

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

HACIENDA LA PUENTE UNIFIED SCHOOL DISTRICT.

CASE NO. 2022110091

DECISION

June 28, 2023

On November 2, 2022, Student filed a due process hearing request with the Office of Administrative Hearings called OAH. On March 13, 2023, OAH permitted Student to file an amended due process hearing request. Administrative Law Judge June R. Lehrman heard this matter via videoconference on May 2, 3, 4, 9, 10, 11, 16, 17 and 18, 2023.

Alexis Casillas and Jennifer Chang represented Student. Student's Mother attended all hearing days on Student's behalf. Mother is referred to here to as "Mother" or "Parent." Jennifer Chamberlain and Savannah Skelton represented Hacienda La Puente Unified School District, called Hacienda. Dr. Kitty Louie, Executive Director, attended all hearing days on Hacienda's behalf.

At the parties' request the matter was continued to June 12, 2023, for written closing briefs. The record was closed, and the matter was submitted on June 12, 2023.

ISSUES

1. Did Hacienda deny Student a free appropriate public education, or FAPE during the 2020-2021 school year, by failing to conduct appropriate assessments of him in all areas of suspected disability?
2. Did Hacienda in the 2020-2021 school year deny Student a FAPE by failing to:
 - a. Issue 2a was withdrawn.
 - b.
 - i. offer him necessary related speech and language services and
 - ii. implement his services in accordance with his individualized education program, or IEP;
 - c. offer him necessary processing remediation;
 - d.
 - i. offer him necessary related reading remediation and
 - ii. implement his services in accordance with his individualized education program;
 - e. offer him necessary related math remediation; or
 - f. offer him necessary related extended school year services to enable him to meet "appropriately ambitious" IEP goals and make meaningful progress in the general education curriculum?

3. Did Hacienda deny Student a FAPE during the 2021-2022 school year by failing to appropriately respond to the family's January 3, 2022, requests for
 - a. an augmentative and alternative communication assessment and
 - b. independent educational evaluations in the areas of speech and language and academics?
4. Did Hacienda during the 2021-2022 school year deny Student a FAPE by failing to
 - a.
 - i. offer him necessary related speech and language services and
 - ii. implement his services in accordance with his IEP;
 - b. offer him necessary processing remediation;
 - c.
 - i. offer him necessary related reading remediation and
 - ii. implement his services in accordance with his IEP;
 - d. offer him necessary related math remediation; or
 - e. offer him necessary related extended school year services to enable him to meet "appropriately ambitious" IEP goals and make meaningful progress in the general education curriculum?
5. Did Hacienda deny Student a FAPE during the 2022-2023 school year by failing to appropriately respond to the family's request for a visual processing assessment?

6. Did Hacienda during the 2022-2023 school year deny Student a FAPE by failing to
 - a.
 - i. offer him necessary related speech and language services and
 - ii. implement his services in accordance with his IEP;
 - b. offer him necessary processing remediation;
 - c.
 - i. offer him necessary related reading remediation
 - ii. implement his services in accordance with his IEP;
 - d. offer him necessary related math remediation
 - e. offer him necessary related extended school year services, or
 - f. implement the offered assistive technology supports so as to enable him to meet “appropriately ambitious” IEP goals and make meaningful progress in the general education curriculum?

The issues were modified slightly for clarity with no substantive changes. The ALJ has authority to redefine a party’s issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

The issues in this decision analyzed by topic and not in numerical order.

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 et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All references to the Code of Federal Regulations are to the 2006 edition. The main

purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

Student bore 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).)

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or

guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); (*Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 399 [137 S.Ct. 988, 998-9] (*Endrew*)).

Student was 13 years old and in eighth grade at the time of hearing. Student resided within Hacienda's geographic boundaries at all relevant times. Student was eligible for special education under the primary eligibility category of specific learning disability, and the secondary eligibility category of speech or language impairment.

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ASSESSMENT ISSUES

ISSUE 1: DID HACIENDA DENY STUDENT A FAPE DURING THE 2020-2021 SCHOOL YEAR BY FAILING TO CONDUCT APPROPRIATE ASSESSMENTS OF HIM IN ALL AREAS OF SUSPECTED DISABILITY?

In Issue 1, Student contends that Hacienda denied Student a FAPE during the 2020-2021 school year, by failing to conduct appropriate assessments of him in all areas of suspected disability. Specifically, Student contends Hacienda failed to assess Student for a visual processing disorder. Student further contends Hacienda also failed to use any standardized assessments in the areas of cognitive and psychological processing and academics when assessing him. Hacienda contends its assessment of Student was appropriate. The assessment completed in 2020 was a triennial assessment of Student.

With respect to Issue 1, the parties reached a stipulation to the following facts.

- The family signed a November 17, 2020, assessment plan disagreeing that a remote assessment was appropriate for Student. The assessment was performed virtually while a Public Health Order for the County of Los Angeles was in place during the COVID-19 pandemic. The assessment was conducted in December 2020 and consisted of a records review, interviews, teacher reports, and informal assessments in the areas of math, reading, and social emotional functioning.
- Hacienda also conducted a speech and language assessment virtually, administering informal assessments, interviews and observations.

- The family requested independent educational evaluations in response to Hacienda's 2020 multidisciplinary assessment and the 2020 speech and language assessment.
- Hacienda agreed to fund independent educational evaluations in speech and language, and academics.
- Hacienda agreed it would reimburse the family for the costs of independent educational evaluations conducted by Dr. Helena Johnson and Susan Hollar.
- The cost of the independent speech assessment by Hollar was \$2,800, and the cost of the independent psychoeducational assessment by Johnson was \$6,500.

Hacienda agreed to reimburse the family for independent assessments in order to avoid the legal requirement of filing for due process itself to defend its own triennial assessments. Although agreeing to fund these independent assessments, Hacienda did not concede that its triennial and speech assessments were inappropriately conducted.

STANDARDIZED TESTING INSTRUMENTS

Although Mother consented to the "virtual" triennial assessment plan, she did not agree that the virtual format met the criteria of a comprehensive triennial assessment. As part of the triennial assessment, school psychologist Amy Kuo conducted a records review, interviewed Mother, and administered rating scales. She used the Adaptive Behavior Assessment System – Third Edition, the Behavior Assessment System for Children – Third Edition, and the Conners – Third Edition. She interviewed Student's fifth

grade teacher from the prior fifth grade 2019-20 school year, since fifth grade had been the last time Student had attended school in person. During the entire sixth grade, the 2020-21 school year, when the assessment was being completed, school was conducted only virtually due to the COVID-19 pandemic.

School psychologist Jamie Fernicola conducted three classroom observations of Student via Zoom. She interviewed Student and got input from his teachers. Hacienda used no standardized testing instruments when assessing Student because in-person contact was restricted during the COVID-19 emergency, and the publishers of the applicable standardized testing protocols had not modified their in-person protocols. Fernicola admitted her virtual observations via Zoom were more limited than in-person observations. For example, in person an assessor can witness a student inside a classroom and see directly what the child is working on. Fernicola nevertheless felt that the assessment provided sufficient information to inform Hacienda's offer of a FAPE.

Student had been assessed many times in the past. Those assessments included an independent psychoeducational assessment conducted in 2016, and an independent speech assessment conducted in 2017. In summer 2020, Student had also recently been independently assessed for central auditory processing and assistive technology needs. Fernicola confirmed Student's cognitive abilities were known to be average overall, with some areas of deficit in auditory and visual processing, visual motor integration and verbal comprehension. These deficits affected his academic performance and resulted in his needing extra time to process verbal information and visual prompts. Student had some trouble expressing complex thoughts. Student also needed supports such as repetition, and multi-modal presentation of information.

For the 2020 triennial assessment, in the absence of standardized testing instruments, Student's teachers selected an alternative mode of academic testing. Informal academic assessments were conducted by special education teachers Martha Montoya and Adriana Villarreal.

A school district must ensure that reevaluations of a child's needs are conducted if the district determines that the educational or related services needs of a child with special needs, including improved academic achievement and functional performance, warrant a reevaluation; or if the parent or teacher request a reevaluation. Reevaluations must be conducted in accordance with the procedural requirements of the IDEA. (20 U.S.C. § 1414 (a)(2)(A); 34 C.F.R. § 300.303.) Reevaluations must be conducted at least every three years and may not be performed more frequently than once a year unless both the district and the parents agree. (20 U.S.C. §1414 (a)(2)(B).)

A local educational agency must assess a special education student in all areas of suspected disability, including if appropriate,

- health and development,
- vision,
- hearing,
- motor abilities,
- language function,
- general intelligence,
- academic performance,
- communicative status,
- self-help,
- orientation and mobility skills,

- career and vocational abilities and interests, and
- social and emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304 (c)(4); Ed. Code, § 56320, subd. (f).)

A local educational agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. (20 U.S.C. § 1414(b)(2)(A).). No single measure or assessment shall be the sole criterion for determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (34 C.F.R. § 300.304 (c)(6).) The local educational agency must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304 (b)(3); Ed. Code, § 56320, subds. (e) & (f).) Assessments must be conducted by trained and knowledgeable individuals who are both "knowledgeable of [the student's] disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (g), 56322.)

As long as statutory requirements for assessments are satisfied, the U.S. Department of Education, Office of Special Education Programs, has advised that selection of particular testing or evaluation instruments is left to the discretion of State and local educational authorities. (*Letter to Anonymous* (OSEP Sept. 17, 1993) 20 IDELR 542; *M.W. v. Poway Unified School District* (S.D. Cal. Aug. 14, 2013) 2013 WL 4401673.)

It is undisputed that due to the COVID-19 pandemic, Hacienda did not administer any standardized assessment instruments directly to Student. Hacienda used rating scales and informal assessment tools to gather relevant data. The assessors used informal measures, such as recounting the observations of others who were in regular contact with Student, and interviewing Mother, and Student's teachers. However, the rating scales administered were formal assessment tools, although they were not directly administered to Student himself.

No statute or regulation requires a particular assessment or assessment method. Part 300.310 of the Regulations of the Offices of the Department of Education (34 C.F.R.), requires that an assessor "as appropriate" should review existing data, including evaluations and information provided by parents, classroom or State-administered assessments, observations by teachers and related services providers. Hacienda did so. The regulations also state that when assessing for specific learning disabilities, an assessment "must ensure that the child is observed in the child's learning environment" (34 C.F.R. § 300.310). Hacienda complied.

Student failed to establish by a preponderance of the evidence that the assessors' reliance on the observations of teachers who had direct contact with Student, rating scale responses, interviews with parent and teachers, and informal academic assessments, did not meet the legal requirements for a triennial assessment.

The preponderance of the evidence showed that the IEP team had adequate information to determine the nature of Student's needs and make an appropriate offer of services using a variety of assessment tools and strategies, to gather relevant information, including rating scales, interviews and records review. (20 U.S.C. § 1414(b)(2)(A)). Hacienda did not rely on a single measure or assessment as the

sole criterion for determining Student's needs. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) The assessments were sufficiently comprehensive to identify all of Student's special education and related service needs, whether or not commonly linked to the disability category of Student. (34 C.F.R. § 300.304 (c)(6).) The rating scales were technically sound testing instruments that demonstrated the effect that behavioral factors had on the functioning of Student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304 (b)(3); Ed. Code, § 56320, subds. (e) & (f).)

Moreover, the assessments were conducted by individuals who were both knowledgeable and competent. (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (g), 56322.) For these reasons, Student failed to establish that Hacienda denied Student a FAPE by failing to use standardized testing instruments while conducting the triennial assessment.

VISUAL PROCESSING

The parties stipulated that the family requested a visual processing disorder assessment in December 2020, the time period of the triennial assessment in December 2020, and that Hacienda did not respond to that request either in writing, or with an assessment plan. Hacienda contends the failure to respond was harmless, because Student did not actually require a visual processing assessment.

Upon parent request, the local educational agency must conduct a reassessment, even when the school determines that no additional data is needed to determine the student's educational needs. (20 U.S.C. § 1414 (a)(2)(A)(ii); Ed. Code, § 56381, subds. (a)(1) & (d); 34 C.F.R. § 300.303 (a)(2).)

Education Code, section 56043 provides that within 15 days after a “referral for assessment” a proposed assessment plan “shall” be developed. A “referral for assessment” means any written request for assessment made by persons including a parent. (Ed. Code, § 56029.) If the request is oral not written, “staff of the school district, SELPA, or county office shall offer assistance to the individual in making a request in writing and shall assist the individual if the individual requests such assistance.” (C.C.R., § 3021.)

A parent must be provided “written prior notice” when a school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. 20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4.) The notice must include

- a description of the action proposed or refused by the school district,
- an explanation of why the district proposes or refuses to take the action,
- a description of each evaluation procedure, test, record, or report used as a basis for the proposed or refused action,
- a description of any other factors relevant to the district’s proposal or refusal,
- a statement that the parents have protection under the procedural safeguards of IDEA, and
- sources for the parents to contact to obtain assistance. (20 U.S.C. § 1415(c); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.)

The procedures relating to prior written notice “are designed to ensure that the parents of a child with a disability are both notified of decisions affecting their child and given an opportunity to object to these decisions. (*C.H. v. Cape Henlopin School Dist.* (3d Cir. 2010) 606 F.3d 59, 70.)

A school district’s failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School District, et al.* (9th Cir. 2006) 464 F.3d 1025, 1031.) In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following:

- impeded the right of the child to a FAPE;
- significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of a FAPE to the child of the parents; or
- caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E); Ed. Code, § 56505, subd. (f).)

The hearing officer “shall not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian to participate in the formulation process of the individualized education program.” (Ed. Code, § 56505, subd. (j).)

Here, Hacienda procedurally violated the IDEA by not providing an assessment plan in response to the family's request for a visual processing disorder assessment in December 2020. If the request was oral only, Hacienda procedurally violated the regulation that required it to offer assistance to put it into writing.

As will be seen below, Student has not established that his right to a FAPE was thereby impeded, or that he suffered a deprivation of educational benefits. Thus, Hacienda's failure to respond to the request was a "nonsubstantive procedural error."

However, the failure to assess Student in the area of visual processing as requested interfered with the opportunity of the parent or guardian to participate in the formulation process of the IEP by depriving parent and the rest of the IEP team of potentially pertinent information about Student's needs. Hacienda contends the error was harmless because Student did not actually need to be assessed in visual processing. In light of the law regarding a district's obligation to assess upon parental request, Hacienda's argument is unpersuasive.

Therefore, Student prevailed on Issue 1. Remedies are discussed below.

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ISSUE 3: DID HACIENDA DENY STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR BY FAILING TO APPROPRIATELY RESPOND TO THE FAMILY'S JANUARY 3, 2022, REQUESTS FOR (A) AN AUGMENTATIVE AND ALTERNATIVE COMMUNICATION ASSESSMENT AND (B) INDEPENDENT EDUCATIONAL EVALUATIONS IN THE AREAS OF SPEECH AND LANGUAGE AND ACADEMICS?

In Issue 3, Student contends Hacienda denied Student a FAPE during the 2021-2022 school year by failing to appropriately respond to the family's January 3, 2022, requests for an augmentative and alternative communication assessment and independent educational evaluations in the areas of speech and language and academics. Specifically, Student contends that, although Hacienda agreed to fund independent evaluations in the areas of psychoeducational functioning and speech and language, it has not to date actually done so.

Hacienda contends it appropriately responded to the requests for independent educational evaluations in the areas of speech and language, and academics, and Parent did not request an augmentative and alternative communication assessment. Hacienda further contends that, although it was ready to fund the independent educational evaluations in the areas of speech and language, and academics, Student did not follow through after Hacienda communicated with Parent regarding those independent educational evaluations.

The procedural safeguards of the IDEA provide that under certain conditions a parent is entitled to obtain an independent educational evaluation of a child at public expense. (20 U.S.C. §1415(b)(1).) An independent evaluation is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).)

A parent may request an independent assessment at public expense if the parent disagrees with an evaluation obtained by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an independent assessment at public expense, the school district must, “without unnecessary delay,” either initiate a due process hearing to show that its assessment is appropriate or provide the independent assessment at public expense, unless the school district demonstrates at a due process hearing that the assessment obtained by the parent does not meet its criteria. (34 C.F.R. §300.502(b)(2).) The school district may inquire as to the reason why the parent disagrees with the district’s assessment, but the district may not require the parent to provide an explanation and may not unreasonably delay its “fund or file” obligation to either provide the independent assessment at public expense or file its due process complaint to demonstrate the appropriateness of its assessment. (34 C.F.R. § 300.502(b)(4).)

FUNDING OF INDEPENDENT EVALUATIONS IN SPEECH AND LANGUAGE ACADEMICS

On January 3, 2022, Student’s advocate wrote Hacienda a letter that clearly asked for independent educational evaluations in speech and language, and academics. Hacienda’s response dated January 28, 2022, clearly agreed to fund them. No evidence was presented concerning events thereafter.

Student in closing briefs contends that Hacienda did not follow through on the funding. Hacienda in closing briefs contends it needed Parent to respond to communications regarding assessors before it could do so, but Parent never responded. These closing arguments were not addressed at hearing. Neither party presented any evidence pertaining to their respective contentions.

Hacienda's January 28, 2022, response to Parent's January 3, 2022, request was timely. In this respect, there was no denial of a FAPE by virtue of failing to "respond" to the family's January 3, 2022, requests appropriately.

However, it is apparent from the parties' stipulation that Hacienda did not actually fund these two assessments, one by Hollar for \$2,800, and the other by Johnson was \$6,500. The parties' stipulation constitutes a finding that the funding never occurred.

Given the lack of any testimony at hearing concerning this issue, the only evidence was the documents themselves, the January 3 letter and the timely January 28 response, and the stipulation. Because Hacienda agreed to fund the assessments, and has not done so, and in absence of any other evidence concerning why, Student carried the burden of proof on this Issue.

Student prevails on Issue 3(b). Remedies are discussed below.

AUGMENTATIVE AND ALTERNATIVE COMMUNICATION ASSESSMENT.

The January 3 letter contained language that might be construed as a request for an augmentative and alternative communication assessment. Student contends that is

what it was. Hacienda contends to the contrary, asserting that Parent did not request an augmentative and alternative communication assessment. The verbiage Student construes as a request for an augmentative and alternative communication assessment, was couched within a paragraph about conversations which occurred at an IEP team meeting concerning that issue.

The only reasonable interpretation of the disputed language in the January 3 letter, which appears at paragraph 10 of the letter, is that Student was in fact requesting Hacienda to conduct an assessment in the area of augmentative and alternative communication.

Here, Hacienda procedurally violated the IDEA by not providing an assessment plan in response to the family's request for an augmentative and alternative communication assessment. Given the evidence concerning Student's ability to communicate without such assistance, Student has not established that his right to a FAPE was thereby impeded, or that he suffered a deprivation of educational benefits. However, the failure to respond to the request interfered with the opportunity of the parent or guardian to participate in the formulation process of the IEP by depriving parent and the rest of the IEP team of potentially pertinent information about Student's needs.

In light of the law regarding a district's obligation to assess upon parental request, Student prevailed on Issue 3(a). Remedies are discussed below.

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ISSUE 5: DID HACIENDA DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO APPROPRIATELY RESPOND TO THE FAMILY'S REQUEST FOR A VISUAL PROCESSING ASSESSMENT?

In Issue 5, Student contends that Hacienda denied Student a FAPE during the 2022-2023 school year by failing to appropriately respond to the family's request for a visual processing assessment. Hacienda acknowledges that the request was made, and that it did not respond.

The parties stipulated that the family requested a visual processing disorder assessment in December 2020, as addressed in Issue 1, and that the family reasserted that request again after Johnson's 2022 independent educational evaluation. The parties did not reach an agreement on a remedy for Issue 5.

Hacienda contends the error was harmless because Student did not actually need to be assessed in visual processing. In light of the law cited above regarding a district's obligation to assess upon parental request, Hacienda's argument is unpersuasive.

Therefore, Student prevailed on Issue 5. Remedies are discussed below.

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ISSUES CONCERNING SPEECH OFFERS

ISSUE 2(b)(i): DID HACIENDA DURING THE 2020-2021 SCHOOL YEAR DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION, OR FAPE, BY FAILING TO OFFER HIM NECESSARY RELATED SPEECH AND LANGUAGE SERVICES?

For all issues concerning speech offers across the three school years in question, Student contends the goals required prompting and other inappropriate levels of adult support, and were, therefore, not appropriately ambitious for Student, who should have been able to independently perform tasks given his average cognitive profile.

Student also claims Hacienda overstated Student's actual achievement levels, and that he was, in fact, performing worse than Hacienda's progress reports and present levels of performance claimed.

Hacienda contends its offers to Student of speech and language services were appropriate.

PRESENT LEVELS OF PERFORMANCE IN SPEECH AND LANGUAGE

Student's IEP team meetings for the 2020-2021 school year spanned the time frame from September to December 2020. There were two relevant IEP documents. One of those documents indicated IEP team meetings were held on September 18, 2020, October 23, 2020, and November 16, 2020. Student's triennial assessment

occurred in December 2020. After the triennial assessment report dated December 8, 2020, Hacienda convened another IEP team meeting in December, 2020, that resulted in a second IEP document.

The offer of goals and services is gleaned from a combination of these two documents and is deemed to have been made as of the date of the latter, December document. Unless the distinction between the two documents is pertinent, the two documents combined are referred to as the "2020-21 sixth-grade IEP."

During the sixth grade, in the 2020-21 school year, speech language pathologist Kristin Delgado served Student and worked on his four speech and language goals from his fifth grade IEP. At the annual IEP team meetings that occurred in September, October and November of 2020, Delgado reported on Student's progress and that he met all four speech goals. Delgado reported Student was a very hard worker and had made wonderful progress in his speech and language development. He met his goal in semantics, to define learned vocabulary words with up to 88 percent accuracy and use them meaningfully in a sentence with up to 80 percent accuracy with three cues. He met his goal in expressive language and syntax, demonstrating the ability to change learned verbs from the past tense to the present, future, and present perfect, and answer a question in a complete sentence by using the correct verb tense, with 80 percent accuracy, with three cues.

Delgado noted Student benefitted from a structured task to accurately use the different verb tenses. He had difficulty monitoring his tensing to make sure it was parallel to the rest of his statement. Delgado reported Student would benefit from

learning how to self-correct his grammar errors during less structured activities. This observation was in accord with Mother's comment that Student still used the past tense during everyday conversation.

Student met his goal in pragmatics and was now able to explain the meaning of learned idioms with 90 percent accuracy with no cues. Some examples included, "It's raining cats and dogs," and "don't let the cat out of the bag." He demonstrated understanding of the literal meaning and figurative meanings of idioms. He met his goal in articulation and prosody. He was able to mark at least two syllable stress markers with up to 84 percent accuracy, and one breath mark for each sentence with 100 percent accuracy, with three cues.

PROPOSED NEW GOALS

Delgado proposed two new annual communication goals. The first proposed goal was as follows: by October 2021, after reading a sixth-grade appropriate passage, Student would make inferences from implicit information in the text with 80 percent accuracy when given no more than two cues. English Language Arts teacher Elizabeth Kim had reported this as an area of need. The second proposed new goal stated that by October 2021, when given sixth-grade appropriate sentences, Student would identify grammatical errors and correct the errors in the sentence with 80 percent accuracy when given minimal cues (i.e., in 30 percent of all opportunities).

In December, Delgado conducted Student's triennial speech and language assessment. She reviewed records, interviewed Parent and Student, and observed Student in several classes via Zoom. She administered an articulation probe, a language probe, took a speech/language sample and administered rate and prosody probes.

She found, based on the records reviewed, he had met or substantially met, all of his communication goals since 2014. He continued to present with deficits in his expressive language skills in semantics and morpho-syntax, along with reduced overall speech clarity in connected speech. His deficit in expressive language was characterized by difficulty formulating grammatically correct sentences in a cohesive manner during discourse and using appropriate word order in sentences. Mother frequently corrected his grammar during spontaneous conversations at home. Semantically, he had difficulties with understanding novel words. Student was not always successful when using context clues to help him define unknown words. He also had difficulty utilizing abstract language as it pertained to inferencing (e.g., understanding implicitly stated information, emotions of characters, tone of the situation, humor and jokes).

With regards to his overall speech clarity, Student had reduced speech intelligibility at the conversational level. He habitually made one consonant error, mispronouncing the "th" sound, and made vowel substitutions as well. The majority of his speech sound changes at the conversational level were due to speaking rapidly. However, his intelligibility was rated as 90 percent intelligible or higher based on parent and teachers' interviews, and was rated as 99 percent based on Delgado's assessment probes. He used spurts of rapid speech and longer pauses between sentences, and used filler words. Some of his teachers reported understanding him 100 percent, and others reported they understood him "most" of the time.

The annual IEP team meeting carried over from November to December 2020, after Hacienda completed its virtual triennial assessment. At the December 2020 meeting, Delgado proposed two additional communication goals. The first proposed additional goal stated that when a conversational breakdown occurred, Student would restate, re-cast or clarify using strategies (e.g., by reducing his speech rate, articulating,

using transition words, adding necessary information, using a graphic organizer) when discussing grade appropriate topics in four out of five opportunities when given no more than one reminder. Delgado based this goal on the results of the triennial speech assessment she just conducted.

The second proposed additional goal stated that when using curriculum-relevant tasks, Student would use context clues to determine the meaning of unfamiliar words or phrases with 80 percent accuracy when given no cues. This goal was based on a common-core sixth-grade standard and a curriculum-based language probe according to which Student was only able to use context clues in two out of five opportunities.

EXPERT OPINIONS

Student's expert speech language pathologist Susan Hollar assessed Student twice, once in January 2017, almost three years prior to the 2020-21 sixth-grade IEP at issue here. Her second assessment of Student occurred two years later in the summer of 2022 and will be discussed in further detail below, during the discussion of eighth grade when it occurred. On the basis of her earlier and later assessments, Hollar critiqued the 2020-21 goals.

Hollar painted a very different portrait of Student as lower functioning than Hacienda contends. Hollar thus disputed the appropriateness of Delgado's proposed goals. Hollar disputed that the goals should have been based on sixth-grade curriculum. She based this on his then-current score on the English Language Arts statewide achievement test, which equated to Student having "not met" the sixth-grade English Language Arts state standards at that time. She also criticized that the goals included cueing or prompting. In her opinion, prompting was appropriate for

instructional purposes, but not for measuring success, because prompted performance is not independent. Thus, in her opinion, it did not give an accurate measure of a student's true abilities.

SERVICES OFFER

Delgado recommended and Hacienda offered Student 90 minutes in weekly speech and language services, which consisted of 60 minutes in individual sessions, and 30 minutes in a small group session.

In addition, following the recommendations of an independent central auditory processing evaluation by audiologist Dr. Bea Braun, the 2020-21 sixth-grade IEP offered numerous accommodations, including

- small group instruction,
- breaks,
- a visual schedule,
- extra classroom movement,
- extended time on tests and assignments,
- a checklist of steps for tasks as needed,
- special acoustics,
- having tests read to him,
- simple repetitive directions rephrased if needed,
- increased verbal response time,
- frequent checks for understanding,
- ample repetition of new sequencing tasks,
- pre-teaching vocabulary,

- not calling on Student for answers or to read aloud unless he volunteers,
- visual supports such as models, graphic organizers, and directions,
- allowing alternative response mode (oral, or pointing, typing, speech to text),
- teacher-supported transitions when returning from pull-out services,
- presenting information visually before oral explanations,
- making text available through audio books,
- note-taking assistance,
- study guides or sheets,
- flexible seating,
- shortened assignments,
- support with organization of materials,
- reminders to use correct spelling and legible handwriting, and
- shortened homework.

ANALYSIS AND CONCLUSION

Hacienda prevailed on Issue 2(b)(i). Student's evidence was insufficient to meet his burden of proving that the offer of speech services for the 2020-21 school year denied Student a FAPE. The more persuasive evidence was that the offer of speech and language services was appropriate to meet Student's needs at the time of the 2020-21 sixth-grade IEP.

Delgado presented at hearing as knowledgeable and credible. She had served Student throughout the 2020-21 school year and monitored progress on his fifth-grade goals, all of which he met. She proposed two goals in the fall of 2020 and then, after assessing him for his speech and language triennial assessment, two additional goals in

December. She had a thorough and detailed recollection of Student, good explanations of her own recordkeeping, and excellent knowledge of the applicable testing psychometrics.

Overall Delgado was a very persuasive witness. She had excellent knowledge of the law concerning eligibility standards for speech language impairment, and thoroughly grounded her opinions in those criteria and in her own observations of Student.

The observation of other credible, persuasive teachers and service providers who worked with Student at this time on reading and math are discussed in more detail below. They all, without exception, were in accord with Delgado's persuasive testimony concerning her observations of Student.

An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. An IEP is "a snapshot, not a retrospective." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 , citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

"Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

To meet its substantive obligation under the IDEA, a school must offer an IEP "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Endrew, supra* at p. 399.) The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education

requires a prospective judgment by school officials. (*Ibid.*) Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. (*Ibid.*) The IEP must aim to enable the child to make progress. (*Ibid.*)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) 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 student. (*Id.*)

Here, the District's obligations were amply met. Student's four proposed goals were measurable and enabled Student to be involved in and make progress in the general education curriculum. The IEP showed a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. The goals targeted

- making inferences from implicit information in grade-level passages,
- identifying grammatical errors when given minimal cues,
- repairing conversational breakdowns, and
- using contextual clues to determine the meaning of unfamiliar words when given no cues.

The texts to be used were at the sixth-grade content level. Based on Delgado's contemporaneous knowledge of Student's then-current functioning, it is clear that these goals aimed for Student to make progress, and did not deny Student a FAPE.

Hollar's critique of the goals and services was unpersuasive in light of the weight of contrary evidence. The prompting she criticizes was implicit in the recommendations

of the independent audiologist, and was appropriate to offer Student a FAPE. Hollar's contention was that Student was doing poorly, so he needed more interventions. For example, she disputes that he was performing at a sixth-grade level and criticizes the goals because they were based on sixth-grade curriculum.

Hollar's knowledge of Student was, however, not contemporaneous, and was outweighed by the more persuasive observations of all the teachers and service providers who interacted with him daily, and who gave a credible and very different portrait of his functioning at school. Moreover, the contention that he was doing too poorly to accomplish these goals contradicts Student's alternate contention that his goals were not sufficiently ambitious.

The preponderance of the evidence did not support either Hollar's premise about Student's functional levels, or her conclusions. Hacienda prevailed on Issue 2(b)(i).

ISSUE 4(A)(i): DID HACIENDA DURING THE 2021-2022 SCHOOL YEAR DENY STUDENT A FAPE BY FAILING TO OFFER HIM NECESSARY RELATED SPEECH AND LANGUAGE SERVICES?

PROGRESS ON GOALS AND PRESENT LEVELS

Delgado stopped working with Student in May 2021. For the seventh grade in the 2021-22 school year, speech language pathologist Tse-Hsuan (Ruby) Cheng served Student. Cheng conversed with Delgado in August 2021 before starting to work with Student that fall. At the start of the seventh grade in the fall of 2021, Cheng was implementing the four communication goals Delgado proposed that had been offered in the 2020-21 sixth-grade IEP.

However, Parent's consent to those goals was delayed from when they were originally proposed in December 2020. Mother did not consent to implementation of those goals until April 2021. Thus, by the start of seventh grade, those goals had only been worked on for approximately eight weeks at the end of sixth grade from April to May 2021, and the beginning of seventh grade in August 2021.

Furthermore, the sixth grade had been in a virtual format during the COVID 19 pandemic. Hacienda did not return to in-person learning until the beginning of Student's seventh grade in the 2021-2022 school year.

The seventh-grade annual IEP team meetings occurred in September and October 2021. The resulting document is referred to as the "2021-22 seventh-grade IEP." At the team meetings, Cheng reported on Student's progress on the sixth-grade IEP goals. On the goal requiring Student to make inferences from implicit information in a grade-level text with 80 percent accuracy when given no more than two cues, Cheng reported Student had made "substantial" or 66 percent progress. Specifically, the goal called for two cues, but in order to attain 80 percent accuracy Cheng had to give Student three to five cues.

On the goal requiring Student to identify grammatical errors and correct the errors in grade-level sentences with 80 percent accuracy when given minimal cues, Cheng reported Student made substantial progress. Specifically, Student attained only 70 percent accuracy and required minimal to moderate cuing. In other words, his accuracy was lower than the target, and only with additional cuing than called for in the goal. On the goal requiring Student to use strategies to repair communication breakdowns in two out of five trials with two to three reminders, Student made only "partial" or 33 percent progress. On the goal requiring Student to determine or clarify

the meaning of unknown words, Student made only “partial” or 33 percent progress. He continued to need support to determine and clarify the meaning of unknown words. When conversing with Cheng and peers, Student sometimes demonstrated difficulties using the exact vocabulary word. Many times, he used gestures and other descriptive words to describe the target words.

At the 2021-22 seventh-grade IEP team meetings, there was extensive discussion of Student’s speech. Mother had concerns. Student needed a lot of corrections when describing and explaining things. Mother shared that Student struggled with verbal communication. For example, he struggled with explaining his homework to parents, which frustrated him. Mother found it difficult to understand what Student was trying to communicate 60 to 70 percent of the time. Mother was not sure how much he was comprehending.

Cheng acknowledged that sometimes it was difficult to understand the meaning behind what Student was trying to say. When excited, he made grammatical errors. He struggled with communication breakdowns, often showing frustration, such as sighing, when someone did not understand what he was saying.

Determining the meaning of unknown words from context was another challenging area for him. However, he was able to make inferences with cues and prompts. He was often able to identify grammatical errors in spontaneous speech when it was written down.

PROPOSED NEW GOALS

After this discussion at the 2021-22 seventh-grade IEP team meetings in September and October 2021, Hacienda proposed three new communication goals

and an academics goal to acquire vocabulary. The first stated that when given a seventh grade reading or listening task, Student will be able to answer questions that require inferencing and predicting by identifying clues from implied meaning and possible outcomes independently with 80 percent accuracy. This goal represented an advance from the prior year's goals in that it offered no prompting, and was to be accomplished independently. Cheng worked on this goal with Student over the course of the seventh grade, and according to her data he made progress on it that year.

The second proposed seventh-grade speech goal stated that when a conversational breakdown occurred, Student would restate, re-cast, or clarify using two strategies (e.g., reducing his speech rate, articulating, using transition words, adding necessary information, using a graphic organizer, and finding references online) when discussing seventh-grade topics in 80 percent of the opportunities. This goal for this year also called for independent work with no cuing. According to Cheng's data taken over the seventh-grade year, Student made progress on this goal as well.

The third new proposed communication goal was that Student would learn 60 seventh-grade curriculum-based vocabulary words by demonstrating the ability to define the words or use them correctly in sentences independently. Again, this goal now called for independent work with no cuing. The baseline for this goal was that of 80 seventh-grade level vocabulary words, of which Student could define only four. The academics vocabulary goal stated that Student would be able to determine or clarify the meaning of unknown and multi-meaning words and phrases based on seventh grade reading content, using context clues, grade-appropriate Greek and Latin affixes and roots, or using reference materials in four out of five opportunities.

EXPERT'S OPINION

Hollar criticized Student's progress on his prior year's goals as concerning and insufficient. Hollar opined that Student should have, with proper support, been doing better.

Hollar also criticized the proposed new goals, citing the baselines as very concerning evidence of poor performance. For example, she criticized the new goal to learn 60 seventh-grade curriculum-based vocabulary words because the baseline was that out of 80 seventh-grade words, Student could define only four. She opined that instead of seventh-grade curriculum-based vocabulary words, Student should go back to learning sixth-grade vocabulary or even lower. She criticized the goal that required inferencing and predicting from seventh-grade texts, because in her estimation Student was not reading at grade level.

Thus, despite Student's contention that his goals were not ambitious enough, Hollar opined his goals were too ambitious.

SERVICES OFFER

Cheng recommended and Hacienda offered a continuation of 90 minutes weekly speech services with 60 individual and 30 group. Parent consented to the implementation of the proposed speech and language services and goals on December 30, 2021. The accommodations continued in each IEP offer from year to year.

ANALYSIS AND CONCLUSION

Student's evidence was insufficient to meet his burden of proving that the offer of speech and language services for the 2021-2022 school year denied Student a FAPE. The more persuasive evidence established that, when those services were offered in October 2021, the offer was appropriate to meet Student's communication needs. The 2021-22 seventh-grade IEP was reasonably calculated to enable Student to make progress appropriate in light of his circumstances. Moreover, that IEP was also crafted to enable him to make progress in light of his circumstances. Student's three proposed goals were measurable and enabled Student to be involved in and make progress in the general education curriculum.

The IEP showed a direct and appropriate relationship between Student's present levels of performance, his needs, the goals and objectives, and the specific educational services to be provided. The first goal targeted inferencing and predicting from implied meaning, independently, and represented an advance from the prior year's goals in that it offered no prompting. The second goal addressed conversational breakdown, a recognized area of need. This goal also called for independent work with no cuing. The third goal targeted seventh-grade curriculum-based vocabulary words, and again called for independent work with no cuing. Based on Cheng's contemporaneous knowledge of Student's then-current functioning, it was evident that these goals were sufficiently ambitious and appropriately targeted for Student's progress. Thus, Hacienda's offer of speech and language services in the 2021-22 seventh-grade IEP did not deny Student a FAPE.

Hollar's equation of slow progress with a denial of FAPE was unpersuasive. It was not clear what basis Hollar had for her expectations about what Student should have been able to achieve. It was, therefore, not established that Student's lack of such expected progress amounted to a denial of FAPE. The degree of Student's progress was equally explainable by the fact that the

- goals had not been consented to until almost the end of sixth grade,
- that the entire sixth grade had been virtual due to COVID, and
- that at the time of the progress reporting, everyone was only just returning to an in-person school format.

Moreover, no one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra* at p.202.) The IDEA cannot and does not promise "any particular [educational] outcome." (*Id.* at p.192.) "No law could do that—for any child." (*Endrew, supra* at p. 398.) The IDEA "requires participating States to educate a wide spectrum of handicapped children," and "the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between." (*Rowley, supra*, 458 U.S. at p. 202.)

In addition, Hollar's perception that Student was poorer-performing than Hacienda thought, was outweighed by the contemporaneous observations of Hacienda's numerous credible teachers and service providers. For example, Hollar's

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opinion that Student could not access seventh-grade level text was less persuasive than the opposing opinion held by Student's English Language Arts teachers, addressed elsewhere in this Decision.

Insofar as the level of services offered, based on Hollar's premise that Student was doing so poorly, her conclusion was that that poor performance could be remedied by more intensive interventions. However, the preponderance of the evidence did not support either the premise or the conclusion. Hacienda prevailed on Issue 4(a)(i).

It should be noted that Hollar is a very experienced speech language pathologist with extensive expertise in administering and interpreting assessments. Her expertise encompasses, for example, social emotional interventions, pragmatic language deficits, and various educational interventions. Hacienda did not at hearing establish substantial doubt as to the validity of her 2022 assessment, discussed below.

However, there is a stark contrast between her findings about Student's functioning, and the contemporaneous and credible observations of numerous teachers and service providers who witnessed him in the actual educational setting and whose dedication and passion to their professions were evident. There was no explanation for the stark difference in how Student presented to the family and his experts, versus how he presented to Hacienda in his classroom performance.

But, Student had the burden to prove that the family's and expert's impression was correct, and Student did not succeed in meeting it. Hacienda evidence raised very substantial doubt about these essential questions. Therefore, Student, who had the burden of proof, failed to establish his contentions.

ISSUE 6(A)(I) DID HACIENDA DURING THE 2022-23 SCHOOL YEAR DENY STUDENT A FAPE BY FAILING TO OFFER HIM NECESSARY RELATED SPEECH AND LANGUAGE SERVICES?

PROGRESS ON PRIOR GOALS

Student's eighth-grade IEP team meetings occurred on September 9, September 21, and October 10, 2022. The resulting document will be referred to as the "2022-23 eighth-grade IEP."

For the eighth-grade year, speech language pathologist Erica Myers worked with Student. Myers reported Student's progress on his prior year's goals based on data she collected at her therapy sessions with Student. He met his goal to determine or clarify the meaning of an unknown word on four out of five opportunities. He relied on digital reference materials, rather than choosing from other strategies. He substantially met (indicating 66 percent success) his inferencing goal. He could answer questions that required inferencing and predicting with 73 percent accuracy, given minimal support (i.e., one to two cues).

He substantially met his conversation repair goal. During conversational breakdown, he used two repair strategies with 88 percent accuracy given minimal support, or one-to-two cues. He still required some cuing, prompting and support.

He partially met his vocabulary goal. He learned 23 out of 34 introduced seventh-grade vocabulary words, as demonstrated by providing the word definition or using the word correctly in a sentence.

PRESENT LEVELS

Myers and special education teacher Montoya reported Student's present communication levels. Student produced sentences that were meaningful with intact vocabulary. He produced sentences with various nouns, verbs, and adjectives. Student had learned 23 out of 34 introduced seventh-grade vocabulary words as demonstrated by providing the word definition or using the word correctly in a sentence. Although he had made progress, during interactions with peers and adults, Student demonstrated difficulty using exact vocabulary. Instead of using the targeted word in a sentence, he often used descriptors to describe the intended target word.

He produced sentences that varied in length and structure. His sentences contained a variety of morphological markers and syntactic forms including

- conjunctions (because),
- regular past tense (tricked),
- sequencing words (after),
- pronouns (she),
- irregular past tense (gave),
- negatives (not),
- present progressive verb tense (trying), and
- present tense (think).

During structured tasks and given three cues, Student was able to modify verbs using the correct verb tense, with 80 percent accuracy. He demonstrated errors with verb tense during conversational speech. Student was able to use conversation breakdown strategies given minimal support. He demonstrated difficulty maintaining

a conversation past three conversational turns without support. He was kind and friendly. He independently expressed his wants and needs and was able to express his feelings and emotions when asked.

Student engaged in conversation and was able to maintain conversation up to three conversational turns given two-to-three verbal prompts. He interacted well with his peers during class, often going to them with a question before approaching the teacher or other staff members. He participated in small group and whole class discussions when the teacher called on him. Eighth grade English Language Arts teacher Melissa Restovich reported that he raised his hand to ask questions during class and participated in small group discussions. He also interacted positively with peers and appeared to be good friends with his seat partner.

PROPOSED NEW GOALS

Myers proposed three new communication goals. The first goal was in the area of pragmatics and stated that Student would independently initiate social interaction with peers and maintain interaction for four conversational turns, with 80 percent accuracy. The second goal targeted "word-finding," and stated that during conversational interactions, Student would demonstrate the use of word finding strategy (e.g., attributes, gestures) given a single prompt, with 80 percent accuracy, across three consecutive sessions. The third goal targeted verb tense, stating that Student would formulate sentences containing correct verb tense by independently self-monitoring and self-correcting during conversational interactions, with 80 percent accuracy. Myers drafted these proposed goals based on teacher and parent reporting, her own observations, and Hollar's independent speech assessment.

INDEPENDENT ASSESSMENTS

During the spring and summer of 2022, just prior to the eighth-grade IEP team meetings, Hollar assessed Student in the area of speech and language, and Johnson conducted an independent psychoeducational assessment. They both presented their reports at the 2022-2023 eighth-grade IEP team meetings.

HOLLAR'S INDEPENDENT SPEECH AND LANGUAGE ASSESSMENT

During the spring/summer 2022 assessment, Hollar observed Student, and administered several standardized and informal testing instruments. Her selection and administration of these tests was appropriate, within her area of expertise and clinical judgment.

She administered the Goldman-Fristoe Test of Articulation to measure the ability to articulate sounds in response to a picture stimulus at the one-word level. The Test of Integrated Language and Literacy Skills was used to evaluate oral and written language to identifying language or literacy disorder, describing patterns of strengths and weakness, and track change over time.

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The Comprehensive Assessment of Spoken Language was administered to assess strengths and weaknesses in the areas of

- general language ability,
- receptive language,
- expressive language, lexical and semantic,
- syntactic and supralinguistic abilities.

The Clinical Assessment of Pragmatics used a series of video-based social scenarios to identify

- pragmatic language deficits,
- determine strengths and weaknesses within a variety of pragmatic language domains,
- document progress in pragmatic language skills, and
- analyze pragmatic language skills in children and young adults.

The Clinical Evaluation of Language Fundamentals Descriptive Pragmatics Profile was used to rate pragmatic skills. The Pragmatic Profile Test of Narrative Language was used to assess ability to answer questions about stories, retell stories, and to create his own stories.

Hollar also administered a "Checklist for Possible Cluttering," a 33-item checklist containing items that many researchers believed to be indicative of cluttering. Cluttering is a fluency disorder that affects the rate and rhythm of speech, resulting in halting or disrupted speech, rapid speech, omission of syllables, and inappropriate hesitations and pauses.

Many of the tests assessed intelligibility, pragmatics and social skills. In terms of academics, the most pertinent test was the Test of Integrated Language and Literacy Skills, which is discussed elsewhere in this Decision. Hollar also opined about remediating Student's processing deficits resulting from central auditory processing disorder. Student's contentions regarding his processing deficits are also discussed elsewhere in this Decision.

Hollar determined that Student had difficulties with

- articulation,
- spontaneous language generation,
- vocabulary,
- semantics,
- syntax,
- grammar,
- organization and
- social pragmatic language.

On the basis of the checklist, she diagnosed him with a "cluttering disorder." She found this disorder impacted Student's intelligibility, his ability to answer questions and had a significant impact on his speech and language skills. This could result in difficulties in

- reading and writing,
- poorly organized thinking,
- short attention span,
- poor concentration,
- lack of awareness,

- inconsistencies in rate and volume,
- inconsistent articulation, and
- word retrieval problems.

Hollar found Student's speech intelligibility was within the at-risk range. His fluency when spontaneously talking was marked by

- frequent word repetitions,
- occasional repetition and holding of the first sound of a word,
- frequent filler words,
- difficulty in use of correct grammatical formats,
- word finding difficulties,
- word order mistakes,
- contraction of multiple syllable words,
- use of sentence fragments,
- frequent revisions, and
- awkward pauses within his speech.

On standardized assessment instruments testing for receptive language, or listening and understanding what is communicated, Student demonstrated below average abilities relative to age-appropriate peers. With respect to expressive language skills, those skills that relate to the organization, production, and context of what a person says, he scored in the deficient range relative to age-appropriate peers. With respect to vocabulary, concept and category development, comprehension of

associations and relationships among words, and idiomatic language across both receptive and expressive formats, Student indicated below average abilities. Student exhibited deficient abilities in grammar.

Her results indicated Student's social pragmatic skills were well below average. On a test designed to determine ability to correctly detect, comprehend, and interpret social cues, Student's score indicated poor abilities. Student's abilities to be aware of basic social routines and to judge their appropriateness in certain situations were poor. On a subtest that measured awareness of social context cues, Student's score indicated poor abilities. Student also scored poorly on tests designed to assess his ability to detect a speaker's intent by recognizing meanings of various nonverbal cues.

Hollar rated Student as an Intermediate Social Communicator, who might "often have difficulty understanding other people's intentions and struggled with reading comprehension tasks requiring inferencing and predicting." While Student was a willing communicator, he struggled to provide his listener with adequate information to understand his expression of past events. He rarely provided appropriate background. Student talked as if the other person had the same experience and understood all the background. Student required intervention to provide his listener with appropriate background information to follow his train of thought.

In summary, Hollar found Student had areas of need in vocabulary, grammar, sentence to paragraph skills at grade level, intelligibility and fluency. He also had difficulty following complex verbal directions as,

- taking meaning from context,
- inferences,

- idioms,
- nonliteral language,
- double meanings,
- making predictions and inferences.

He had weakness in auditory processing at the word and sentence level in classroom environments. Further, he was delayed in the development of appropriate social skills, conversational skills and taking the perspective of others.

Hollar opined Student required instruction in the areas of indirect language, figurative language, and idioms. She found he required intervention to provide his listener with appropriate background information to follow his train of thought. She found Student needed interventions to provide additional details when his communication partner was confused. Hollar further concluded Student would benefit from learning strategies which would help him be understood.

Hollar opined the supports she saw him being given at school were not the proper supports to enable him to learn independently. She recommended an extensive list of the types of support he needed. She listed certain recommended materials and curriculum. She also recommended intensive “processing intervention,” which recommendations are discussed elsewhere in this Decision. She recommended speech and language services three times per week for 30 minutes each session, consisting of one individual session and two group sessions. She recommended an extensive list of accommodations, including

- visual support,
- practice and repetition,

- audio files,
- dictation, and
- repeating directions in the same order.

She also numerous specific speech and language goals.

Hacienda's question recommended of Hollar's testing protocols did not impeach the validity of her test results. Her results were an accurate portrait of how Student performed on the testing instruments on the dates she assessed him. Many of Hollar's concerns were shared by Hacienda. For example, Student's IEP's had historically addressed vocabulary and grammar, inferences and idioms, and conversational repair strategies.

JOHNSON'S INDEPENDENT PSYCHOEDUCATIONAL ASSESSMENT

Johnson's psychoeducational assessment also addressed Student's social skills. Johnson concluded Student was at risk for anxiety and withdrawal. She also opined he had autism, finding he had difficulty with changes in routine and coping with stress. Johnson also recognized Student's language and communication deficits, and rigid or inflexible patterns of behavior.

Parent reported that Student did not initiate with school friends outside of school until the end of seventh grade. He had one friend in school with whom he had begun to initiate and get together outside of school. Mother observed that Student engaged in less conversation with his friend than did typical peers, and usually on a preferred topic. Around peers in the community, Student did not initiate interaction and his conversational response was, in Mother's view, limited.

MOTHER'S OPINION

Extensive discussion occurred during the 2022-23 eighth-grade IEP team meeting concerning Hollar's report and Student's present levels of performance. Mother shared that she observed Student having difficulties understanding teacher directions when he tried to complete an assignment at home. She noted he was not able to complete lessons at home independently. Mother shared that he had not been observed to do any class work independently. He required a lot of support at home to get his homework done. Parent wanted to know if the present levels of performance presented were representative of Student's independent abilities.

At hearing, Mother's testimony indicated she perceived Student as reticent and not intelligible. His stories started at the end and jumped around. He presumed the listener knew the beginning and could fill in the gaps. He was not thorough or clear. She felt he had no friends outside school and did not socialize with anyone. He took judo outside of school, and participated in track, but she did not see him socialize or interact with the other students there. Hollar's assessment of Student's intelligibility, and both independent assessors' assessments of Student's social emotional functioning, were in accord with Mother's perception.

OFFER OF SERVICES

The 2022-23 eighth-grade IEP offered 90 minutes of weekly speech language services. The proportion of group to individual services was reversed from previous years, with 60 minutes now being group therapy sessions and 30 minutes being an individual therapy session. This shift was in accordance with Hollar's recommendations.

HACIENDA'S TEACHERS AND SERVICE PROVIDERS

There exists here a stark contrast between the portraits of Student painted by the opposing parties, both of which were credible perceptions held by their respective witnesses. Hacienda's witnesses were credible, including his teachers over the three years in question in English Language Arts and Math, and his service providers for speech and language and for specialized academic instruction. Over the three years in question, they all understood Student's speech, found him not reticent, understandable and socially outgoing.

Teachers and service providers working with Student contemporaneously had credible opinions of his functioning capably at school. For example, in the sixth grade, when Delgado assessed Student for his triennial speech language evaluation, she did not suspect he had a cluttering disorder. Delgado would have investigated a possible cluttering disorder had she suspected Student might have one. Delgado criticized Hollar for diagnosing Student with a cluttering disorder on the basis of a single checklist.

When Delgado assessed him, he was 99 percent intelligible, with bursts of high speech rate, but still 90 percent intelligibility overall. As reported in the triennial assessment, Student's teachers understood most or all of his speech.

In the seventh grade, speech language pathologist Cheng found Student intelligible during speech sessions. No teacher ever reported to Cheng any issues concerning his intelligibility. In seventh grade, teacher Kim had no issues in English Language Arts classes in seventh grade understanding Student's speech.

In eighth grade, Restovich, who taught Student English Language Arts in the eighth grade, also had no problem understanding Student's speech.

As far as his social emotional functioning goes, Mother's concerns that Student was friendless were amply disproven by those who witnessed him at school. Their contemporaneous observations year after year were more persuasive than the checklists, rating scales and assessments performed by Hollar and Johnson on a few days in the spring and summer of 2022 that found him to have such serious social emotional and pragmatic language difficulties. As Delgado at hearing convincingly stated, Hollar reached her opinions concerning Student's social pragmatics without ever interviewing his teachers or doing observations of him during unstructured time.

In sixth and seventh grades, Kim witnessed his positive peer interactions. Student had a specific group of friends and a group he preferred for work on group projects. He also participated in classroom discussions. In seventh grade, Cheng saw him interact with peers when she fetched him from physical education for his speech sessions, and also when they walked past the lunchroom. In eighth grade, speech language pathologist Myers witnessed his peer interactions on campus and during unstructured time. He

- responded to greetings,
- asked original questions,
- asked follow-up questions,
- maintained conversations, and
- engaged in normal back and forth dialogue.

In eighth grade English, teacher Restovich observed very positive peer interactions. She saw him share stories with peers, laugh, and "act silly" with others. In her class he sat next to a friend who appeared to be a "best buddy." In eighth grade math class, Montoya

saw Student smiling, initiating, going over to friends, and “talk[ing] about math.” In eighth grade, school psychologist Mirtha Gutierrez observed Student with peers in hallways and being with friends and socializing during lunchtime.

ANALYSIS AND CONCLUSION

The disparity between Student’s witnesses and Hacienda’s witnesses in the area of his speech and language, persists into areas other than speech, including reading and math abilities, discussed in detail below. Overall, the Hacienda teachers and service providers were more persuasive. Their observations of Student’s ability to access grade level content, speak understandably and interact positively with his peers over the three years in question simply outweighed the contrary evidence provided by Student.

Mother’s observations are not discounted, but were not in the school environment. Hollar’s assessment occurred over a few days in the spring and summer of 2022, and conflict with the contemporaneous and credible observations of numerous teachers and service providers who witnessed him in the actual educational setting over numerous years. Student had the burden to prove that the family’s and expert’s impression was correct, and Student simply did not succeed in meeting it. Hacienda evidence was consistent and weighed heavily against Student’s, ultimately overwhelming it. Therefore, Student, who had the burden of proof, failed to establish his contentions.

In sum, Student failed to meet the burden to prove that Hacienda’s offer of speech and language goals and the number of minutes of speech and language

services denied him a FAPE. Student failed to establish that he needed significantly more intervention than he had been receiving in order to “be involved in and make progress in the general education curriculum.”

Therefore, Hacienda prevailed on Issue 6(a)(i).

SPEECH IMPLEMENTATION ISSUES

ISSUE 2(b)(ii): DID HACIENDA DENY STUDENT A FAPE DURING THE 2020-2021 SCHOOL YEAR BY FAILING TO IMPLEMENT HIS SPEECH SERVICES IN ACCORDANCE WITH HIS IEP?

Student contends the required amounts of speech and language services were not actually provided, as established by Hacienda’s service logs. Hacienda contends its offers to Student of speech and language services were materially implemented.

A FAPE requires services to be provided “in conformity with” a child’s IEP. (20 U.S.C. § 1401(9)(D).) When a student alleges the denial of a FAPE based on the failure to implement an IEP, in order to prevail, the student must prove that any failure to implement the IEP was material. A material failure to implement an IEP means that the services provided to a disabled child fall “significantly short of the services required by the child’s IEP.” (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 820-822.)

A material failure occurs only when there is more than a minor discrepancy between the services provided to the disabled child and those required by the IEP. There is no statutory requirement of perfect adherence to an IEP. A failure to implement an IEP may deprive a child of a FAPE.

However, the language of the IDEA counsels against making minor implementation failures actionable given that special education and related services need only be provided “in conformity with” the IEP. There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a FAPE. (*Van Duyn v. Baker Sch. Dist.*, *supra*, 502 F.3d 811, 815, 821.)

Despite typos on her service log, which she satisfactorily explained at hearing, Delgado credibly confirmed she provided Student all the speech and language services offered in his 2020-21 sixth-grade IEP. Student argues the service logs are conclusive evidence that Delgado failed to provide all the speech and language services offered to Student, but this contention is rejected in light of Delgado’s consistent and credible insistence that she provided all of the required minutes of speech and language services.

Student also contends that, even if all required speech and language services were in fact provided, the errors in the logs constitute a procedural inadequacy that resulted in the loss of educational opportunity, or significantly impeded upon Parent’s opportunity to participate in the IEP formulation process, or caused a deprivation of educational benefits, thus resulting in a denial of a FAPE.

This argument is not persuasive. The IDEA does not require accurate logs as one of its procedural requirements and it was not at hearing established or contended, that parent relied on the logs in any manner during the formulation of Student's IEP's.

Accordingly, Hacienda prevailed on Issue 2(b)(ii).

**ISSUE 4(a)(ii): DID HACIENDA DURING THE 2021-2022 SCHOOL YEAR
DENY STUDENT A FAPE BY FAILING TO IMPLEMENT HIS SPEECH
SERVICES IN ACCORDANCE WITH HIS IEP?**

During Student's seventh-grade school year, Cheng provided the 60 minutes individual speech language therapy and 30 minutes group therapy weekly, as had been offered and consented to by Parent. Cheng testified she provided all offered speech and language services to Student during the 2021-2022 school year.

Despite typos in Cheng's service logs, at hearing, Student failed to impeach Cheng's persuasive testimony that the offered amount of speech and language services had been materially provided to Student in the 2021-2022 school year.

Accordingly, Hacienda prevailed on Issue 4(a)(ii).

**ISSUE 6(a)(ii): DID HACIENDA DURING THE 2022-23 SCHOOL YEAR
DENY STUDENT A FAPE BY FAILING TO IMPLEMENT HIS SPEECH
SERVICES IN ACCORDANCE WITH HIS IEP?**

For the eighth-grade year, speech language pathologist Erica Myers worked with Student. She provided 90 minutes weekly.

The 2021-22 seventh-grade IEP had offered 60 minutes individual services and 30 group, and was being implemented until Mother consented to implementation of the 2022-23 eighth-grade IEP, which reversed the proportions of individual to speech. The reversal was in accordance with Hollar's recommendations. No evidence at hearing established the date of Mother's consent to implementation of the eighth grade IEP. Thus the switch in proportions should have occurred at an undefined date after the 2022-23 eighth-grade IEP offer was finalized.

There was ambiguity in Myers' service logs and in her testimony about the proportion of the individual to group speech therapy minutes actually provided. However, Student did not establish that if there was an error in implementing the proper proportion of group to individual speech therapy minutes, it constituted a material failure to implement the IEP.

Hacienda, therefore, prevailed on Issue 6(a)(ii).

READING IMPLEMENTATION ISSUES

For all issues concerning reading implementation, Student contends that for his sixth, seventh and eighth-grade years, Hacienda failed to properly implement Student's individual specialized academic education services called for by his IEP.

Specifically, Student contends that during the individual sessions, Hacienda was obligated to provide Student with a Lindamood Bell reading program called Verbalizing

and Visualizing “with fidelity,” in accordance with Lindamood Bell instructions. Further, Student contends Hacienda did not consistently provide the requisite number of weekly individual service minutes called for by Student’s IEP.

Hacienda contends it materially implemented the reading services called for by Student’s IEPs.

ISSUE 2(d)(ii): DID HACIENDA DURING THE 2020-2021 SCHOOL YEAR DENY STUDENT A FAPE, BY FAILING TO IMPLEMENT HIS READING REMEDIATION SERVICES IN ACCORDANCE WITH HIS IEP.

Student’s implementation contentions regarding the reading program to be provided Student, were all based on an IEP from an undefined prior year that was not introduced into evidence. The relevant time period for this due process dispute commences in November 2020, during the middle of Student’s sixth grade. The IEP that governed Student’s program in November 2020 was from a prior school year or years. That IEP was not offered into evidence.

There is agreement amongst the parties that that IEP had offered Student 300 weekly minutes, or one hour per day, of individualized pull-out specialized academic instruction.

VISUALIZING AND VERBALIZING

With regard to the contention that Visualizing and Verbalizing was supposed to be, and was not implemented with fidelity, the parties agree that the pertinent IEP

document was dated October 3, 2018. But they do not agree on its contents. And, since the October 3, 2018, IEP was not in evidence, there is no direct evidence of precisely what that IEP offered.

In terms of the details of what content was supposed to be taught during Student's individual specialized academic instruction sessions, Student failed to meet his burden of proving that implementing Visualizing and Verbalizing "with fidelity" according to Lindamood-Bell instructions was required.

Student's advocate, Susan Burnett, recalled that Hacienda had initially in a prior IEP from an earlier year offered Student a Lindamood Bell program called "Seeing Stars." The Seeing Stars program targeted basic reading decoding skills such as word attack, letter word identification, sight words, and phonemic awareness. Comprehension comes later and is addressed by the subsequent "Visualizing and Verbalizing" program.

Burnett also recalled that the prior IEP in which the ostensible offer of Seeing Stars was made was "sometime prior to [sixth grade]; probably sometime in 2019 in a prior IEP." Burnett was, in other words, not sure when Hacienda had offered the Lindamood Bell Seeing Stars program, but after that "we never let it go," meaning that Parent's subsequent consents always continued to include that ostensible offer of a specific reading program. Parent and her advocate Burnett understood the prior commitment to Lindamood Bell Seeing Stars carried over into an ongoing obligation to provide the subsequent Lindamood Bell Visualizing and Verbalizing program "with fidelity."

However, no portion of this alleged understanding, although sincere, was proven to have been mutual. Burnett recalled that after the independent assessment conducted in July 2020 by audiologist Bea Braun, Hacienda offered the Visualizing and Verbalizing program. This program, however, is not stated as offered anywhere in the IEP's that occurred in the fall of 2020.

Parent instead relies on her and Burnett's own writings that refer back to a missing IEP document or documents, in which an offer of Visualizing and Verbalizing had ostensibly been made. Specifically, for the 2020-21 school year, Student relies on Mother's partial consent to, and partial rejection of, the IEP offer made in the 2020-21 sixth-grade IEP, which had proposed a reduction of the 300 individual weekly minutes.

Parent's partial consent, dated April 2021, did not agree to reduce the 300 minutes of weekly reading intervention. It also stated that Dr. Braun had opined that Visualizing and Verbalizing was very important for Student given his auditory deficits. Student argues that this verbiage established the specific contents of the old IEP to have offered Visualizing and Verbalizing with fidelity.

The argument is unpersuasive. While Burnett's statement may indicate a parental preference or request for the Visualizing and Verbalizing program, or an assessor's recommendation, it does not establish that such an offer had ever been made by Hacienda, such as to support this implementation claim.

Student also relies on the notes of the 2020-21 sixth-grade IEP team meetings, which occurred over several dates in September through December 2020, specifically the notes on November 30, 2020, which state: "Team proposed for [Student] to work on Lindamood-Bell/Seeing Stars curriculum for 30 minutes during his Special Education

Study Hall class.” This single reference to a different, prior Lindamood Bell program called “Seeing Stars” is too oblique to establish an ongoing obligation to provide other subsequent Lindamood Bell programs.

Student further relies on some service logs for the individual specialized academic instruction that reference “Visualizing and Verbalizing” or “V/V” during the individual sessions.

Based on this very ambiguous documentary record, Student now argues that during his 300 weekly minutes of individual specialized academic instruction, he should have been provided the Lindamood Bell Visualizing and Verbalizing program implemented “with fidelity” to the program as envisioned by Lindamood Bell. Since the contention is based on an absent prior IEP that was not placed into evidence in the case, that apparently had offered a prior Lindamood Bell program, Student failed to meet his burden of proof concerning the sixth-grade reading implementation issue.

For these reasons Student failed to establish that Hacienda had an obligation to implement Visualizing and Verbalizing with fidelity in Student’s individual readings specialized academic instruction services.

SERVICE MINUTES

Further, despite gaps in her service logs, special education teacher Adriana Villareal’s credible testimony established that she provided 300 weekly minutes of individual specialized academic instruction virtually to Student in the 2020-2021 school year during the pandemic. Student failed to establish that Hacienda materially failed to implement Student’s offered program. Consequently, Hacienda prevailed on Issue 2(d)(ii).

ISSUE 4(c)(ii): DID HACIENDA DURING THE 2021-2022 SCHOOL YEAR
DENY STUDENT A FAPE, BY FAILING TO IMPLEMENT HIS READING
REMEDATION SERVICES IN ACCORDANCE WITH HIS IEP?

VISUALIZING AND VERBALIZING

For the 2021-22 school year, Student's contention, that the Visualizing and Verbalizing program was not, and should have been implemented, continues to be based on the same IEP dated October 3, 2018, that was not placed into evidence. For this school year, Student again relies on the writings of Student's own advocate.

For the 2021-22 seventh-grade IEP, which was developed in meetings held over several dates in September and October, Parent's partial consent was stated in a letter from Burnett dated January 3, 2022. That letter stated "SAI 200 min weekly individual for reading intervention (reduction of 100 min) DO NOT AGREE. STAY PUT is 300 min a week individual (5 x 60) for visualizing and verbalizing reading intervention."

As with the prior year's consent, Burnett confirmed at hearing that this was "restating an offer from a prior IEP." As in the prior year, Burnett's statement may indicate a parental preference or request for the Visualizing and Verbalizing program, or a unilateral understanding. But, it does not establish that such an offer had ever been made by Hacienda, such as to support this claim that an agreed-upon IEP was not implemented.

Thus, Student did not meet his burden to establish that Hacienda was under an obligation to implement Visualizing and Verbalizing with fidelity in the 2021-2022 school year.

SERVICE MINUTES

For this seventh-grade school year, moreover, Student failed to establish that Hacienda did not provide to Student his 300 weekly minutes of individual specialized academic instruction.

For the seventh grade in the 2021-22 school year, Student's individual special academic instruction was provided by special education teacher Trina Nakagawa. Nakagawa at hearing confirmed that the seventh period was when she provided Student with his one-to-one reading intervention services. The period was less than an hour and so she remained with Student beyond dismissal time to ensure that he received all of his 300 weekly minutes of specialized academic instruction. Although her service logs, placed into evidence, were not complete, Nakagawa's testimony at hearing credibly established there was no material implementation failure for the individual specialized academic instruction minutes during Student's seventh grade year.

Consequently, Hacienda prevailed on Issue 4(c)(ii).

ISSUE 6(c)(ii): DID HACIENDA DURING THE 2021-2022 SCHOOL YEAR DENY STUDENT A FAPE, BY FAILING TO IMPLEMENT HIS READING REMEDIATION SERVICES IN ACCORDANCE WITH HIS IEP.

VISUALIZING AND VERBALIZING

For the 2022-23 school year when Student was in eighth grade, he continues to claim that the Verbalizing and Visualizing program was offered. Student continues to rely on the IEP dated October 3, 2018, which was not placed into evidence. Student again relies on the writings of Student's own advocate.

The notes of the 2022-23 eighth-grade IEP team meeting reference Burnett's contentions about Visualizing and Verbalizing. As in the prior years, these notes indicate Parent's preference and request for the Visualizing and Verbalizing program. The notes do not establish that Hacienda offered that reading program to Student. For example, transcripts of the IEP team meeting created by Burnett reference a Hacienda teacher as the "[Lindamood Bell provider]." But the evidence established that Hacienda did not introduce the teacher by this designation. Rather, Burnett herself inputted that nomenclature in front of the teacher's name, and her transcription software program did the same.

Then, in response to the 2022-23 eighth-grade IEP offer, Burnett wrote, in pertinent part, "[Visualizing and Verbalizing] is not being provided with fidelity as intended by the publisher."

Unilateral writings by Parent's advocate establish only her own contentions and her own understanding. They do not sufficiently meet Student's burden of proof, that such an offer had ever been made by Hacienda, such as to support this claim that an agreed-upon IEP was not being implemented. Thus, Student did not meet his burden to establish that Hacienda was under an obligation to implement Visualizing and Verbalizing with fidelity.

SERVICE MINUTES

However, for this eighth-grade year, Student established that Hacienda materially failed to implement the full number of individual service minutes Student's eighth-grade IEP called for. Student therefore prevails on Issue 6(c)(ii).

The 2022-23 eighth-grade IEP team meetings occurred over several dates, the last of which was October 10, 2022. In that IEP, Hacienda offered 275 individual service minutes. In the lengthy response to the offer, Mother agreed to its implementation without disputing this reduction of the individual service minutes from 300 weekly minutes to 275 minutes. Therefore, Hacienda should have provided 275 weekly minutes of specialized academic instruction.

The 275 minutes were not fully implemented by Amber Gonzalez, the special education teacher who provided Student's individual reading remediation. Gonzalez confirmed the class periods she serviced Student. Monday, Tuesday, Wednesday, and Friday were only 52-minute periods and Thursday was only 44 minutes. This amounted to 252 weekly minutes or a deficit of 23 weekly minutes. Relying on the school calendar, there were approximately 24 school weeks between the October 10, 2022, IEP meeting and the end of the school year.

Student prevailed on Issue 6(c)(ii). Remedies are discussed below.

READING OFFERS

ISSUE 2 (d)(i): DID HACIENDA DURING THE 2020-2021 SCHOOL YEAR DENY STUDENT A FAPE, BY FAILING TO OFFER HIM NECESSARY RELATED READING REMEDIATION.

Student contends that Hacienda's offers of goals and services, in both reading and math, across the three years in question, contemplated prompting and inappropriate levels of adult support, and were, therefore, not appropriately ambitious for Student.

Student further contends he should have been able to accomplish independent grade-level performance without prompting, given his average cognitive profile, and that his failure to do so was the results of Hacienda's denials of FAPE.

Student also contends he was not performing academically as well as Hacienda contended, or as should be expected to, given his average cognitive profile. Student further contends his advancement from grade to grade was based not on his own independent work and that he was inappropriately being prompted and "provided with answers." Thus, although Student advanced from grade to grade, Student contends his passing marks were not probative of whether a substantively appropriate program had been offered.

Student disputes as inflated and overstated, Hacienda's reports of Student's achievement levels, and avers that notwithstanding his average cognition, he was in fact performing worse than Hacienda's progress reports and present levels claimed. Student urges that Hacienda's reported present levels of performance were "gross misstatements" that "shroud ... his difficulties in narratives that hide [Student's] ... lack of independent skill and abilities." Student further argues that given this "shrouding," it is actually a "false conception that there are disparate pictures about what [Student's] reading skills were like."

Hacienda contends its offers were appropriate and were based on accurate present levels of performance.

PRESENT LEVELS

At the 2020-21 sixth-grade IEP team meetings, Villareal reported Student's present academic levels in English Language Arts. Villareal noted Student was using grade curriculum-based reading materials and a variety of reading comprehension strategies. When using comprehension strategies, such as activating prior knowledge, inferring, summarizing, monitoring for meaning, Student could respond to three literal and inferential questions about a text by restating the question, answering correctly, citing textual evidence with concrete detail, and explaining how the citation supports his answer, with 83 percent accuracy in three trials. Moreover, when given 20 five-syllable words Student was able to read 19 to 20 words correctly in three trials with a verbal reminder to cut the words into syllables first. Student was also able to read a fifth-grade level text with a fluency of 94 words per minute with 97 percent accuracy and respond to four out of five comprehension questions correctly without looking at the text. Student was also able to read a sixth-grade level text with fluency of 83 words per minute and 95 percent accuracy. In writing, when revising a written assignment or a teacher-created probe with grammatical, capitalization, punctuation and spelling errors, and while using a revision checklist, Student was able to identify and correct 80 percent of the errors.

Villareal assessed Student in the area of English Language Arts in December 2020 as part of the triennial assessment. Her assessment tools were informal and not standardized, because during the COVID-19 emergency no standardized tests were available to be administered virtually, rather than in person. Villareal administered the Wonders Running Record, an informal reading accuracy and comprehension test. Her results indicated that when reading a sixth-grade level text, Student scored 98 percent in

correctly reading the words, making errors on two words, "Madrid" and "product." He answered four out of five comprehension questions correctly. He made errors when answering "why" questions requiring him to make inferences from the text.

Running Record is a method which observes and evaluates a student's oral reading. It is intended to help teachers identify a student's reading level, style, and strategy use. It helps determine a student's independent (easy), instructional, and frustrational (hard) reading levels and provides information on how the student is processing the text. The data from student performance also can assist teachers in seeing how students are progressing in relation to foundational skills featured in the Common Core State Standards for English Language Arts.

Villareal also administered a Lexile assessment tool, on which Student read on average 80 words per minute with 98 percent accuracy. He could answer comprehension questions without looking at the text 75 percent correctly. Villareal observed Student read mainly in two-word phrases, with some longer phrases and at times word-by-word. He grouped words awkwardly and did not connect phrases to the larger context of the passage. He read sections of the passage excessively slowly or quickly.

After reading a sixth-grade level text and participating in whole-class discussions, Student was able to write an informative explanatory essay by introducing a topic, developing the topic with relevant facts and quotations, and by providing a concluding statement that directly connected to his topic by using a graphic organizer, sentence frames and guiding questions. He continued to use basic language and sentence structures. He needed to continue developing his ability to provide precise and descriptive language to his writing and appropriate transitions to connect ideas.

Villareal also reported that when Student revised a written assignment or a teacher-created probe with grammatical, capitalization, punctuation, and spelling errors, and while using a revision checklist, he could identify and correct 80 percent of the errors using word processing software.

At hearing, Student's questioning of Villareal did not succeed in significantly undermining her statements of his present reading levels, nor her administration or scoring of the informal testing instruments conducted for the triennial assessment. Consequently, the evidence established Villareal's results were valid.

PROPOSED NEW GOALS

For Student's 2020-21 sixth-grade IEP, his English Language Arts teacher, Elizabeth Kim, and Villareal developed proposed reading goals that targeted the sixth-grade California Common Core standards in reading and writing. Kim discussed with Villareal what she expected students to be able to accomplish within each grade. For example, the Common Core expects writing projects to contain evidence and argument tying the evidence to the proposition that a Student is writing about. Kim believed Student was capable of goals that were in accordance with Common Core sixth-grade level standards.

Both Villareal and Kim presented as knowledgeable and trustworthy witnesses. Kim was credible, consistent, calm, thorough, detailed, and a competent, skilled and dedicated professional. She recounted her teaching methods with excellent detail. Her testimony was given great weight.

In the fall IEP document prior to the triennial assessment, Hacienda offered two reading goals. The first stated that Student would answer three comprehension questions concerning a sixth-grade text, after reading it and participating in class discussion that required inferencing, by restating the question, answering it correctly, citing textual evidence, analyzing how the evidence supports his answer, and summarizing his response in three trials using a graphic organizer and guiding questions with 80 percent accuracy. The second reading goal stated Student would verbalize the main idea and details of a grade level paragraph using ten-to-twelve structure words (such as size, color, number, shape, where, movement, mood, background, perspective, when, sound) in two out of three paragraphs using visual and verbal prompts in three trials.

In the IEP meeting in December 2020, after the triennial assessment, Hacienda offered the above two reading goals plus two additional reading goals. The third reading goal stated Student would, after reading a sixth-grade level text independently, answer seven out of eight (87.5 percent) literal and inferential questions correctly in three trials. Villareal explained that this goal was about understanding a text after reading it only once, which was an area of weakness for Student. One of Student's prior year's goals had aimed at answering four out of five comprehension questions about a fifth-grade level text orally without looking back at the text, with a 75 percent accuracy rate. Student met that goal. This goal represented an increase in Student's accuracy to 87.5 percent when he used more complex sixth-grade reading materials. The fourth reading goal stated Student would read sixth-grade level text at 111 words per minute. His current level at that time was 83 words per minute.

Student's expert witnesses Hollar and Johnson contend that the goals were not ambitious enough in that they provided too much support to Student, and were, thus, not calibrated to increase or measure his independence. The first goal provided help to Student in the form of a graphic organizer and guiding questions. The second goal, required prompting to remind him of skills, using "structure cards." Villareal acknowledged that at this time he did require more or less prompting, depending on his level of interest in the topic in the text. The third and fourth goals did not provide for prompts.

ACCOMMODATIONS

The 2020-21 sixth-grade IEP also offered numerous accommodations, delineated above, that had been recommended by independent audiologist Braun. These included

- small group instruction,
- breaks,
- a visual schedule,
- extended time having tests read to him,
- simple repetitive directions rephrased if needed,
- increased verbal response time,
- frequent checks for understanding,
- ample repetition of new sequencing tasks,
- pre-teaching vocabulary,
- visual supports such as models, graphic organizers, and directions,

- allowing alternative response mode (oral, or pointing, typing, speech to text),
- teacher-supported transitions when returning from pull-out services,
- presenting information visually before oral explanations,
- note-taking assistance,
- shortened assignments,
- support with organization of materials,
- reminders to use correct spelling and legible handwriting, and
- shortened homework.

Student did not challenge the appropriateness of the offered accommodations. The prompting which Student now critiques, were implicit in these recommendations and were appropriate to help him access the curriculum.

OFFER OF SERVICES

Hacienda, in the first set of IEP team meetings, offered 275 minutes per week of specialized academic instruction in a separate pull-out small group setting. After the triennial assessment, this offer was increased in the December 2020 IEP, which offered 325 minutes per week of specialized academic instruction in a separate setting, which Montoya described as one period a day of small group instruction in a study hall class. Both IEP documents offered 300 minutes of push-in specialized academic instruction per week in the general education classroom. Neither the September-November IEP document, nor the December IEP document generated after the triennial offered any individual specialized academic instruction.

ANALYSIS AND CONCLUSION

THE PRESENT LEVELS AND GOALS WERE APPROPRIATE

An IEP is a written document for each child with a disability that includes:

- a statement of the child's present levels of academic achievement and functional performance; and
- a statement of measurable annual goals, including academic and functional goals, 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)(A); 34 C.F.R. § 300.320; Ed. Code, § 56345, subd.(a)(2).)

The IEP shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal.CodeRegs.,tit.5,§ 3040.) Hacienda offered goals that complied with all of these legal standards.

At hearing, Student's questioning of Villareal did not succeed in significantly undermining her statements of his present reading levels. Her administration and scoring of the informal testing instruments conducted for the triennial assessment

yielded valid results. Hollar and Johnson opined that Student's present levels did not accurately reflect his academic functioning, which their results suggest was much lower functioning than Hacienda contends.

However, their assessments did not occur until 2022, approximately 16 months after the IEP at issue here and were of course unknown to Hacienda at this time. An IEP is evaluated in light of information available at the time it was developed. (*Adams v. State of Oregon, supra*, 195 F.3d at p. 1149.) If these later results were relevant to a backward-looking analysis that was pertinent to present levels in 2020-2021, that inference was not established at hearing.

They were in any event less persuasive than the contemporaneous observations of Student's consistent and credible teachers and service providers. For the same reasons, the experts' critique of the goals was not persuasive, as it was also based on their later assessment results indicating that Student's functioning was lower than Hacienda contended. As will be discussed in further detail below, during the discussion of the 2022-23 eighth-grade IEP, when the independent assessments were presented, those assessment results were outweighed by contrary and more persuasive evidence of Student's functioning presented by all of Hacienda's teachers and service providers over the three years in question.

For the sixth-grade year, Villareal's and Kim's views outweigh Hollar's and Johnson's as to what reading goals Student could accomplish. They were based on more contemporaneous and constant observations of his skills.

Student did not meet his burden of proving that the 2020-21 sixth-grade IEP's present levels or offers denied Student a FAPE.

THE MINUTES OF INDIVIDUAL SERVICES HACIENDA OFFERED WERE NOT APPROPRIATE

At hearing, there was no coherent explanation offered to explain why the offer of a FAPE in the 2020-21 sixth-grade IEP proposed to discontinue all individual specialized academic instruction services. Villareal stated only that in her opinion Student needed more small-group and more push-in services. This did not explain why individual services should have been discontinued.

"By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement. A reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." (*Endrew, supra* at 404.)

This Hacienda did not do.

At hearing, Hacienda asked numerous teachers and service providers whether Student needed more reading remediation than he was being given, which was 300 weekly minutes, and all answered in the negative. No one, however, established that zero minutes would have been appropriate for him.

By the time of his next annual IEP Student had made progress on his sixth-grade goals. It thus appears that the individual services Hacienda provided to Student worked,

and should not have been summarily removed, especially without a cogent reason for doing so. The evidence showed that Student still had academic special education needs and therefore was still entitled to services.

Student, therefore, met his burden of proving that the offer Hacienda made, discontinuing his previous 300 individual minutes of specialized academic instruction, impeded Student's right to a FAPE, and significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of a FAPE to Student.

Therefore, Student prevailed on Issue 2(d)(i). Remedies are discussed below.

ISSUE 4 (c)(i): DID HACIENDA DURING THE 2021-2022 SEVENTH-GRADE SCHOOL YEAR DENY STUDENT A FAPE, BY FAILING TO OFFER HIM NECESSARY RELATED READING REMEDIATION.

Student contends that Hacienda's offers of goals and services in reading contemplated prompting and inappropriate levels of adult support, and were, therefore, not appropriately ambitious for Student. Student also contends he was not performing academically as well as Hacienda contended, or as should be expected to, given his average cognitive profile. Student disputes as inflated and overstated, Hacienda's reports of Student's achievement levels, and avers that notwithstanding his average cognition, he was in fact performing worse than Hacienda's progress reports and present levels claimed.

Hacienda contends its offers were appropriate and were based on accurate present levels of performance.

PROGRESS ON PRIOR GOALS AND PRESENT LEVELS

Parent partially consented to the 2020-21 sixth-grade IEP offer in April 2021. She agreed to the implementation of the offered goals, and related services. She did not agree to the elimination of 300 weekly minutes of individual specialized academic instruction, which, therefore, continued to be implemented.

Student made progress during the sixth grade based on what was actually provided. By the time of the 2021-22 seventh-grade IEP, Student's progress on his sixth-grade goals was apparent.

In Student's individual specialized academic instruction sessions in sixth grade, Villareal used Lindamood Bell Visualizing and Verbalizing curriculum, but not exclusively. Villareal also used other reading comprehension strategies to enhance Student's ability to understand inferences, including the "Power Up" reading intervention on-line program. She worked with him on visualizing text, summarizing it and checking in with him for comprehension and understanding. During the 300 minutes of weekly individualized special academic instruction, in the 2020-2021 sixth-grade school year, Student made progress in reading independently based on Villareal's personal experience teaching Student, informal assessment scores, his filling out of graphic organizers and his answering of comprehension questions.

Student's general education English Language Arts teacher Kim also confirmed he made progress. According to both Villareal and Kim, Student made progress on his goals in the 2020-2021 school year in reading independently. Both Kim and Villareal acknowledged that sixth-grade texts were more challenging for him than fifth-grade

texts. According to Kim, at the beginning of the sixth grade, Student struggled to read independently. He could read the words but could not at first comprehend the content.

But, this improved and by end of year he was independently understanding the text on his own. Kim accommodated him. For example, she allowed him to answer questions orally instead of in writing. Student was also offered numerous accommodations including

- extra time,
- breaking assignments down into smaller chunks,
- use of guiding questions,
- graphic organizers, and
- preferential seating.

Per Villareal, Student did not know all the vocabulary needed for the sixth-grade texts, so she would pre-teach vocabulary from lists of sixth-grade vocabulary words, which are available in core curriculum grade level materials. Pre-teaching of vocabulary was one of the accommodations Hacienda offered based on Dr. Braun's independent auditory processing assessment.

In Kim's opinion, no additional reading remediation was needed for Student, other than what Hacienda has provided. Her opinion, however, presumed that the 300 individual minutes of specialized academic instruction would be in that package of services.

For his 2021-22 seventh-grade annual IEP team meetings in September and October 2021-22 at the beginning of seventh grade, Montoya reported on Student's reading progress. Montoya took over from Villareal as Student's case carrier in 2021-22

and became responsible for tracking his progress on goals. Progress on goals was monitored by way of selected assignments and curriculum-based probes, selected by general education teachers and Montoya.

Montoya was an education specialist with a “mild to moderate” teaching credential. In the 2020-2021 sixth grade year, she provided Student’s specialized academic instruction in math. In the 2021-2022 school year, Student’s seventh grade year, and in the 2022-2023 school year, Student’s eighth grade year, Montoya provided push-in services in both English Language Arts and Math classes. She did not provide him with his individual special academic instruction.

Montoya acknowledged providing assistance and accommodations to Student during the progress-monitoring. For example, if he communicated that he did not understand or remember a story, she might remind him what the story was about or summarize it for him so that he could answer questions regarding it. She believed his answers were nevertheless independent, as she did not answer questions for him, and he had to independently cite to evidence to support his answers. In push-in services in class, and study hall group pull-out, she acknowledged that she might give Student hands-on help if a new concept was being introduced. She also might prompt him through an assignment if necessary, and correct his errors.

Montoya reported Student met the first of the reading goals by answering three comprehension questions concerning a sixth-grade text, after reading it and participating in a class discussion. Student’s answers required inferencing by restating the question and had to be answered correctly, citing textual evidence, analyzing how the evidence supported his answer, summarizing his response, in three trials using a graphic organizer and guiding questions with 80 percent accuracy in three trials.

Student could correctly answer and cite textual evidence and summarize his response with no more than two guiding questions. But, he required additional support to connect his evidence within his explanation of the answer. Kim confirmed Montoya's progress reporting was consistent with Student's classroom performance.

Progress on the second goal was "substantial," indicating 66 percent accomplishment. Student was able to verbalize the main idea and details of a sixth-grade level paragraph using structure words with visual and verbal cues in three trials.

Student made "no progress" on the third goal. Student was only able to read sixth-grade level text independently with an average of 69 percent comprehension over three trials. He went down from prior his prior baseline of 75 percent. And, he did not meet the goal of 87.5 percent.

Progress on the fourth reading goal was reported as "substantial." Student was able to correctly read sixth-grade level text at an average rate of 94 words per minute over six trials.

At the time this progress was reported in the fall of seventh grade in the 2021-2022 school year, Student had been working on these goals for only approximately eight weeks at the end of sixth and beginning of seventh grades. Parent's consent to the implementation of the 2020-2021 sixth-grade IEP proposed annual goals was delayed from when they were offered in December 2020. Mother eventually consented to implementation of the goals in April 2021.

Thus, by the time of the seventh grade IEP team meeting in the fall of 2021, those goals had only been worked on for approximately eight weeks at the end of sixth grade from April to May, and the beginning of seventh grade starting in August 2021.

Furthermore, Student's sixth grade year had been delivered in a virtual format during the COVID 19 pandemic. Hacienda did not return to in-person learning until Student's seventh grade in 2021-22.

PROPOSED NEW GOALS

For the seventh grade in the 2021-22 school year, Student's individual special academic instruction was provided by special education teacher Trina Nakagawa. Kim, Student's general education sixth-grade English Language Arts teacher, continued in that role for seventh grade.

In the fall of 2021, during seventh grade in preparation for his annual IEP, Kim and Nakagawa developed proposed reading goals that targeted the seventh-grade California Common Core standards in reading and writing. Kim felt Student was capable of advancement to more ambitious goals in accordance with Common Core grade level standards.

The first proposed goal stated Student would read seventh-grade level text with an average rate of at least 122 words correct per minute over four consecutive trials. The second proposed goal stated that after reading a seventh-grade level multi-paragraph text using paragraph by paragraph imagery, Student would be able to verbalize a summary of the text including the main and central idea of the text and at least four relevant and sequential details independently with 80 percent accuracy in four trials. Mother consented to the implementation of these goals in January 2022.

According to Nakagawa, after he began working on them, Student made progress on this goal over the remainder of the seventh-grade year, reading multi-paragraph texts and recounting the main idea with supporting facts with 80 percent

accuracy, and that he accomplished this independently. Student would read the text, visualize each paragraph, then she would take the text away and Student could summarize it.

The third proposed reading goal stated that after reading a text independently at grade seven level complexity, Student would be able to independently answer literal and inferential questions about the text with at least 80 percent accuracy in four trials. Student made progress on this goal after implementation. His success rate with inferences with more accuracy improved. He did not meet this goal, but made progress on achieving it.

The fourth proposed reading goal stated that after reading a seventh-grade level text and participating in a whole class discussion, Student will answer three comprehension questions that require inferencing by restating the questions, answering them correctly, citing textual evidence, analyzing how his evidence supports his answer, and summarizing his response, using a graphic organizer and sentence frames with 80 percent accuracy in four trials.

OFFER OF SERVICES

The 2021-22 seventh-grade IEP offered 200 minutes of individual service, instead of 300 minutes that had previously been provided. Nakagawa explained she saw the benefit to the service. Student benefitted from the individualized reading service as he showed improvement in being able to form images, summarizing the text in sequence, and responding accurately to higher order thinking questions.

But, she recommended a reduction in the amount of time for the individual service because Student got anxious when he was missing other classes. Nakagawa

testified she looked at the “whole child” when making this recommendation. Although she saw the benefit to the reading services, she wanted to reduce his anxiety. She also based this recommendation on his progress, which she felt was appropriate.

Parent did not consent to the reduction, so she continued to implement the 300 minutes.

ANALYSIS AND CONCLUSION

THE PRESENT LEVEL AND GOALS WERE APPROPRIATE

Student contends that he was capable of and should have accomplished more progress, and that this established he had been denied a FAPE. The contention was based on expert opinions that were not presented to Hacienda until 2022. The IEP offer at issue here occurred in the fall of 2021 and must be judged based on information available to the district at that time. Therefore, based on the snapshot of information known to Hacienda at the time of the 2021-22 seventh-grade IEP, Student was making progress on his goals.

Moreover, the IDEA does not contemplate that all annual goals will necessarily be achieved. It expressly provides that one of the purposes of the annual IEP review is to determine whether annual goals are being achieved and to revise the IEP to address any lack of expected progress toward those goals. (34 C.F.R. § 300.324(b)(1)(ii)(A).) A student may derive educational benefit even if some of his goals and objectives are not fully met. (*Perusse v. Poway Unified School Dist.*, S.D. Calif. July 12, 2010, No. 09 CV 1627, 2010 WL 2735759, p. *11 (*Perusse*).) In *Perusse*, the Court, found the student had not established by a preponderance of the evidence that student had not received meaningful benefit or made meaningful progress towards his goals, even though he did

not meet all his goals or reach the level of an average, proficient student according to the testing. In that case, as here, all the district witnesses who directly observed that student indicated that progress had been made.

Student's expert witnesses' critique of the four new proposed goals was not persuasive. Their critiques were based on their opinions that Student's present levels of performance did not accurately reflect his academic functioning. They opined that the goals provided too much support and did not encourage independence. At the same time as arguing the goals provided too much support, Johnson also argued that the goals were not ambitious enough and represented too little progress over the prior year.

However, the critiques are based on assessments of Student's functioning that occurred approximately 16 months after the IEP at issue here, which are irrelevant to the offer of a FAPE at the time it was made.

Moreover, Student did not succeed in undermining the evidence that his present levels stated in this IEP were accurate as to his functioning at the time. The 2021-22 seventh-grade IEP accurately stated Student's present levels, measurable goals designed to meet his needs and to enable Student to be involved in and make progress in the general education curriculum. There was also a direct relationship between Student's present levels of performance, the goals and objectives offered, and the specific educational services to be provided.

Hacienda's goals complied with all of these legal standards.

THE MINUTES OF INDIVIDUAL SERVICES HACIENDA OFFERED WERE NOT APPROPRIATE

Student was benefitting from the continued implementation of the 300 minutes of individual services. Hacienda did not sufficiently explain why its offer decreased the minutes of individual services that were apparently working. Nakagawa's explanation that she wished to reduce Student's anxiety is an unsatisfying and not "cogent" explanation of how the 200 minutes would be sufficient to offer Student the reading support he needed.

Student therefore prevailed on Issues 4(c)(i). Remedies are discussed below.

ISSUE 6 (c)(i): DID HACIENDA DURING THE 2022-2023 SCHOOL YEAR DENY STUDENT A FAPE, BY FAILING TO OFFER HIM NECESSARY RELATED READING REMEDIATION.

Student contends that Hacienda's offers of goals and services in reading contemplated prompting and inappropriate levels of adult support, and were, therefore, not appropriately ambitious for Student. Student also contends he was not performing academically as well as Hacienda contended, or as should be expected to, given his average cognitive profile. Student disputes as inflated and overstated, Hacienda's reports of Student's achievement levels, and avers that notwithstanding his average cognition, he was in fact performing worse than Hacienda's progress reports and present levels claimed.

Hacienda contends its offers were appropriate and were based on accurate present levels of performance.

PROGRESS ON PRIOR GOALS AND PRESENT LEVELS

Hacienda convened an annual IEP for the eighth-grade, 2022-2023 school year over several dates in the fall of 2022. The resulting document is referred to as the "2022-23 eighth grade IEP." Montoya continued as Student's case carrier in the eighth grade. Melissa Restovich took over from Kim as Student's eighth-grade English Language Arts teacher.

The IEP team reported on Student's progress on his seventh-grade goals as follows. Student was able to read seventh-grade level text with an average rate of 122 correct words per minute over four consecutive trials. He met this goal.

After reading a multi-paragraph seventh-grade level text and using paragraph by paragraph imagery, Student was able to verbalize a summary of the text including the main and central idea and four relevant and sequential details independently with 90 percent accuracy over four trials. He met this goal.

After reading a seventh-grade text and participating in a whole group discussion, Student could respond to comprehension questions by restating, answering, citing evidence, and analyzing how the evidence supports his claim using sentence frames and graphic organizers. He made substantial progress on this goal.

After reading a text independently at seventh-grade text complexity, Student was able to independently answer literal and inferential questions about the text with 72.5 percent accuracy containing inferential questions in four trials. He made substantial progress on this goal.

Mother had consented to implementation of the 2021-2022 seventh-grade IEP in January 2022. She did not consent to reduction of individual specialized academic instruction minutes.

Therefore, Student's 300 weekly individual specialized academic instruction continued to be provided in seventh grade by Nakagawa. Nakagawa used some Visualizing and Verbalizing curriculum and other programs and strategies with Student. Typically, she worked with Student by going through the Visualizing and Verbalizing workbook, but also worked on other assignments, typically from Student's science class. Because his service was individual, she could work on what she felt he needed. Science was non-fiction, and she used the science assignments to help Student access nonfiction texts.

Kim continued as Student's general education sixth-grade English Language Arts teacher for seventh grade. Student made progress over the course of seventh grade on his reading goals. She used more accommodations at the beginning of the 2021-2022 school year, when Students were returning to in-person learning after COVID, but later tapered off on Student's accommodations.

As a result, Student became less dependent on his teachers for comprehension. Toward the end of seventh grade, he read a novel mostly independently. He could remember the plot with details for classroom reading assignments. Kim asked reading comprehension questions that he was able to answer in class. Kim acknowledged Student received support during his group pull-out study skills period that may have included pre-reading and summarization of the text by the special education teacher Montoya. But, in Kim's opinion, even if Montoya summarized text for Student in study skills, this was not inconsistent with independent reading because in class he could cite

evidence to the novel. And, she never gave either Student or Montoya the comprehension questions ahead of time. Thus, Student's reading abilities were advancing.

In the 2022-23 eighth-grade IEP, Montoya reported on Student's reading present levels. Student could read a seventh-grade passage accurately at an average rate of 122 words per minute. His comprehension was inconsistent as his performance varied based on his background knowledge, interest in the subject matter, understanding of vocabulary, and level of teacher-led or class discussion and support. His comprehension of literal questions was stronger than his comprehension of inferential questions. His estimated reading levels, according to a Basic Reading Inventory, were independent at the sixth-grade level. He required instruction at the seventh-grade level.

His "frustrational" reading level was eighth grade texts. He could decode ten out of ten two-syllable words, seven out of ten three-syllable words, nine out of ten four-syllable words, and 29 out of 30 words with common prefixes and suffixes. He could correctly spell 16 out of 26 words. He was able to identify

- beginning and ending consonant sounds,
- beginning consonant blends,
- short vowel patterns,
- final digraphs and blends,
- common long vowel patterns, and
- other vowel patterns.

When responding to a written prompt after reading a grade level text together in class, and participating in a class discussion, Student was able to refer to details about the story and cite evidence to support a written statement about the story with the

assistance of guiding questions and highlighted key phrases and words as reference. He benefitted from using a graphic organizer, sentence frames, and graphic organizers to complete a written response.

PROPOSED NEW GOALS

Eighth-grade English Language Arts teacher Restovich proposed new reading goals to Student's 2022-23 eighth-grade IEP team meeting in the fall of 2022, based on eighth-grade Common Core standards.

The first proposed goal was, when asked to read a novel multi-paragraph text at the eighth-grade level, Student would read the words containing three or more syllables within the text with at least 95 percent accuracy in three trials.

The second proposed goal stated, after reading a novel at the eighth-grade level with multi-paragraph text, Student will be able to independently verbalize an objective summary of text which includes the main and central idea of the text and at least four relevant and sequential details with at least 80 percent accuracy in four trials. The prior year's goal in this area of need had aimed for 80 percent accuracy and Student had attained 90 percent, with a seventh-grade text. The complexity of the eighth-grade text could be expected to be more challenging.

The third proposed goal stated that after reading a text independently at grade eight text complexity, Student would be able to independently answer literal and inferential questions about the text with at least 80 percent accuracy in four trials.

The fourth proposed reading goal stated that after reading an eighth-grade level text and participating in a class discussion, Student would independently respond to

one to three comprehension questions by answering correctly, citing one to two pieces of the textual evidence that most strongly supports his response, analyze his evidence and how it supports his answer, summarizing his response with 80 percent accuracy in four trials.

Restovich created these proposed goals in collaboration with Montoya. They both monitored Student's progress. Restovich reported that Student had good reading comprehension during the 2022-23 eighth grade school year. He could summarize a text and a paragraph. He could read eighth-grade level texts independently and silently to himself. He could answer comprehension questions and tests, and fill out graphic organizers with the information.

Restovich did not provide Montoya with the questions or reading assignments ahead of time, so the work was Student's alone. In Restovich's experience, Montoya did not provide inappropriate levels of assistance to Student. She might explain or clarify the text, which was appropriate and did not interfere with his independent access to the curriculum.

Despite Student's insistence on this point, at hearing, Student's probing of Montoya and Restovich failed to establish that Student's progress was a result of Montoya completing work on his behalf.

EXPERT OPINIONS

In the Spring of 2022, at the end of Student's seventh grade, Johnson conducted her independent psychoeducational assessment. She completed her

report in September 2022 during Student's eighth grade year. In the spring and summer, Susan Hollar assessed Student's speech and language abilities. Both reports were presented at the 2022-23 eighth-grade IEP team meetings. Both experts testified at hearing.

JOHNSON'S ASSESSMENT

Johnson assessed Student's cognitive abilities and there was no contrary evidence concerning his cognitive abilities. Her assessment of his intelligence was uncontested.

Johnson selected nonverbally administered measures of intelligence as most appropriate for Student because of his language impairment. As such, he was not required to comprehend instructions or provide a verbal response to demonstrate his cognition. She selected the Universal Nonverbal Intelligence Test, second edition, a nonverbally administered measure of intelligence.

Overall, Student's cognitive abilities were in the average range. Johnson reiterated in her testimony that he had average cognitive abilities, and in her opinion with appropriate intervention he should be able to demonstrate mastery of grade level texts without prompting.

Student had processing difficulties that impacted reading, including deficits in auditory processing, visual processing and visual motor integration. He should also, with appropriate interventions, be capable of accessing grade level math. He performed well on the quantitative reasoning (or mathematical problem-solving) subtests.

She also selected the Test of Nonverbal Intelligence, fourth edition. When language, motor, and cultural demands were largely removed, per this test, Student's nonverbal cognitive ability measured in the average range.

Johnson administered two standardized measures of academic achievement, the Woodcock-Johnson IV Tests of Achievement and the Gray Oral Reading Test, Fifth Edition, called the GORT-5. The Woodcock Johnson consisted of 11 subtests used to evaluate academic achievement. Subtests measured

- word identification skills,
- writing words that are presented orally,
- using syntactic and semantic cues to identify a missing word in text,
- writing responses to a variety of demands, pronouncing unfamiliar printed words, and
- reading stories accurately.

It also measured

- reading rate, requiring both reading-writing and cognitive processing speed abilities, and
- formulating and writing simple sentences quickly, requiring both reading-writing and cognitive processing speed.

Student's reading skills measured in the very low to average range on the Woodcock Johnson. The GORT-5 is a norm-referenced test of oral reading rate, accuracy, fluency, and comprehension for individuals ages six years through 23 years. Student scored in the poor or below average range on all GORT-5 subtests.

Johnson calculated Student's Woodcock Johnson scores to a "grade level equivalent" on that test that showed Student ranging in the approximate third-grade range. Johnson questioned whether Student's reading levels could really be independent at the sixth-grade level and instructional at the seventh-grade level, as reported by Montoya. Based on her standardized testing, she opined that Student did not have grade level reading skills. For example, she criticized the Basic Reading inventory Montoya administered in March 2022, about the same time Johnson was assessing Student. Johnson testified that Montoya's testing results did "not align with my own testing."

Johnson opined that Student's reading skills measured in the very low to average range. Student's performance on word attack problems was notable for lack of automaticity and self-corrections. His decoding was choppy. There existed a significant discrepancy between his nonverbal cognitive and reasoning ability and his achievement in basic reading skills and reading comprehension consistent with a specific learning disability. He did not demonstrate knowledge of some functional academic concepts. Considering all these factors, Student showed inadequate progress in academic skills according to Johnson.

Johnson criticized Hacienda's proposed goals both as being too advanced for Student's actual capabilities, and simultaneously for providing him with too much support. Johnson also criticized Hacienda's offer of services. She opined Student initially required a minimum of four hours per day, five days per week, of individual reading and math intervention sessions for a minimum of 12 weeks. She further opined that Lindamood-Bell phonological processing and comprehension building strategies and programming were research-based and effective for children like Student, who present with auditory processing challenges.

Johnson's testimony concerning her testing results was credible. Her testimony was thorough and very consistent. She exhibited familiarity with research in her field and backed her opinions up with the research.

However, her opinions about Student's academic levels were derived from a limited number of interactions with Student over a few testing dates.

HOLLAR'S ASSESSMENT

In Hollar's assessment, Student's profile on the Test of Integrated Language and Literacy Skills indicated he presented with an oral written language disorder. Hollar opined that he was "likely to demonstrate educational challenges in oral and written language modalities, including reading fluency and oral listening comprehension skills. His language deficits are negatively impacting his academic skills."

Based on this and her other assessment results, she was unsure Student could read at grade level. Hollar observed Student in English Language Arts class at school on May 11, 2022. According to her observation he could not without prompting independently respond to content-level questions. He needed multiple choice options to respond. He also needed a structured framework to tell him to supply facts to support an opinion. He had help from both the special education teacher and general education teacher who provided him with multiple cues and prompts.

In summary, as far as academics, Hollar found that Student had areas of need in

- vocabulary,
- grammar,
- sentence to paragraph processing skills at grade level,

- language development to follow complex verbal directions as they relate to the academic curriculum,
- taking meaning from context,
- inferences, idioms,
- nonliteral language,
- double meanings,
- making predictions and inferences after reading a grade level appropriate passage to himself,
- generation of grade level narratives related to academic curriculum,
- weakness in auditory processing at the word and sentence level in classroom environments.

Both experts argued that Student was not performing at grade level. Given Student's average cognitive abilities, he should be able to perform at grade level given what in their view would be the appropriate interventions. Thus, Hollar opined that the interventions she recommended should remediate his vocabulary, grammar, ability to organize language and his reading abilities. Johnson also opined that the programs she recommended should get Student to average abilities in the Woodcock Johnson basic reading subtests, passage comprehension and reading recall subtests.

It should be noted that a third opinion, that of Anne Perry, the Director of the Center for Lindamood Bell in Pasadena, was also presented at hearing. Perry opined concerning the fidelity of implementation of Visualizing and Verbalizing, discussed above. She also opined regarding the meaning of Johnson's and Hollar's assessment results, but as her testimony did not add to theirs it is not recounted here.

Perry also confirmed Student's other experts' opinions of his below-grade reading skills. She presented the results of a Lindamood Bell reading assessment conducted in November 2022.

As this assessment did not yet exist at the time of the 2021-2022 eighth-grade IEP meetings that concluded in October 2022, it is not relevant to Student's reading levels, nor to the offer of services made at that time. Moreover, the assessment was hearsay. Perry did not conduct the testing and did not know who did.

OFFER OF SERVICES

In the 2022-23 eighth-grade IEP, Hacienda offered 275 minutes of weekly individual specialized academic instruction. The only explanation offered for this modification in the 300 individual minutes being provided was that the offer had to comport with the school's 55-minute class period length.

ANALYSIS AND CONCLUSION

THE PRESENT LEVEL AND GOALS WERE APPROPRIATE

Because there was a direct conflict in this case between teachers' representations and Student's scores on statewide tests and standardized assessments, Student argues that the assessments were more reliable because they contain "non-influenceable data points" to evaluate whether Student was making progress in the general education curriculum. Because of the conflicting evidence, Student correctly urges that this case requires a "deeper meaningful-benefit inquiry," considering first whether the general

education progress data demonstrates adequate knowledge of the course material, and looking at additional evidence to evaluate which measures are more reliable given the circumstances.

Firstly, Student repeatedly implied Montoya was doing Student's work for him, thus inflating Hacienda's perception of his actual abilities. However, Student's probing of Montoya at hearing failed to undermine the validity of her progress reporting results, which over the course of two years were repeatedly validated by two different English Language Arts teachers, Kim and Restovich, as well as Student's math teacher, and his speech and language service providers. And, in Hacienda's reporting on Student's present levels of performance, Montoya acknowledged Student's challenges with comprehension and inferences. Therefore, Hacienda's progress reports and statements of Student's present levels of performance were honest and accurate.

Secondly, the Woodcock-Johnson third-grade equivalent score from Johnson was unpersuasive as the main indicator of Student's present levels of performance. Similarly, his Woodcock Johnson "standard scores" that compared him to a group of others of similar age and found him to be in the very low to average range were also unpersuasive. As the Woodcock Johnson Manual itself stated, "standard scores provide information regarding peer comparison but do not provide information regarding level of development."

More informative, as far as actual grade level content mastery goes, were Student's scores on the Smarter Balanced Assessment Consortium tests, which measured mastery of the grade-level content that is expected by the Common Core.

In 2020 and 2022, Student had not met the achievement standards for English Language Arts for sixth or seventh grades and needed “substantial improvement to demonstrate the knowledge and skills in English Language Arts/literacy needed for likely success in future coursework.”

However, the pass rate overall in California on these content-level mastery tests was below 40 percent of students. Moreover, the law applicable to what constitutes a FAPE does not necessarily require a particular pass rate or mastery of grade level content for every individual student.

No one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at p. 202.) The IDEA cannot and does not promise “any particular [educational] outcome.” (*Id.*, at 192.) No law could do that—for any child.” (*Endrew, supra*, 580 U.S. 386 at 398.) The IDEA “requires participating States to educate a wide spectrum of handicapped children,” and “the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between.” (*Rowley, supra*, 458 U.S. at p. 202.)

Credible, devoted, experienced, dedicated and competent teachers, over three years, one after the other, confirmed that Student was accessing grade level curriculum in sixth, seventh and eighth grade reading. The content reading level is identified by the Common Core Standards adopted by the California Department of Education. Student made progress in the general education curriculum according to those grade-level standards, and was advancing on his goals, which were based on Common Core grade-level standards and were appropriately ambitious.

That meets the legal standard of a FAPE elucidated by the Supreme Court.

Student's experts here argue essentially for the same standard that the Supreme Court rejected in *Endrew*, namely that a FAPE is "an education that aims to provide a child with a disability [the same] opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities." As *Endrew* confirmed, however, the *Rowley* majority "rejected any such standard in clear terms." (*Endrew, supra* at 403 [citing *Rowley, supra* at 198 ("The requirement that States provide 'equal' educational opportunities would ... seem to present an entirely unworkable standard requiring impossible measurements and comparisons.")]).

Here, the methodologies Hacienda used in providing specialized academic instruction during the applicable school years have effectively enabled Student to make meaningful progress in his areas of deficit in reading. The IEP team estimated, based on what they knew of Student's abilities, challenges, and past timetables for his progress on and achievement of prior goals, that Student could achieve the new goals within one year. Student failed to establish that the offered goals were not appropriate or were insufficiently ambitious.

Quite the contrary, the goals were firmly rooted in Common Core grade level standards. Based on Student's success in meeting some, and partially meeting other of his goals in the prior years, and his success in the general education classroom in some areas of English Language Arts, it was reasonable for Hacienda to offer the goals it did and offer the services it did. The reasonableness was reinforced by Student's progress on his goals.

Student failed to demonstrate that Hacienda did not provide Student an appropriately individualized and intensive program of interventions to address Student's disability-related deficits in reading.

THE MINUTES OF INDIVIDUAL SERVICES HACIENDA OFFERED WERE NOT APPROPRIATE

However, Hacienda had been providing and implementing 300 weekly minutes of individual specialized academic instruction from a prior year's IEP, and although those minutes contributed to Student's success on which Hacienda relies, it did not repeat that offer year after year. Thus, in the 2020-21 sixth-grade IEP, Hacienda offered no minutes. In the 2021-22 seventh-grade IEP, it offered 200 minutes.

In the 2022-2023 eighth-grade IEP, Hacienda proposed 275 weekly minutes of individual specialized academic instruction. But, given Hacienda's contention that it had been providing an appropriate level of service to allow Student to access his education, they did not provide a cogent explanation for how this reduction of minutes would have offered Student a FAPE.

Because Hacienda repeatedly attempted to decrease or modify the level of individual intervention that had demonstrably provided Student with FAPE, and because they posited no coherent explanation for that decrease, Student prevailed on Issue 6(c)(i). Remedies are discussed below.

MATH OFFERS

ISSUE 2 (e): DID HACIENDA DURING THE 2020-2021 SCHOOL YEAR DENY STUDENT A FAPE, BY FAILING TO OFFER HIM NECESSARY RELATED MATH REMEDIATION.

For all three years in question, Student contends that Hacienda's offers of goals and services in math contemplated prompting and inappropriate levels of adult support, and were, therefore, not appropriately ambitious for Student. Student also contends he was not performing academically as well as Hacienda contended, or as should be expected to, given his average cognitive profile. Student disputes as inflated and overstated, Hacienda's reports of Student's achievement levels, and avers that notwithstanding his average cognition, he was in fact performing worse than Hacienda's progress reports and present levels claimed.

Hacienda contends its offers were appropriate and were based on accurate present levels of performance.

PRESENT LEVELS

At the 2020-21 sixth-grade annual IEP team meetings that occurred in September through November 2020, and then in December after Student's triennial assessment, Villareal reported Student's present academic levels in math. When given fifth grade core curriculum materials and after reviewing a similar problem in a small group, Student could solve word problems involving addition and subtraction of fractions with common denominators with 85 percent accuracy. He scored a 75 percent with unlike denominators. When solving addition and subtraction problems with unlike

denominators, Student would add and subtract the denominators instead of finding a common denominator. He still required additional support to set up and solve word problems involving the addition and subtraction of fractions and mixed numbers with unlike denominators.

On December 2, 2020, during Hacienda's triennial assessment, Montoya assessed Student's math abilities using two assessment tools, the Global Strategy Stage, also called GloSS, and the Individual Knowledge Assessment of Numbers, or IKAN. In the 2020-2021 sixth-grade school year, she provided specialized academic instruction to Student in math.

The GloSS and IKAN assessment package enabled teachers to identify the number knowledge and strategy stages in which students were demonstrating proficiency across all knowledge and strategy domains. The assessments consisted of a series of interview strategies and number questions. The students were then assigned an overall stage, based on their responses to the questions in the interview. The series of questions increased in difficulty. Students moved through the questions until they become too difficult for them to answer correctly.

The GloSS was in an interview format on which Student was asked to perform mathematical calculations when being shown pre-printed cards showing word or picture problems. For example, one card might show a stack of dollar bills and ask, "Which is more money, one-half ($\frac{1}{2}$) of \$20 or one-quarter ($\frac{1}{4}$) of \$40." The results were programmed into "stage level" ratings specific to that test. This assessed the strategies

known and mastered by the student. From this assessment, a strategy stage was determined for each of three domains: addition/subtraction, multiplication/division, and ratio/proportions. An overall global stage was also identified. Student's results fell within "Stage 5: Early Additive."

At the Early Additive stage, students have begun to recognize that numbers are abstract units that can be treated simultaneously as wholes or can be partitioned and recombined. Student demonstrated the ability to solve addition problems. He could recall multiplication facts to solve one-step word problems. He was able to recognize and apply division facts to problems. He was able to use a mix of counting and part-whole strategies to solve double-digit subtraction. He demonstrated an understanding of using a combination of multiplication and addition-based reasoning. He also demonstrated the ability to partition factors additively. When solving one- or two-step problems involving multiplication or division, he needed reminders to read the task more than once. He was able to identify which operation to use but had a challenging time explaining why he chose that operation. At hearing, Montoya was questioned concerning the GloSS protocols and scoring sheets, but this cross-examination failed to undermine the validity of her testing or test results.

The IKAN Counting Interview is a diagnostic interview where students are assessed on their ability to understand the forward and backward number counting sequence and their ability to recognize and sequence numbers. Student was able to count forward beginning with the number one and counting on. He was also able to start counting from a number other than one and continue counting on (e.g., start at 51

stop at 78). He was able to skip count by tens and count down backwards from 10 to zero. He could also begin counting backwards from any number and stop when prompted. He demonstrated mastery of number recognition up to 1000.

Montoya also administered a Developmental Math Assessment that measured Student's ability in the following areas:

- place,
- value,
- rounding and number sense,
- addition and subtraction, and
- multiplication and division.

Student showed his work on a white board. Some of the questions were asked verbally and Student was asked to explain how he arrived at the answer. On other questions, Student showed his work on the white board and held it up for the teacher to see. He was able to ask for questions to be repeated as many times as he needed. He performed better on questions where he was given visual supports. Using a numberline, as well as additional guiding questions, he demonstrated the ability to apply round numbers to the nearest whole number, tens place and hundreds, and thousands place. He could round a double-digit number to the nearest ten. Given a three-digit or four- digit number, Student could round to the nearest hundred two out of three times. He could compare two whole numbers and determine which is bigger, less than, or if they are equal. When solving two-step word problems, he was able to set up the problem or choose the appropriate operation (i.e., first add the numbers then subtract the totals). He was able to set up and solve one step word problems involving addition, subtraction, multiplication, and division. He could solve double and triple-digit

addition and subtraction problems involving regrouping by breaking down the problem by thousands, hundreds, tens, and ones. He demonstrated the ability to fluently multiply numbers between zero-10. He could add and subtract fractions with the same denominators. He had a challenging time identifying equivalent fractions. He could convert fractions over 10 to decimals (i.e., $3/10=0.3$).

PROPOSED NEW MATH GOAL

In the 2020-21 sixth-grade IEP, Hacienda offered one math goal. That offered goal stated, given five-word problems and an example of the type of problem, Student would use ratio and rate reasoning to solve real-world and mathematical problems (e.g., by reasoning about tables of equivalent ratios, tape diagrams, double number line diagrams, or equations) with 80 percent accuracy with adult guidance and support over three trials. This goal was derived verbatim from the Common Core sixth-grade math standards pertaining to ratios and proportional relationships.

Once Parent consented to this goal in April 2021, Montoya worked on it with Student.

Student's expert witnesses disputed the appropriateness of the goal because it contained adult guidance and support within the goal itself. Goals, they argued, should aim to measure what a Student can accomplish independently. Guidance and support, they argued, is appropriate for instruction and learning, but not for measuring whether a goal has been met or not, because such a goal inherently presumes that the work will not be done by the student alone.

However, as Montoya persuasively explained, adult guidance only meant reminding Student of the steps to solving the problems. He was not given answers, which he had to calculate himself.

OFFER OF SERVICES

The 2020-21 sixth-grade IEP offered 325 minutes per week of specialized academic small group instruction in a study hall class, plus 300 minutes per week or approximately one hour per day of push-in specialized academic instruction in Student's general education academic classes.

ANALYSIS AND CONCLUSION

Student's expert witness, Johnson, opined that these push in and group pull-out services offered were insufficient for math. She recommended math individual pull-out multiple times a week. Johnson further opined that Student had a chronic deficiency in his word problems and needed individual support. She based this on her own testing, but since that did not occur until April 2022, it was not known to Hacienda when it made the offer of services, which must be judged based on the pertinent snapshot in time for this Issue relating to the offer made 16 months prior in December 2020.

More pertinent to the 2020 offer, Johnson also pointed to the math results Student attained on the 2020 administration of the Smarter Balanced Assessment System. Student "nearly met" the Common Core state standard for math. For grade six, "nearly met" meant Student had "nearly met the achievement standard and may require further development to demonstrate the knowledge and skills in mathematics needed for likely success in future coursework."

Johnson's critiques of Hacienda's offered math goal and offer of services in the 2020-21 sixth-grade IEP were unpersuasive. Student's present levels were accurately based on information known at the time, and the goal was appropriately ambitious and based on Common Core grade level standards.

Thus, Student failed to meet his burden of proof to establish that Hacienda denied him a FAPE during the 2020-2021 school year by failing to offer him necessary related math remediation.

Therefore, Hacienda prevailed on Issue 2(e).

ISSUE 4 (d): DID HACIENDA DURING THE 2021-2022 SCHOOL YEAR DENY STUDENT A FAPE, BY FAILING TO OFFER HIM NECESSARY RELATED MATH REMEDIATION.

PROGRESS ON MATH GOAL

Montoya began working on his sixth-grade math goal with Student in April 2021 once the 2020-21 sixth-grade IEP was signed. By the following September 2021, she reported at the 2021-22 seventh-grade IEP team meetings that Student had met this goal when given an example of the type of problem along with a graphic organizer listing the steps to solve the problem. Student could use ratio reasoning to solve problems. At times, he might require at least two guiding questions to simplify the ratios.

PROPOSED NEW MATH GOAL

General education teacher Brian Mahaffey taught math to sixth, seventh and eighth graders. He was Student's math teacher in the 2021-2022 seventh-grade school year and in the 2022-2023 eighth grade school year. Mahaffey and Montoya attended the 2021-22 seventh-grade IEP team meeting that occurred in September 2021, at which the team reviewed Student's progress in sixth grade, and proposed a new math goal for seventh grade.

The proposed new math goal stated that when given five to ten problems, an example of the type of problem and after having a similar problem modeled for him, Student would use proportional relationships to solve multi-step ratio and percent problems (e.g., simple interest, tax, markups and markdowns, gratuities and commissions, fees, percent increase and decrease, percent error) with 80 percent accuracy in four trials as measured by work samples and observation record.

OFFER OF SERVICES

Hacienda offered 275 minutes each push-in and group pull-out specialized academic instruction which Montoya provided. Mahaffey assigned class and homework assignments on-line, then monitored the results. He gave his class, including Student, daily tasks and problems and periodically, other assignments to monitor progress.

According to Mahaffey, Student's seventh-grade accommodations in the 2021-2022 school year in math class included preferential seating in the front of the class, extra time, allowance to re-take assessments and try again, shortened assignments and shortened assessments.

ANALYSIS AND CONCLUSION

As with the reading levels, goals and services, Johnson opined Student was in fact doing less well than Hacienda contended. She also simultaneously criticized goals for both being beyond his actual skill level and, at the same time, not being sufficiently ambitious and requiring too much adult support. Finally, as with the reading goals, she opined that, given Student's cognitive profile, his poor performance was the result of inappropriate interventions by Hacienda. He should in her opinion, do better, and, therefore, he required extensive additional interventions in order to do so.

Johnson's critiques were again not persuasive. She critiqued this proposed new seventh-grade math goal by comparing it to the prior year's sixth-grade goal. She opined the goals were similar in content and both used examples or models to guide Student. Thus, she opined that Hacienda was not fading their level of support. This, for Johnson, represented proof of limitations in Student's progress.

But, contrary to these contentions, this goal is clearly an advancement over the previous year's goal in that it offers modelling of a problem only, rather than adult guidance and support as had been offered in the previous year's math goal. It was also based on seventh-grade Common Core standard curriculum for ratios and proportions. Ratios and proportions had also been the subject matter of the previous year's goal, but this year the subject matter was advanced to "multi-step" problems.

Mahaffey confirmed that sixth-grade Common Core is two-step problems, and seventh grade is three-step problems. Montoya confirmed the appropriateness of this goal for Student based on a baseline of his independent, unprompted ability based on probes and worksheets she had given him.

Student's cross-examination of Montoya failed to impeach her testimony that Student's work on the probes was independent.

The evidence did, however, support an inference that in seventh grade, Student struggled to achieve his math goal. A workbook from the seventh-grade year in 2021 showing Student's work, indicated he failed to comprehend word problems relating to proportional relationships. And, in the seventh-grade 2021-2022 state testing on the Smarter Balanced Assessment System, Student had "not met" the standard for math. For grade seven, "not met" meant Student had "not met the achievement standard and needs substantial improvement to demonstrate the knowledge and skills in mathematics needed for likely success in future coursework."

Although Mahaffey worked with Student on this goal in seventh grade, by the following school year Student had still not met this goal. The progress reporting did however indicate that Student had "substantially met" the goal, indicating a performance rate of 66 percent.

As discussed above, the failure to meet a goal does not necessarily prove a denial of a FAPE. Student did as well in Mahaffey's seventh-grade class as Mahaffey's other students, all of whom needed extra support with word problems. According to Mahaffey, Student's performance was "no different" from the other students in his class. Furthermore, on the Smarter Balance test, overall, the pass rate in California was only 33 percent. Since Mahaffey's class was in a high-performing school with many more advanced students, the pass rate was 60 percent. Although Student contends, he was behind, and was falling further behind his peers, this did not appear to be the case.

In the 2021-22 seventh-grade IEP, Student's present levels were accurately based on information known at the time, and the goal appropriately ambitious and based on

Common Core grade level standards. The goal was designed to enable Student to be involved in and make progress in the general education curriculum. The IEP showed a direct relationship between the present levels of performance, the goal, and the specific educational services to be provided. Student was provided access to specialized academic instruction and related services individually designed to provide educational benefit to Student through an IEP reasonably calculated to enable him to make progress appropriate in light of his circumstances. For math in the seventh-grade IEP, Hacienda complied with all of the applicable legal standards.

Therefore, Hacienda prevailed on Issue 4(d).

ISSUE 6 (d): DID HACIENDA DURING THE 2022-2023 SCHOOL YEAR DENY STUDENT A FAPE, BY FAILING TO OFFER HIM NECESSARY RELATED MATH REMEDIATION.

PROGRESS ON PRIOR GOALS AND PRESENT LEVELS

By the beginning of eighth grade, Student had met his sixth-grade math goal and had substantially met his seventh-grade goal. When given an example of the type of problem modelled for him, Student could use proportional relationships to solve one-to-two step problems (meeting the sixth-grade Common Core standard). However, when tasked with the seventh-grade requirement of three step problems, his accuracy decreased.

He was able to add, multiply, subtract, and divide single- and double-digit numbers. He could recall multiplication facts and use ratio and rate reasoning to solve division problems. He could recall division facts. He could identify a proportional

relationship and find rate of change to determine if the relationship was linear. He doubted his ability to make sense of rational numbers, especially fractions.

PROPOSED NEW GOALS

Based on Student's "substantially met" progress in seventh grade, Mahaffey proposed two new math goals for the eighth-grade year. The first goal was, when given five to ten problems and an example of the problem, Student should solve three or more step linear equations with variables on both sides with rational number coefficients, including equations whose solutions require expanding expressions using the distributive property and collecting like terms, with 80 percent accuracy in four trials. This was an eighth-grade goal based on the Common Core standards. Mahaffey believed Student could do this material. Mahaffey could adjust the number of questions or the level of support. But, he believed Student could access this content.

Mahaffey proposed another math goal, also based on the eighth-grade level work, that Mahaffey believed Student could access. That goal stated that given five-to-ten-word problems involving linear relationships, Student would use a math problem solving strategy (such as asking what is the problem about, what quantities are in the problem, and what are you looking for) to interpret the information from the word problem and create an equation, such as $y = mx + b$, defining a linear function, to solve for unknown variables with 80 percent accuracy.

Mahaffey, who testified at hearing, was a competent and devoted teacher who used a variety of teaching strategies. He had clearly devoted substantial effort and thought to his teaching methods. When teaching children math, he allowed them to try

new ways to learn. Mahaffey customarily allowed his students to try, fail and then try again. Because of his subject-matter expertise and his dedication to his profession, his testimony was given great weight.

For this eighth-grade school year, which is the current 2022-23 school year, Mahaffey believed the proper way to teach Student was to allow him to try and perhaps fail, without prompting. Thus, he did not pre-teach Student. Student was required to read the problem first to make sense of it and come up with a proposed solution. Mahaffey would only read the problem aloud after Student tried first. As a result, Student had "become a self-starter in math."

Per Mahaffey, word problems were a weakness for all students. The problems are rigorous. One must understand the math procedures required to solve the problem. It was a struggle for everyone.

At the time of hearing, Mahaffey was working with Student on both eighth-grade math goals. These were grade level standards that Mahaffey was "not watering down." Student had made progress on these goals and Mahaffey was happy with his progress.

The week in the which the due process hearing occurred, and Mahaffey testified, Student was doing square roots and working on the Pythagorean Theory, which treats the mathematical relationships between the sides of triangles.

EXPERT OPINIONS

Johnson's assessment occurred at the end of the 2021-2022 seventh grade and was presented in the fall of 2022 at the 2022-23 eighth-grade IEP team meeting. It directly contrasts with Mahaffey's assessment of Student's present levels. According to

Johnson's assessment conducted in the Spring of 2022 at the end of seventh grade, Student's math skills were in the very low to low-average range. While deficiencies in language and auditory processing may have impacted his applied math skills, in Johnson's view his "extremely low performance" was not fully attributable to these factors. For example, Student could not correctly tell time on an analog clock. While he identified coins, he did not demonstrate an understanding of money values when applied to a math problem. He did not correctly complete problems involving measurement or fractions. For calculations, he incorrectly answered problems involving division, multidigit addition, three-digit subtraction, and fractions. He made errors on simple math facts due to missing the sign.

His current subtest scores were combined to result in composite scores of "very low" on mathematics, with a standard score of 66, which was in the first percentile. He scored "low" in broad mathematics with a standard score of 70 in the second percentile. He scored low average in math calculation skills with a standard score of 80, which was in the tenth percentile, and very low in math problem solving with a standard score of 68, which was in the second percentile.

OFFER OF SERVICES

At the 2022-2023 eighth-grade IEP, Hacienda offered the same amounts of push-in specialized academic instruction and group pull-out specialized academic instruction as was offered in the prior school year's IEP. Hacienda offered 275 minutes per week of push in specialized academic instruction in the general education class, and 275 minutes of small group study hall pull out.

ANALYSIS AND CONCLUSION

Mahaffey disagreed with Johnson's assessment of Student's achievement levels at the time Johnson conducted her assessment at the end of seventh grade, and when she presented her report at the 2022-23 eighth-grade IEP team meeting. Per Mahaffey, Student was not behind on his prior years' grade level skills. For example, fractions were sixth-grade level content and Student could calculate slope, which is a fraction.

Mahaffey acknowledged that when working with fractions, Student might sometimes invert the numbers of fractions, causing errors. He also acknowledged that Student could be confused by division, multiplication, and word problem solving. And, in the 2021-2022 state testing on the Smarter Balanced Assessment System, Student had "not met" the standard for math.

Johnson's standardized tests compared Student to a normed group of peers and found that he placed "very low" to low average with standard scores ranging from 66, in the first percentile, to 80 in the tenth percentile. In direct contrast, Mahaffey compared Student to the group of peers Mahaffey taught, and found Student's performance to be "no different."

Mahaffey's opinions concerning Student's content-level mastery was more persuasive than Johnson's opinion. Mahaffey observed Student in class over two school years, whereas Johnson's opinions about Student's academic levels were derived from a limited number of interactions with Student over a few testing dates. In contrast Mahaffey had hands-on knowledge of Student's performance, and confirmed Student was accessing grade level content based on the Common Core standard that was not "watered down."

Mahaffey confirmed Hacienda's perception of Student's actual achievement was accurate and not inflated. Hacienda's progress reports and statements of Student's present levels were honest and accurate. Hacienda's reporting on Student's present levels of performance acknowledged Student's challenges.

In contrast, the Woodcock Johnson standard scores relied on by Johnson were less persuasive.

Although Student had not met the Smarter Balanced Assessment grade-level content for math expected by the Common Core standard, that did not establish that Hacienda had failed to offer him a FAPE. In math, the IEP was clearly and unequivocally, as established by Mahaffey's credible testimony, reasonably calculated to enable Student to make progress appropriate in light of his circumstances.

Here, the methodologies Hacienda used in providing specialized academic instruction during the applicable years had effectively enabled Student to make meaningful progress. The goals were firmly rooted in Common Core grade level standards. Based on Student's success in meeting some, and partially meeting other of his goals in the prior years and his success in the general education classroom, it was reasonable for Hacienda to offer the goals and services it did in the 2022-23 eighth-grade IEP. Such reasonableness was corroborated by Student's progress on his goals.

Student failed to demonstrate that Hacienda did not offer Student an appropriately individualized and intensive program of interventions in math. Therefore, Hacienda prevailed on Issue 6(d).

EXTENDED SCHOOL YEAR ISSUES

ISSUE 2 (f), 4(e) AND 6(e): DID HACIENDA DENY STUDENT A FAPE, BY FAILING TO OFFER HIM NECESSARY RELATED EXTENDED SCHOOL YEAR SERVICES?

For all three issues concerning extended school year, Student contends he should have been offered services over school breaks because he was failing to meet his goals and was not advancing sufficiently.

Hacienda contends it appropriately did not offer Student extended school year instruction and services because Student did not experience regression during lengthy breaks from school.

Extended school year, or services means special education and related services that are provided to a child with a disability beyond the normal school year of the public agency, in accordance with the child's IEP. (34 C.F.R. § 300.106 (b).) Extended year is the period of time between the close of one academic year and the beginning of the succeeding academic year. (Cal. Code Regs., tit. 5, § 3043, subd.(c).)

Each public agency must ensure that these services are available as necessary to provide FAPE. (Ed. Code, § 56345, subd. (b)(3); 34 C.F.R. § 300.106(a)(2006).) The IEP determines on an individual basis whether extended school year services are necessary for the provision of FAPE. (34 C.F.R. §300.106 (a)(2).) Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a

prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. (Cal. Code Regs. ,tit. 5, § 3043.) An extended year program shall be provided for a minimum of 20 instructional days, including holidays. (Cal. Code Regs., tit.5,§ 3043, subd.(d).)

Student has failed to establish he needed extended school year in order to receive a FAPE during any of the years in question. At hearing, the evidence presented regarding Student's likelihood of regression was very unconvincing. Moreover, that evidence was outweighed by more persuasive evidence establishing Student was not prone to regression.

None of Student's teachers or service providers observed regression over any of the school breaks in question over the three school years at issue here. In sixth grade, speech language pathologist Delgado, who consulted on his case in the 2019-2020 fifth grade school year and serviced him directly during the 2020-2021 sixth-grade school year, observed Student did not show regression over the summer of 2020, or over holiday school breaks. Sixth-grade English Language Arts teacher Kim convincingly opined he was performing at a level consistent with other students and did not regress from one school year to the next. Villareal saw him before and after many summers and testified Student had not regressed over breaks from school.

Seventh-grade English Language Arts teacher Kim again opined for this year, that he was performing at a level consistent with other students and did not regress from one year to the next. In the seventh grade, speech language pathologist Cheng saw no regression over breaks and did not recommend extended school year services.

Speech language pathologist Myers, who serviced Student in the eighth grade, observed no regression from one school year to another or over school breaks. Restovich, who taught English Language Arts in the eighth grade, saw no regression from the prior year and would not recommend extended school year. Student academically picked up promptly in the fall of 2022. For example, he could cite evidence from a text to support an argument concerning it. Restovich saw no evidence of regression from prior grade standards.

The consistent observations of Student's teachers and service providers over many years was credible and convincing. It was also borne out by the evidence discussed above concerning his sufficiently ambitious grade level goals, which advanced from year to year according to Common Core standards, and on which Student made appropriate progress.

Mother's opinion that Student required an educational component during the summer gap to enable Student to continue his education without regression, although shared by the private independent speech and psychoeducational assessors, was unsupported by the weight of the underlying facts.

Both Hollar's and Johnson's definition of the word "regression" amounted to an opinion that Student was, in their opinion, not making sufficient progress. Both relied on a comparison of Student's standard scores on certain subtests of the standardized assessments they administered with prior administrations.

Hollar administered the Test of Narrative Language, Second Edition, to assess Student's ability to answer questions about stories, retell stories, and to create his own stories. Student's "scaled score" on the "narrative comprehension" subtest decreased

from 2016 to 2022. Hollar opined that Student's 2022 results on that instrument indicated he suffered a "regression" in Narrative Comprehension. Student's scores on other subtests of this test remained the same.

Johnson, similarly, relied on lower scores in 2022 than 2016 on particular subtests of the Woodcock Johnson. There was a decrease in Student's standard score on the passage comprehension subtest which measures reading comprehension. There was a decrease in Student's standard score in the word attack subtext which measures decoding, a basic reading skill. There were decreases in math subtests measuring applied problems, number matrices, calculation, and math facts fluency. There was no change in other subtests and increases in still others.

The tests Hollar and Johnson relied on were "normed," which meant that the standard score measured an individual's placement within a group of peers. A drop in standard score did not indicate "regression" in the sense of a loss of skills an individual once had and has lost, needing recoupment.

The "standard scores" placed a particular student according to his or her place in the normed group. A child can fall at the top, in the middle or at the bottom of a comparative pack of children. If a particular student stays at the same standard score year after year, that means his level inside the normed pack is remaining stable. If a student's standard score goes up, that means he is advancing to a higher place in the pack. If a student's standard score goes down, that means he fell to a lower spot in the normed pack. Thus, a drop in a standard score may indicate that a student is not progressing *as fast* as others, but it does not disprove that he is progressing at all.

Thus, a decrease in a standard score does not establish regression. It does not mean a student knows less than he used to, or that he is losing skills he once had. It merely means the group of peers he is being measured against is advancing faster than he is. Thus, he may still be progressing, but at a slower pace than others.

This distinction is important for judging the credibility of Hollar's and Johnson's opinions that Student had "regressed." The evidence did not support that contention.

Endrew does not demand a particular level of progress, and it certainly does not require that Student maintain a particular place in the pack of other students who are all advancing in age, knowledge and attainment of skills at their own individual levels. Some may advance faster and others slower. (*Endrew, supra* at 403-5).

The evidence did not support Student's factual contention that he was not making progress. The law does not support his legal contention that he was denied a FAPE if his progress did not keep at the same pace within the normed population.

In light of the above, Student's contention that a gap in services would cause regression and thus would deny Student a FAPE, was not persuasive. Therefore, Hacienda prevailed on Issues 2(f), 4(e), and 6 (e).

PROCESSING REMEDIATION ISSUES

For all the years in question here, two types of "processing" were at issue in this case, auditory and visual. With regard to auditory processing, Student contends that the auditory processing goal and services that Hacienda offered was not measurable or

sufficiently ambitious, and that Student required different interventions. With regard to visual processing, Student contends that his visual processing needs had not been assessed and were, therefore, not appropriately addressed by Hacienda.

Hacienda contends that insofar as auditory processing went, its offers were appropriate. Insofar as visual processing, Hacienda contends that Student did not present with needs in that area.

ISSUE 2(c): DID HACIENDA DURING THE 2020-2021 SCHOOL YEAR DENY STUDENT A FAPE, BY FAILING TO OFFER HIM NECESSARY PROCESSING REMEDIATION

With respect to auditory processing, Student's central auditory processing disorder was recognized in an independent evaluation by Dr. Bea Braun in July 2020. Braun reviewed her assessment at one of the 2020-21 sixth-grade IEP team meetings. She found that Student had poor communication between his right and left ears. He had an integration deficit indicating poor communication between the left and right hemispheres of the brain.

Individuals with an integration deficit may demonstrate

- poor integration of auditory and visual information,
- poor visual imagery,
- poor auditory and reading comprehension,
- poor auditory memory, and
- have difficulty following and remembering multi-step directions.

They can also exhibit difficulties with

- tone-of-voice,
- intent,
- nuance,
- sarcasm,
- idioms,
- jokes,
- nonverbal communication cues,
- facial expressions, and
- body language.

Various reading comprehension, recognition, spelling, and writing skills might also be impacted. Braun recommended Student be provided with demonstration, examples, repeated practice, and alternative ways to accomplish tasks. She also found that Student might have difficulties

- analyzing differences between speech sounds,
- poor vocabulary development, grammar skills, and semantic skills, and
- possible articulation deficits.

Braun recommended numerous classroom strategies and accommodations including assistive technology. Hacienda offered all or essentially all of these in the list of accommodations stated in the 2020-21 sixth-grade IEP offer.

Braun also recommended dichotic listening training, specifically CAPDOTS-Integrated, a research-based online computerized listening training program that can be purchased through a registered audiologist or speech pathologist. CAPDOTS is an

auditory training program in which the trainee hears different sounds in different ears using headphones and a computer program, responds to questions about what he hears, and then scores the responses. The program is self-directed through prompts in the program, but it required Mother to score it. The "Integrated" program involves listening to sounds through both ears at the same time.

The Integrated program was recommended first. The "Selected" program uses sounds through one ear at a time only and was recommended later. The integrated CAPDOTS program required 25 to 30 minutes a day, five days a week, for approximately three to five months. Hacienda offered Student this program in the 2020-21 sixth-grade IEP. After CAPDOTS, Braun recommended a reassessment.

In response to Braun's recommendations, Hacienda, in the 2020-21 sixth-grade IEP, offered a goal that stated Student would "use the CAPDOTS program 30 minutes a day, [five] days a week for [five] months or until the program is completed." Hacienda also offered 60 minutes per year of audiology consultation. Hacienda offered to set up and oversee the CAPDOTS program, and to re-evaluate Student after he completed the program. The duration of this program would depend on Student's progress, but the program usually lasts from three to six months. District's contracted audiologist, Thomas Wise, attended one of the 2020-21 sixth-grade IEP team meetings and was charged to help Parent set up the program and provide them with training.

Student disputes both the goal and the services offered. Specifically, Student contends that the goal only asked Student to "use" the CAPDOTS program, and "lacked any sort of aspirational target in terms of increasing his percent accuracy on the programming, and it was not based on any sort of measurable baseline about where his starting levels were on the actual CAPDOTS programming."

This criticism is not persuasive. Braun only recommended that the program be provided, and that it required 25 to 30 minutes a day, five days a week, for approximately three to five months. She did not recommend any aspirational achievement with respect to the program.

The offered goal was in accordance with her recommendations and did not constitute a denial of FAPE. Moreover, given the findings made in this Decision about Student's overall progress on his academic goals, Student did not establish that, even if this goal was deficient, that he suffered any resultant deprivation of educational benefit.

Student failed to meet his burden to establish either that Hacienda's offer of processing remediation services in the 2020-21 sixth-grade IEP was inappropriate, or that there was Student suffered a deprivation of educational benefit as a result of that offered goal.

Therefore, Hacienda prevailed on Issues 2(c).

ISSUE 4(b): DID HACIENDA DURING THE 2021-2022 SCHOOL YEAR DENY STUDENT A FAPE, BY FAILING TO OFFER HIM NECESSARY PROCESSING REMEDIATION

At the 2021-22 seventh-grade IEP team meetings in the fall of 2021, Hacienda's contracted audiologist Wise reported Student had met his sixth-grade goal and had completed one round of CAPDOTS on March 30, 2021. Wise assessed Student after that, in July 2022, and reported on his assessment.

Student had shown reduced binaural separation abilities. Binaural separation refers to the ability to process sounds coming into one ear while ignoring sounds

coming into the other, a skill that is critical to everyday listening in school. Wise therefore recommended CAPDOTS Selected, to address binaural separation. CAPDOTS Selected uses inputs into a single ear at a time.

Student also showed abnormal right ear advantages, consistent with delayed neuromaturation of the auditory system. At hearing, Wise opined that the auditory system could continue maturing into Student's adolescence. Wise recommended exercises to improve this maturation process, not all of which were linguistic in nature. The exercises related to "neuromaturation of the corpus callosum." Braun's report described the corpus callosum as "the bridge" that connects the two hemispheres of the brain.

Hacienda offered a new goal to use the "CAPDOTS- Selected" program 30 minutes a day, five days a week for five months or until the program was completed. District offered 15 minutes of individual consultation audiological services and supplemental services of audiology/deaf and hard of hearing consultation for 220 minutes a year, and training by an assistive technology specialist for 180 minutes a year.

Student again disputes the appropriateness or measurability of this goal and the effectiveness of the offered services. Student also complains that determining whether the programming was effective was also nearly impossible because there was no audiological evaluation done at the start of the second round of CAPDOTS. However, the evidence proved the contrary. Wise assessed Student in July 2021 before the second round of CAPDOTS.

More importantly, however, the IDEA does not promise results. The IDEA does not contemplate that all annual goals will necessarily be achieved. The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of

education requires a prospective judgment by school officials, and that any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. The IEP must aim to enable the child to make progress. In the area of auditory processing for Student's seventh grade school year, it did so.

Therefore, Hacienda prevailed on Issue 4(b).

ISSUE 6(b): DID HACIENDA DURING THE 2022-2023 SCHOOL YEAR DENY STUDENT A FAPE, BY FAILING TO OFFER HIM NECESSARY PROCESSING REMEDIATION?

Prior to the 2022-23 eighth-grade IEP, Hollar's assessment found that Student struggled when asked to process auditory information with age-expected complexity and speed. When asked to repeat instructions, Student often recounted the second part of the instruction, but not the first.

His processing time for auditory information was well below the average range for sentences longer than four-to-five-words. In Hollar's opinion, he continued to require support within the educational setting for remediation and accommodation for central auditory processing disorder, as "his poor auditory processing skills are likely impacting his reading skills."

Hollar opined that CAPDOTS can be effective to remediate central auditory processing disorder. Children can also learn how to prioritize their listening and hear the important words first. Hollar acknowledged that it is the audiologist's role to prescribe the intervention, and the speech pathologist's role is simply to implement it.

Hollar criticized Student's achievement levels on his CAPDOTS scores, stating that he was performing at less than 50 percent. She questioned whether he was actually doing the program, and opined that he would need a skilled person to guide him through the program. Student further contended that no audiological evaluation was completed after CAPDOTS-Selected, and thus the effectiveness of the program was not measurable.

Johnson opined that CAPDOTS was an effective, but insufficient, intervention and that Student needed additional remediation. In her opinion, research showed Lindamood Bell programs to be particularly effective with regard to auditory processing deficits.

Jill Stowell is the founder, owner and Executive Director of Stowell Learning Centers, a for-profit nonpublic agency that Student contends was, along with Lindamood Bell, the appropriate intervention for Student's processing deficits. Stowell held a master's degree in Learning Disabilities. She was not a speech language pathologist, an audiologist, a psychologist or a neuropsychologist. She had, however, attended numerous trainings and obtained a variety of certificates from a number of private entities that researched and addressed auditory processing and other learning challenges. Only one of her certifications, the Dylsexia Remediation Certification, was a California Post-Secondary Certification. She held no professional licenses.

From her testimony, one can infer that researching and attempting to remediate learning difficulties is a rich, varied, and competitive field in which many private enterprises provide training, certifications, research and remediation services.

Some of the titles of the disciplines in which she was trained include “neuro-timing,” “educational kinesiology,” and “brain integration.” Student contended that Stowell’s services would appropriately remediate both Student’s visual and auditory processing deficits.

In March of 2023, just prior to the hearing in this matter, Stowell Learning Centers conducted a “functional academic and learning skills assessment” of Student. The assessment addressed parental concerns of

- reading,
- writing,
- math,
- listening and comprehension,
- speech and articulation,
- verbal expression,
- processing skills,
- memory,
- attention and
- concentration.

The testing instruments Stowell used purported to assess Student in the areas of visual memory and visual processing, processing speed and phonemic awareness, attention, and cognitive efficiency. In pertinent part, the assessment found Student’s visual and auditory processing was very low, and his reading skills were severely delayed.

Her written materials stated that challenges in neurodevelopmental or core learning skills development, cognitive processing skills, such as attention, memory, auditory and visual processing, reading and spelling skills, comprehension and expressive language “can be permanently improved or corrected ... The brain can be retrained ...”. A bullet point on the cover page of Stowell’s materials stated: “Permanent solutions to learning differences.”

Stowell’s recommended methodologies included The Listening Program, a music and sound stimulation method that focuses on re-educating the ear and auditory pathways for increased

- learning,
- attention,
- communication,
- listening,
- sensory integration, and
- physical coordination.

This is accomplished through the use of specially modified classical music that stimulates the auditory system to take in a full spectrum of sound. A home listening protocol would be developed for the individual student based on individual needs. The student would do approximately 15 minutes of listening twice a day at home five days a week.

Another method was called Quantum Reflex Integration, which combined “sound (harmonious frequencies) and light (low-level laser therapy) to stimulate reflex pathways

and acupressure points with the intention of integrating neurological reflexes that have not matured.” Stowell’s materials stated that correction of the reflexes may lead to significantly improved physical functioning and mental development.

A third methodology was called “Brain Integration.” Brain integration involved “simple movements to help unblock learning. Learning is easiest when the whole brain is involved – when the right and left hemispheres are working together, the front and back of the brain are working together, and the top and bottom parts of the brain are working together. These brain training exercises facilitate the ability to cross the midline of the body, such as moving the eyes from left to right across a page of reading. They also stimulate back-to-front processing, which facilitates receptive and expressive language, and top-bottom integration, which is important for organization. Brain training exercises are done once a week in the clinic and a few minutes daily at home.”

Another method was called “Auditory Stimulation and Training – Reading, Spelling, and Comprehension. This was an auditory training program that used a combination of sound therapy and “specific brain-based reading and comprehension lessons” to improve underlying skills critical to listening and reading success. The Stowell written materials stated that “auditory processing skills [were] improved through the sound therapy and audio-vocal training lessons that help the learner get clearer and more accurate information when listening. This impacts speech clarity, intonation, comprehension, verbal expression, and attention.”

Another method used by Stowell was called "Enhanced Lateralization," in which a student "will receive verbal input through the right ear while simultaneously listening to music in the left ear to increase right ear dominance for language and stimulate left hemisphere processing of language and reading." Another method was called "Processing and Cognitive Enhancement", a "cognitive training program that improves processing skills needed for easy, independent learning and functioning. Skills trained include attention, memory, processing speed, auditory and visual processing, and logic and reasoning." The clinicians at Stowell who implement these methodologies were employees who held bachelor's degrees, whom Stowell has trained.

Stowell recommended, as a first step, a seven-week intensive summer program using these methodologies. The recommended number of hours per week was 20 hours, four hours per day, five days per week. Thereafter, as a follow-up program, she recommended twice weekly sessions during the school year for a total of 55 additional hours to continue with some of the programs.

Student failed to meet his burden of proof either that Stowell's assessments were appropriately administered, or that Stowell Learning Center provided appropriate interventions. Stowell did not administer the assessments herself and had never met Student. An employee with a bachelor's degree administered the assessments.

Other than Stowell's assertion the employee had gone through "intensive training," no evidence established the assessor's qualifications. Stowell consulted with her to select the test instruments, based solely on information from Parent. Stowell could not recall if a records review had been done. She did not talk to Student's teachers, his audiologist, review his IEP's or observe him in the school setting.

Moreover, although she claimed her methodologies were research-based, Stowell's testimony alone was insufficient to establish that as fact.

Wise, a qualified audiologist, was present during the 2022-23 eighth grade IEP team meetings. He reported that Student started using CAPDOTS Selected in August 2022. CAPDOTS Selected had been offered a year before, during the previous fall 2021 IEP. The delay in starting the program was due to difficulties implementing it at home. Mother reported that Student was "overwhelmed with other responsibilities and with the complexity of the program."

However, Student had consistently used the program since that time. The program was designed to only allow one trial to be completed per day. Wise reported that Student demonstrated right ear dominance. One ear dominance was common, and Student was working to build up his left ear through CAPDOTS. Wise reported that Student had been showing improvement overall using CAPDOTS. Student had not yet completed CAPDOTS Selected at the time of the 2022-23 eighth-grade IEP.

Hacienda offered Student a goal in auditory processing, that Student would complete one trial of the CAPDOTS-Selected program, five days per week for three months or until the program was completed.

Student cites to the testing done by Johnson, and Stowell Learning Center, all of which suggested that Student had ongoing auditory processing needs, to establish that Hacienda denied Student a FAPE. That argument is not persuasive. As stated above, the IDEA does not promise results. It does not require a program preferred by Parent. To establish a denial of a FAPE, Student would have had to prove that the IEP was not "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." This he failed to do. Here, despite his challenges,

Student was able, with the supports provided, to access the general education grade-level curriculum. Student failed to meet his burden of proof on this issue. Therefore, Hacienda prevails on Issue 6(b).

With respect to visual processing in each of the years in question, the lack of an assessment in that area has been addressed above in Issue 5. Other than the suspected disability and right to an assessment, Student offered Stowell's testimony as the evidence concerning what goals or services should have been offered. Student contends that Stowell Learning Center's services could remediate Student's visual processing deficits. That evidence was not persuasive. Therefore, Hacienda is the prevailing party on Issue 6(b).

ISSUE 6(F): DID HACIENDA DURING THE 2022-2023 SCHOOL YEAR DENY STUDENT A FAPE BY FAILING TO IMPLEMENT THE OFFERED ASSISTIVE TECHNOLOGY SUPPORTS?

Student contends Student was offered, and Hacienda failed to implement a Live-scribe pen. The Issue as stated pertains solely to the 2022-23 school year. However, Student contends the family accepted this offer and Student should have had access to a Live-scribe pen from April 2021. Student contends, Hacienda declined to allow Student to use the Live-scribe pen for its main purpose—to audio record instruction and link it to what the student has taken down as notes. This, Student contends, constituted a failure to implement his IEP. Hacienda contends Student had access to and all assistive technology supports and that, in any event, these supports were not necessary for him to access his curriculum.

The genesis of this issue dates back to an independent assistive technology assessment conducted by Cindy Cottier that was discussed in the 2020-21 sixth-grade IEP team meetings. She recommended specialized software including word prediction programs, Co-Writer Universal, voice output features, Speech-to-Text, Snap and Read program, Live-scribe Pen, and C-Pen. With regard to the Live-scribe pen, the only assistive technology about which Student complains, the notes of the 2020-21 sixth-grade IEP state that the C-Pen and Live Scribe pens were discussed and will be trialed to see how Student responds. Further, the notes state that the general education teacher asked for clarification regarding the Education Code applicable to the use of audio recording devices in the classroom, because if specific teachers did not agree, audio recording cannot occur in those specific classes. The notes continue, "Team clarified it is not an IEP team decision. Both school administrators and individual teachers must approve audio recordings in the classroom and during Zoom sessions."

The formal offer of assistive technology offered an FM system in instructional time and audiological consultation for equipment check. It offered assistive technology tools: Co-Writer Universal and Snap and Read. The IEP also offered training for staff, Student and Parent to use these tools and equipment. It further offered noise cancelling microphones. With regard to the Live-scribe pen, the sole item at issue here, it offered "Trial: C-Pen and Live-scribe pen (audio recordings of lessons pending administration and individual teachers' approval)."

It was, therefore, made explicitly clear that the use of the Live-scribe pen to record lessons was, according to the Education Code, subject to individual teachers' approval. This is the sole assistive technology item and function that is under contention here. Kim confirmed she did not approve the use of the Live-scribe to

record her lectures, classroom instruction and group discussions. She was concerned about the privacy of other students. He could, however, use a function that scans text and makes it audible.

Education Code, Section 51512, states:

"The Legislature finds that the use by any person, including a pupil, of any electronic listening or recording device in any classroom of the elementary and secondary schools without the prior consent of the teacher and the principal of the school given to promote an educational purpose disrupts and impairs the teaching process and discipline in the elementary and secondary schools, and such use is prohibited. Any person, other than a pupil, who willfully violates this section shall be guilty of a misdemeanor. Any pupil violating this section shall be subject to appropriate disciplinary action."

The law goes on to state that "[t]his section shall not be construed as affecting the powers, rights, and liabilities arising from the use of electronic listening or recording devices as provided for by any other provision of law." If Student contends this exception to the general rule applies here, he did not argue that or provide any authority supporting such argument. As such, the general prohibition is applicable, as was always made explicitly clear in the offer itself.

As with Student's contentions regarding Visualizing and Verbalizing in Issues 2(d)(ii), 4(c)(ii) and 6(c)(ii), the actual IEP documents do not support Student's version of what Hacienda offered. The offer of Student's use of Live-scribe pen was always subject to teachers' approval, as the law explicitly permits.

Therefore, Hacienda prevailed on Issue 6(f).

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:

Hacienda denied Student a FAPE during the 2020-2021 school year, by failing to conduct appropriate assessments of him in all areas of suspected disability.

Student prevailed on Issue 1.

ISSUE 2(b)(i)

Hacienda did not deny Student a FAPE during the 2020-2021 school year by failing to offer him necessary related speech and language services.

Hacienda prevailed on Issue 2(b)(i).

ISSUE 2(b)(ii)

Hacienda did not deny Student a FAPE during the 2020-2021 school year by failing to implement his speech and language services in accordance with his IEP.

Hacienda prevailed on Issue 2(b)(ii).

ISSUE 2(c)

Hacienda did not deny Student a FAPE during the 2020-2021 school year by failing to offer him necessary processing remediation.

Hacienda prevailed on Issue 2(c).

ISSUE 2(d)(i)

Hacienda denied Student a FAPE during the 2020-2021 school year by failing to offer him necessary reading remediation.

Student prevailed on Issue 2(d)(i).

ISSUE 2(d)(ii)

Hacienda did not deny Student a FAPE during the 2020-2021 school year by failing to implement his reading remediation services in accordance with his IEP.

Hacienda prevailed on Issue 2(d)(ii).

ISSUE 2(e)

Hacienda did not deny Student a FAPE during the 2020-2021 school year by failing to offer him necessary math remediation.

Hacienda prevailed on Issue 2(e).

ISSUE 2(f)

Hacienda did not deny Student a FAPE during the 2020-2021 school year by failing to offer him necessary extended school year services.

Hacienda prevailed on Issue 2(f).

ISSUE 3(a) AND (b)

Hacienda denied Student a FAPE during the 2021-2022 school year by failing to appropriately respond to the family's January 3, 2022, requests for (a) an augmentative and alternative communication assessment and (b) independent educational evaluations in the areas of speech and language and academics.

Student prevailed on Issues 3 (a) and (b).

ISSUE 4(a)(i)

Hacienda did not deny Student a FAPE during the 2021-2022 school year by failing to offer him necessary related speech and language services.

Hacienda prevailed on Issue 4(a)(i).

ISSUE 4(a)(ii)

Hacienda did not deny Student a FAPE during the 2021-2022 school year Student a FAPE by failing to implement his speech and language services in accordance with his IEP.

Hacienda prevailed on Issue 4(a)(ii).

ISSUE 4(b)

Hacienda did not deny Student a FAPE during the 2021-2022 school year by failing to offer him necessary processing remediation.

Hacienda prevailed on Issue 4(b).

ISSUE 4(c)(i)

Hacienda denied Student a FAPE during the 2021-2022 school year by failing to offer him necessary related reading remediation.

Student prevailed on Issue 4(c)(i).

ISSUE 4(c)(ii)

Hacienda did not deny Student a FAPE during the 2021-2022 school year by failing to implement his reading remediation services in accordance with his IEP.

Hacienda prevailed on Issue 4(c)(ii).

ISSUE 4(d)

Hacienda did not deny Student a FAPE during the 2021-2022 school year by failing to offer him necessary related math remediation.

Hacienda prevailed on Issue 4(d).

ISSUE 4(e)

Hacienda did not deny Student a FAPE during the 2021-2022 school year by failing to offer him necessary related extended school year services.

Hacienda prevailed on Issue 4(e).

ISSUE 5

Hacienda denied Student a FAPE during the 2022-2023 school year by failing to appropriately respond to the family's request for a visual processing assessment.

Student prevailed on Issue 5.

ISSUE 6(a)(i)

Hacienda did not deny Student a FAPE during the 2022-2023 school year by failing to offer him necessary speech and language services.

Hacienda prevailed on Issue 6(a)(i).

ISSUE 6(a)(ii)

Hacienda did not deny Student a FAPE during the 2022-2023 school year by failing to implement his speech and language services.

Hacienda prevailed on Issue 6(a)(ii).

ISSUE 6(b)

Hacienda did not deny Student a FAPE during the 2022-2023 school year by failing to offer him necessary processing remediation.

Hacienda prevailed on Issue 6(b).

ISSUE 6(c)(i)

Hacienda denied Student a FAPE during the 2022-2023 school year by failing to offer him necessary reading remediation.

Student prevailed on Issue 6(c)(i).

ISSUE 6(c)(ii)

Hacienda denied Student a FAPE during the 2022-2023 school year by failing to implement his reading remediation services in accordance with his IEP.

Student prevailed on Issue 6(c)(ii).

ISSUE 6(d)

Hacienda did not deny Student a FAPE during the 2022-2023 school year by failing to offer him necessary math remediation.

Hacienda prevailed on Issue 6(d).

ISSUE 6(e)

Hacienda did not deny Student a FAPE during the 2022-2023 school year by failing to offer him necessary extended school year services.

Hacienda prevailed on Issue 6(e).

ISSUE 6(f)

Hacienda did not deny Student a FAPE during the 2022-2023 school year by failing to implement the offered Assistive Technology supports.

Hacienda prevailed on Issue 6(f).

REMEDIES

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 District* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft appropriate relief for a party. An award of compensatory education need not provide a day-for-day compensation. (*Id.* at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.)

An award to compensate for past violations must be fact-specific and 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 v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.)

REMEDY FOR ISSUES 1 AND 5

In Issues 1 and 5, Student established that Hacienda denied Student a FAPE during the 2020-21 and 2022-2023 school years by failing to appropriately respond to the family's requests for a visual processing assessment. Student requests an independent educational evaluation in the area of visual processing.

However, an independent educational evaluation is warranted after a district has first assessed, in the event there is disagreement about the results. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) For this reason, Hacienda is ordered within 15 days of this Decision to provide Parent with an assessment plan in the area of visual processing. Assuming Parent consents, Hacienda is then ordered to follow all applicable timelines concerning the assessment and the convening of an IEP team meeting to review the results.

REMEDY FOR ISSUE 3(a)

In Issue 3(a), Student established that Hacienda denied Student a FAPE during the 2022-2023 school year by failing to appropriately respond to the family's January 3, 2022 request for an augmentative and alternative communication assessment. For this reason, Hacienda is ordered within 15 days of this Decision to provide Parent with an assessment plan in the area of augmentative and alternative communication. Assuming Parent consents, Hacienda is then ordered to follow all applicable timelines concerning the assessment and the convening of an IEP team meeting to review the results.

REMEDY FOR ISSUE 3(b)

In Issue 3(b), Student established that Hacienda denied Student a FAPE during the 2021-2022 school year by failing to appropriately respond to the family's January 3, 2022 requests for independent educational evaluations in the areas of speech and language and academics. For this reason, and in accordance with the parties' stipulated remedy for Issue 3, Hacienda is ordered within 15 days of the date of this Decision to reimburse Parent a total of \$9,300 (nine thousand, three hundred dollars), which is the sum of the \$2,800 (two thousand, eight hundred dollar) and \$6,500 (six thousand, five hundred dollars) Parent has already paid for the independent assessments by Susan Hollar and Dr. Helena Johnson.

REMEDIES FOR ISSUES 2(d)(i), 4(c)(i) - SIXTH AND SEVENTH GRADE OFFERS OF SERVICES REGARDING INDIVIDUAL SPECIALIZED ACADEMIC INSTRUCTION FOR READING REMEDIATION

Student prevailed on Issue 2(d)(i) and 4(c)(i) concerning the offers of individual specialized academic instruction reading remediation minutes in Student's sixth and seventh grade IEP's. The 2020-21 sixth-grade IEP offered no continuing individual specialized academic instruction. The 2021-22 seventh-grade IEP offered 200 weekly minutes. The evidence established that the 300 weekly minutes provided pursuant to the 2018 IEP had been effective to allow Student to access the general education curriculum.

Hacienda offered no coherent explanation for why its offers in the sixth-grade and seventh-grade annual IEP's proposed to either discontinue or reduce the amount of individual specialized academic instruction services offered.

However, given the fact that the pre-existing 300 weekly minutes continued to be provided for the entirety of the sixth and seventh grades, no remedy is awarded for these two issues. In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following:

- impeded the right of the child to a FAPE;
- significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of a free appropriate public education to the child of the parents; or
- caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E); Ed. Code, § 56505, subd. (f).)

The hearing officer

"shall not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian to participate in the formulation process of the individualized education program." (Ed. Code, § 56505, subd. (j).)

Because Student, for these two years, continued to be provided 300 weekly minutes of specialized academic instruction, the reduction of the offers constituted a solely procedural error with no resultant effect on either Student's educational benefit or his Parent's opportunity to participate in the development of his program. Therefore, no remedy is awarded.

REMEDIES FOR ISSUES 6(c)(i) AND (ii) - EIGHTH GRADE OFFER AND IMPLEMENTATION OF INDIVIDUAL SPECIALIZED ACADEMIC INSTRUCTION FOR READING REMEDIATION IN EIGHTH GRADE

With respect to Issue 6(c)(ii) concerning implementation of individual services offered in Student's annual eighth grade IEP, Hacienda offered 275 weekly minutes, and although Mother consented to the implementation of that offer, Gonzalez incorrectly provided fewer than the 275 weekly minutes offered. The deficit amounted to 23 weekly minutes less than 275, for each of the approximately 24 weeks from the October 10, 2022, IEP to the end of the 2022-2023 school year, which is approximately nine hours. Student is, therefore, awarded nine hours of specialized academic instruction.

Moreover, Student prevailed on Issue 6(c)(i) concerning the appropriateness of the offer. The 275 minutes amounted to a reduction, without a cogent explanation, of 25 weekly minutes less than the 300 minutes that had demonstrably afforded Student educational benefit. For the approximately 24 weeks in question, these 25 weekly minutes amounted to an additional 10 hours.

Therefore for Issues 6(c)(i) and (ii), Student is awarded an aggregate of 19 compensatory hours of specialized academic instruction to be provided by a credentialed special education teacher.

ORDER

1. Hacienda shall within 15 days of this Decision to provide Parent with an assessment plan in the area of visual processing and augmentative and

alternative communication. Assuming Parent consents, Hacienda is then ordered to follow all applicable timelines concerning the assessment and the convening of an IEP team meeting to review the results.

2. Hacienda shall within 15 days of the date of this Decision to reimburse Parent a total of \$9,300 (nine thousand, three hundred dollars).
3. Hacienda shall provide 19 compensatory education hours to be provided by a credentialed special education teacher in the area of individual reading remediation. Hacienda shall make the hours available at the commencement of the 2023-23 school year. The hours shall be provided outside of school hours. The hours shall be used by the conclusion of the 2023-24 school year or shall be forfeited.

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.

June Lehrman

Administrative Law Judge

Office of Administrative Hearings