenge or struggle must be addressed by an annual goal, or FAPE has been denied. As shown earlier, this is not the law. Placentia-Yorba Linda 's obligation was to ensure that the May 2022 annual IEP offered Student a FAPE, not that it contained a goal for each claimed need.

Once again, the authors of the offered goals testified about the process of drafting them and established that they were adequate. Once again, Student does not mention their testimony or offer any reason why it should be discounted.

## SERVICES AND PLACEMENT

The 2022 annual IEP offered as services 615 minutes a week of specialized academic instruction, 45 minutes twice a week of individual occupational therapy, and 45 minutes a week of group speech and language services. The 2022 annual IEP contained a social/emotional goal to address peer interactions and Student's perception of his safety on campus.

Rozenberg had recommended twice-weekly 30-minute sessions of speech therapy instead of the 45 minutes offered. Student did not prove that the 15-minute difference was needed to meet Student's needs or would have made any difference to Student's education.

Furbush recommended 120 minutes a week of occupational therapy instead of the 90 minutes proposed in the IEP, but Student failed to prove that the additional 30 minutes would have made any difference to Student's education.

Student argues that the offered placement was improper, but only because the offered services were improper. This claim is addressed above.

Once again, Student in his closing brief wholly ignores the central fact that during this period, he made substantial progress in his education and on his goals, which refutes the notion that he needed the additional goals and services his experts proposed in order to receive a FAPE.

Student did not meet his burden of proving that the IEP developed in the meetings on May 12 and June 8, 2022, denied him a FAPE for failure to offer adequate or additional goals and services, for lack of a proper placement.

Student's IEP team met again on September 29, 2022, to consider an updated assessment report by Dr. Molina, who had observed Student in Grimsley's general education class on March 31, 2022, and administered additional tests. Molina again interpreted her test results as showing that Student suffered from dyslexia and dyscalculia. She also diagnosed him as having attention deficit hyperactivity disorder

and autism. Without explaining why it was necessary, Molina recommended concentrating on treating Student's dyslexia by placing him in a specialized school like the Prentice School or the Johnson Academy.

The District members of the IEP team were not persuaded by Molina's opinions. They had the benefit of the November 2021 psychoeducational assessment of school psychologist Vander Kooy, which had produced quite different results. Placentia-Yorba Linda's school psychologist Jaymie Shill attended the September 2022 meeting and questioned several aspects of Molina's updated report, both in its thoroughness and its professionalism. One indicator of Molina's haste or inattention was that the updated report stated Student was in a special day class, but he had been in general education for almost six months by the time Molina wrote her supplemental report, and Molina had observed him there. Another was that she again relied upon rating scales distributed only to Parent. In addition, she had not reported composite scores.

At the meeting, Molina opined that Student needed a reading fluency goal. However, the IEP already contained a goal that addressed reading decoding in the context of Student's reading fluency. The baseline of the first academic goal noted that Student was reading sixth-grade material with sufficient fluency and accuracy to demonstrate comprehension, but that his main difficulty with fluency was in decoding. The goal therefore addressed decoding specifically. Student does not criticize targeting fluency by concentrating on decoding. He did not prove that any further goal was necessary for reading fluency.

In light of the apparent shortcomings in Molina's report, and the IEP team's greatly superior knowledge of Student, the team was reasonable in choosing to continue to rely on Vander Kooy's analysis rather than Molina's, and in choosing not to follow her recommendation of placement in a non-public school. As mentioned above, Placentia-Yorba Linda was obliged to consider Molina's updated assessment report but not to accept her recommendations, including her recommendation for placement.

Another IEP team meeting was convened on December 9, 2022, to consider the independent assessment report of Dr. Beth Ballinger, an optometrist. Among other things, Ballinger recommended that Placentia-Yorba Linda offer 48 sessions of Optometric Vision Therapy, which Ballinger would provide. However, Dr. Ballinger did not testify at hearing, and so was unavailable to explain her views. The report therefore cannot be given significant weight. In addition, Student did not offer evidence of any defects in his vision that have had any effect on his ability to access his education. His accommodations always included preferential seating near the front of the class.

Placentia-Yorba Linda did not deny Student a FAPE in the IEP's developed on May 12, June 8, September 9, and December 9, 2022, by failing to make an appropriate offer of placement, services, and goals.

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ISSUE NO. 10: DID PLACENTIA-YORBA LINDA DENY STUDENT A FAPE IN THE IEP DEVELOPED ON MAY 3, 4, 23, AND 30, 2023, BY FAILING TO MAKE AN APPROPRIATE OFFER OF PLACEMENT, SERVICES AND GOALS, SPECIFICALLY BY FAILING TO OFFER:

- A. LEGALLY COMPLIANT GOALS TO ADEQUATELY ADDRESS 54 AREAS OF NEED AS IDENTIFIED IN THE ISSUE STATEMENT:  
AND
- B. SERVICES AND PLACEMENT TO ADEQUATELY ADDRESS AND SUPPORT GOALS IN THE AREAS IDENTIFIED IMMEDIATELY ABOVE?

Placentia-Yorba Linda completed its 2023 annual IEP offer in a four-session meeting on May 3, 4, 23, and 30, 2023, when Student had already been at Prentice non-public school for approximately one year. Assuming that Student might return, Placentia-Yorba Linda offered general education with supports. Student contends the offer lacked appropriate goals, services, and placement, but Placentia-Yorba Linda disagrees.

Placentia-Yorba Linda offered 11 goals in the 2023 annual IEP. The IEP included:

- three goals for reading,
- one for writing,
- three for math,
- three for communication, and
- one for occupational therapy support.

In his closing brief, Student argues that Rozenberg thought, as of May 2023, that Student also needed goals in the areas of cluttering, perspective taking, pragmatic language and articulation. However, the offered articulation goal already addressed cluttering, and two of its offered communications goals addressed pragmatics. Student does not challenge the specifics of these goals. The only goal missing from Rozenberg's list was perspective-taking, and Student did not prove that Student needed such a goal in May 2023. As noted above, Rozenberg's opinion about goals was unpersuasive because it was not formed until the hearing and was never before the IEP team.

At the second part of the annual meeting, the team considered Dr. Sandman-Hurley's independent assessment report. In 2008, Sandman-Hurley co-founded the Dyslexia Training Institute in San Diego and had extensive experience in treating and advocating primarily for adults but also for children with dyslexia. She observed Student at Prentice on January 17, 2023, and on the same day visited the class at Woodboro that Student would have attended had he remained in the District. She wrote in her report that the Woodboro class was loud and chaotic. However, the only clear reason she offered for her opinion that placement in that class was inappropriate was that it lacked peer-reviewed, research-based multisensory reading instruction. It was Sandman-Hurley's view that Student was "not appropriately served" without that methodology.

However, Student's progress, in conjunction with Placentia-Yorba Linda's staff testimony, showed that he could obtain a FAPE without Sandman-Hurley's preferred reading instruction method. It is well established that, as long as a student is receiving a FAPE, the choice of methodologies is up to the District. (*Rowley, supra*, 458 U.S. at p. 208; *R.P. v. Prescott Unified Sch. Dist.* (9th Cir. 2011) 631 F.3d 1117, 1122.)

Sandman-Hurley also believed that Student's IEP's should contain a decoding goal. But the team did offer a decoding goal in the 2023 annual IEP, which Student does not mention or criticize. And like Rozenberg, Sandman-Hurley did not mention anything about goals in her report or in her presentation to the IEP team. Her opinion was unpersuasive because it was not formed until hearing and was never before the IEP team.

## SERVICES AND PLACEMENT

The 2023 annual IEP proposed as services 454 minutes a week of in-class specialized academic instruction, and 227 minutes of specialized academic instruction out of class. It also offered 45 minutes a week of group speech and language services, and 47 minutes a week of in-class occupational therapy support. Student faults the offer because Rozenberg would have preferred 60 minutes a week of speech support in two 30-minute sessions rather than 45 minutes in one session. She did not explain that opinion. Student offered no evidence to prove the 15-minute difference would have had any effect on Student's education.

At the first part of the annual meeting, Placentia-Yorba Linda also considered the report of California-licensed private audiologist Dr. Maria Abramson. Abramson held a clear credential in health services and had extensive experience as an audiologist in private practice. She had worked with many school districts, and authored the Basic Auditory Training Program, an instructional system to improve the interpretation of sound.



Abramson conducted an auditory processing evaluation of Student on September 13, 2022, and wrote a report, which Placentia-Yorba Linda received on September 30, 2022. Her testing showed that Student had some areas of hearing deficit, and she recommended her own Basic Auditory Training Program as treatment. Student failed to prove that the recommended audio training was necessary for Student to receive a FAPE. There was no evidence that any auditory deficit Student might have had interfered in any way with his education. His accommodations gave him preferential seating at the front of the class. The IEP team reasonably decided not to incorporate Abramson's auditory training recommendations in the 2023 annual IEP.

Student did not prove that Placentia-Yorba Linda denied Student a FAPE in the IEP developed on May 3, 4, 23, and 30, 2023 by failing to make an appropriate offer of placement, services, and goals.

## CONCLUSIONS AND PREVAILING PARTY

### ISSUE 1

Placentia-Yorba Linda did not deny Student a FAPE by failing to provide prior written notices of changes in his program in response to the pandemic.

Placentia-Yorba Linda prevailed on Issue 1.

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## ISSUE 2

Placentia-Yorba Linda denied Student a FAPE by failing to implement his then-current IEP during the pandemic.

Student prevailed on Issue 2.

## ISSUE 3

Whether Placentia-Yorba Linda denied Student a FAPE by failing to have an IEP in place for him at the beginning of the school year, provide him a legally compliant IEP, and failing to provide an appropriate education during the COVID-19 closure of his school were not decided.

Neither party prevailed on Issue 3.

## ISSUE 4

Placentia-Yorba Linda did not deny Student a FAPE by failing to make an appropriate offer of placement, services, and goals in the IEP's developed on May 20, October 8, October 13, and December 3, 2020.

Placentia-Yorba Linda prevailed on Issue 4.

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## ISSUE 5

Placentia-Yorba Linda did not deny Student a FAPE by failing to file a request for due process hearing so that it could implement the September 24 and December 8 and 13, 2021 IEP offers.

Placentia-Yorba Linda prevailed on Issue 5.

## ISSUE 6

Placentia-Yorba Linda did not deny Student a FAPE by failing to provide prior written notice of its rejections of Parent's requests of September 24 and October 15, 2021, or January 3, 2022.

Placentia-Yorba Linda prevailed on Issue 6.

## ISSUE 7

Placentia-Yorba Linda did not deny Student a FAPE during the school years 2020-2021 and 2021-2022 by failing to address the fact that he was being bullied.

Placentia-Yorba Linda prevailed on Issue 7.

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## ISSUE 8

Placentia-Yorba Linda did not deny Student a FAPE in the IEP developed on December 8 and 13, 2021, by failing to make an appropriate offer of placement, services, and goals.

Placentia-Yorba Linda prevailed on Issue 8.

## ISSUE 9

Placentia-Yorba Linda did not deny Student a FAPE in the IEP developed on May 12, June 8, September 9, and December 9, 2022, by failing to make an appropriate offer of placement, services, and goals.

Placentia-Yorba Linda prevailed on Issue 9.

## ISSUE 10

Placentia-Yorba Linda did not deny Student a FAPE in the IEP developed on May 3, 4, 23, and 30, 2023, by failing to make an appropriate offer of placement, services, and goals.

Placentia-Yorba Linda prevailed on Issue 10.

## REMEDIES

ALJ's have broad latitude to fashion appropriate equitable remedies for FAPE denials. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th Cir.

1994) 31 F.3d 1489, 1496.) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3)(2006).) Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d. at p. 1497.)

Compensatory education is an equitable remedy that depends upon a fact-specific and individualized assessment of a student's current needs. (*Puyallup, supra*, 31 F.3d at p. 1496; *Reid v. District of Columbia* (D.C.Cir. 2005) 401 F.3d 516, 524.) The award must 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, supra*, 401 F.3d at p. 524.) Student proved that Placentia-Yorba Linda reduced his instructional hours by approximately two-thirds from March 30 to June 16, 2020, and again from August 31, 2020, to September 30, 2020. He also proved that Placentia-Yorba Linda reduced his instructional hours by approximately one third from October 1, 2020, to April 1, 2021.

Most of the hours Student missed were of academic instruction. The evidence does not permit any clear division of the missed hours among academic instruction, occupational therapy and speech services. Student is now likely receiving occupational therapy and speech services in his private placement, and no witness testified that doubling the hours of such related services will help Student. An award of compensatory academic hours will benefit him more than a mixture of academics and services. Hour-for-hour relief for a denial of FAPE is not required by law. (*Puyallup, supra*, 31 F.3d at p. 1497.)

Student will therefore be awarded 4 hours of compensatory academic instruction for every school day from March 30 to June 16, 2020, four hours for every school day from August 31 to September 30, 2020, and two hours for every school day between October 1, 2020, and April 1, 2021.

Placentia-Yorba Linda's calendars show that there were 51 school days from March 30 to June 16, 2020, and 21 school days from August 31 to September 30, 2020. The calendars also show that there were 112 school days from October 1, 2020, to April 1, 2021.

Therefore, Student will be awarded:

- 204 hours of compensatory academic instruction for the hours missed between March 30 to June 16, 2020, at the rate of four hours per school day;
- 84 hours of compensatory academic instruction from August 31 to September 30, 2020, at the rate of four hours per school day; and
- 224 hours of compensatory academic instruction for the hours missed from October 1, 2020, to April 1, 2021, at the rate of two hours per school day.

In total, Student is awarded 512 hours of compensatory academic instruction to remedy the denial of FAPE between March 30, 2020, and April 1, 2021.

Student failed to prove entitlement to any other remedy.

## ORDER

1. Placentia-Yorba Linda shall provide Student 512 hours of individual tutoring by a licensed special education teacher, or a teacher with equivalent credentials, to be divided among core academic subjects as determined by Parent in consultation with the tutor. The core academic subjects shall be the same subjects as Student would be studying if he were in a general education class in middle school or high school at the time.
2. Placentia-Yorba Linda shall make the tutoring hours ordered above reasonably available to Student starting 21 days after the date of this Decision and until the end of the 2025-2026 regular school year. Placentia-Yorba Linda shall ensure that the hours are delivered during the regular school year and during summer break. Placentia-Yorba Linda's obligation to provide the compensatory hours shall cease at the end of the regular 2025-2026 academic year notwithstanding any unused services. Placentia-Yorba Linda's obligation shall also cease if Student is no longer a resident of the district.
3. If Student is absent from any scheduled tutoring session without 24-hours' notice, Placentia-Yorba Linda may subtract that session from the total hours to be provided.
4. All Student's other requests for relief are denied.

## RIGHT TO APPEAL THIS DECISION

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

Charles Marson

Administrative Law Judge

Office of Administrative Hearings