

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL DISTRICT.

CASE NO. 2024030862

DECISION

DECEMBER 12, 2024

On March 22, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Newport-Mesa Unified School District, called Newport-Mesa. On April 24, 2024, OAH granted the parties' joint request for continuance. On August 16, 2024, OAH granted Student's motion to amend his due process hearing request. Administrative Law Judge Ashok Pathi heard this matter via videoconference on October 1, 2, 9, 10, 11, 15, and 16, 2024.

Attorneys Timothy Adams and Madeline Knutson represented Student. Parents attended all hearing days on Student's behalf, except for October 15, 2024, when only

Student's mother attended. Student did not attend the hearing. Attorney S. Daniel Harbottle represented Newport-Mesa Unified School District. Juliana Sauvao, Director of Special Education Resolutions and Newport-Mesa's Special Education Local Plan Area, called a SELPA, attended all hearing days on Newport-Mesa's behalf.

At the parties' request, the matter was continued to November 21, 2024, to allow the parties to submit written closing briefs. The record was closed, and the matter was submitted, on November 21, 2024.

ISSUES

A free appropriate public education is called a FAPE. An individualized education program is called an IEP. Extended school year is called ESY.

1. Did Newport-Mesa Unified School District deny student a FAPE from March 22, 2022, through the end of the 2021-2022 school year, including ESY, by:
 - a. failing to ensure that an administrator was present at the March 24, 2022 IEP team meeting;
 - b. failing to ensure that a school psychologist, occupational therapist, adapted physical education teacher, and administrator were present at the March 28, 2022 IEP team meeting;
 - c. failing to ensure that a school psychologist was present at the May 5, 2022 IEP team meeting;

- d. failing to offer goals in the following areas of need:
 - i. executive functioning;
 - ii. sensory processing;
 - iii. fine motor skills; and
 - iv. visual motor skills.
- e. failing to offer appropriately ambitious goals that addressed all of Student's needs in the following areas:
 - i. reading comprehension;
 - ii. mathematics;
 - iii. social skills;
 - iv. behavior;
 - v. self-regulation; and
 - vi. communication;
- f. failing to offer a one-to-one aide during the regular school year;
- g. failing to offer occupational therapy services during the regular school year;
- h. failing to offer sufficient speech and language services during the regular school year;
- i. failing to offer sufficient individual specialized academic instruction during the regular school year;

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- j. failing to offer the following services during ESY:
 - i. specialized academic instruction;
 - ii. speech and language; and
 - iii. occupational therapy; and
 - k. failing to offer a sufficiently supportive placement?
- 2: Did Newport-Mesa Unified School District deny Student a FAPE during the 2022-2023 school year, including ESY, by:
- a. failing to ensure that a school psychologist, occupational therapist, and adapted physical education teacher, were present at the March 14, 2023, IEP team meeting;
 - b. failing to offer goals in the following areas of need:
 - i. communication;
 - ii. sensory processing;
 - iii. self-regulation;
 - iv. fine motor skills; and
 - v. visual motor skills;
 - c. failing to offer appropriately ambitious goals that addressed all of Student's needs in the following areas:
 - i. reading comprehension;
 - ii. mathematics;
 - iii. social skills;
 - iv. behavior; and
 - v. executive functioning;

- d. failing to offer a one-to one aide during the regular school year;
 - e. failing to offer occupational therapy services during the regular school year;
 - f. failing to offer sufficient speech and language services during the regular school year;
 - g. failing to offer sufficient individual specialized academic instruction during the regular school year;
 - h. failing to offer the following services during ESY:
 - i. specialized academic instruction;
 - ii. speech and language; and
 - iii. occupational therapy; and
 - i. failing to offer a sufficiently supportive placement?
3. Did Newport-Mesa Unified School District deny student a FAPE during the 2023-2024 school year, including ESY, by:
- a. failing to ensure that a school psychologist, occupational therapist, and administrator were present at the May 30, 2024 IEP team meeting;
 - b. failing to offer goals in the following areas of need:
 - i. reading comprehension;
 - ii. sensory processing;
 - iii. fine motor skills; and
 - iv. visual motor skills;

- c. failing to offer appropriately ambitious goals that addressed all of Student's needs in the following areas:
 - i. mathematics;
 - ii. social skills;
 - iii. executive functioning;
 - iv. behavior;
 - v. communication; and
 - vi. self-regulation;
- d. failing to offer a one-to-one aide during the regular school year;
- e. failing to offer sufficient occupational therapy services during the regular school year;
- f. failing to offer sufficient speech and language services during the regular school year;
- g. failing to offer sufficient individual specialized academic instruction during the regular school year;
- h. failing to offer occupational therapy services during ESY; and
- i. failing to offer a sufficiently supportive placement?

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4. Did Newport-Mesa Unified School District deny Student a FAPE from the beginning of the 2024-2025 school year, through August 16, 2024, by:
 - a. failing to offer, in the May 30, 2024, IEP, goals in the following areas of need:
 - i. reading comprehension;
 - ii. sensory processing;
 - iii. fine motor skills; and
 - iv. visual motor skills;
 - b. failing to offer, in the May 30, 2024, IEP, appropriately ambitious goals that addressed all of Student's needs in the following areas:
 - i. mathematics;
 - ii. social skills;
 - iii. executive functioning;
 - iv. behavior;
 - v. communication; and
 - vi. self-regulation;
 - c. failing to offer, in the May 30, 2024, IEP, a one-to-one aide during the regular school year;
 - d. failing to offer, in the May 30, 2024, IEP, sufficient occupational therapy services during the regular school year;
 - e. failing to offer, in the May 30, 2024, IEP, sufficient speech and language services during the regular school year;

- f. failing to offer, in the May 30, 2024, IEP sufficient individual specialized academic instruction during the regular school year;
- g. failing to offer, in the May 30, 2024, IEP occupational therapy services during ESY; and
- h. failing to offer, in the May 30, 2024, IEP a sufficiently supportive placement?

JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision

of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student had the burden of proof in this matter. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 14 years old and in ninth grade at the time of hearing. Student resided within the Newport-Mesa's geographic boundaries at all relevant times. Student was eligible for special education under the categories of Autism, Other Health Impairment, and Speech or Language Impairment. Student had many diagnosed disabilities, including Autism, Noonan-like Syndrome, Hypertrophic Septal Cardiomyopathy, Growth Hormone Deficiency, and Attention Deficit Hyperactivity Disorder, called ADHD.

LEGAL FRAMEWORK

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 Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000] (*Endrew F.*))

An IEP is a written statement for each child with a disability that should include:

- the child's present levels of academic achievement and functional performance,
- a statement of measurable annual goals,
- a description of how the child's progress on the annual goals will be measured,
- a statement of special education and related services,
- any program modifications or supports necessary to allow the child to make progress,
- an explanation of the extent to which the child will not be educated with nondisabled children in general education classes, and
- the frequency, location, and duration of the services. (20 U.S.C. § 1414(d)(1)(A); Ed. Code, § 56345, subd (a).)

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ISSUE 1.a.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM MARCH 22, 2022, THROUGH THE END OF THE 2021-2022 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO ENSURE THAT AN ADMINISTRATOR WAS PRESENT AT THE MARCH 24, 2022 IEP TEAM MEETING?

Student claimed Newport-Mesa denied him a FAPE by failing to ensure that all necessary IEP team members attended the March 24, 2022 IEP team meeting, specifically a school district representative, referred to by the parties as an administrator. Newport-Mesa responded that all necessary participants attended the March 24, 2022 IEP team meeting.

Each meeting to develop, review, or revise the IEP of an individual with exceptional needs must be conducted by an IEP team. (20 U.S.C., § 1414(d)(3); Ed. Code, § 56341, subd. (a).) The IEP team must include:

- one or both of the parents or a representative chosen by the parents;
- not less than one regular education teacher if the pupil is, or may be, participating in the regular education environment;
- not less than one special education teacher, or where appropriate, one special education provider to the student;

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- a representative of the school district who is (a) qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of the student, (b) knowledgeable about the general education curriculum, and (c) knowledgeable about the availability of school district resources;
- an individual who can interpret the instructional implications of assessment results;
- at the discretion of the parent, guardian or school district, other individuals with knowledge or special expertise regarding the student; and
- if appropriate, the student. (20 U.S.C. § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).)

The intent behind the mandatory composition of the IEP team is to ensure a well-informed team. "A properly constituted IEP team is in the best position to develop an IEP that suits the peculiar needs of the individual student." (*R.B. ex rel. F.B. v. Napa Valley Unif. Sch. Dist.* (9th Cir. 2007) 496 F.3d 932, 941 [citing *Rowley, supra*, 458 U.S. at p. 206].)

The failure to have a required IEP team member present is a procedural violation. However, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 [superseded on other grounds by statute] (*Target Range*).) A procedural error results in a denial of a FAPE only if the violation impeded the student's right to a FAPE; significantly impeded the parent's opportunity to

participate in the decision-making process; or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2006); Ed. Code, § 56505, subds. (f)(2) & (j); *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043 (*Doug C.*) [citing *Target Range, supra*, 960 F.2d at p. 1484].) A procedural violation, “results in a denial of an educational opportunity where, absent the error, there is a ‘strong likelihood’ that alternative educational possibilities for the student ‘would have been better considered.’” *Doug C., supra*, 720 F.3d at p. 1047 [citing *M.L. v. Federal Way Sch. Dist.* (9th Cir. 2005) 394 F.3d 634, 657 (Gould, J. concurring in part and concurring in the judgment)].)

On March 24, 2022, Newport-Mesa convened the first part of Student’s annual IEP team meeting to, among other things, review Student’s triennial assessments. Newport-Mesa included all required IEP team members, including an administrator Cheryl Beck, the then principal at Eastbluff Elementary School. Student argued that the March 24, 2022 IEP team meeting notes did not reflect Beck’s presence at the meeting. However, School Psychologist Lindsey Basart, who also attended the March 24, 2022 IEP team meeting, credibly testified that Beck was present and acted as the note taker for that meeting. Basart also pointed to specific discussions documented in the IEP team meeting notes that Beck had participated in, such as those regarding Student’s behavior difficulties.

Student’s mother testified that she did not recall who attended the March 24, 2022 IEP team meeting, and Student did not otherwise refute the evidence that Beck attended the March 24, 2022 IEP team meeting. Student failed to prove that the March 24, 2022 IEP team did not include a school administrator. Therefore, Student failed to prove that he was denied a FAPE due to the lack of a school administrator at the March 24, 2022 IEP team meeting.

ISSUE 1.b.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM MARCH 22, 2022, THROUGH THE END OF THE 2021-2022 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO ENSURE THAT A SCHOOL PSYCHOLOGIST, OCCUPATIONAL THERAPIST, ADAPTED PHYSICAL EDUCATION TEACHER, AND ADMINISTRATOR WERE PRESENT AT THE MARCH 28, 2022 IEP TEAM MEETING?

SCHOOL PSYCHOLOGIST

Student argued that a school psychologist was a necessary participant for the March 28, 2022 IEP team meeting because the school psychologist had conducted an assessment as part of Student's triennial assessment, and to discuss Student's behaviors, academics, and placement. Newport-Mesa responded that all necessary participants attended the March 28, 2022 IEP team meeting.

The school psychologist was not a mandatory IEP team member for the March 28, 2022 IEP team meeting. The parties do not dispute that an IEP team meeting was conducted on March 24, 2022, that did not conclude. A second IEP team meeting was held on March 28, 2022. The evidence established that Basart had presented her portion of the March 24, 2022 Psychological-Educational Multidisciplinary Assessment Report, called the March 2022 Multidisciplinary Report, at the March 24, 2022 IEP team meeting. The evidence also established that the IEP team agreed on Student's eligibility for special education and discussed all portions of Student's IEP which required Basart's participation. Thus, because Basart had finished reviewing her report at the first part of

the IEP team meeting and was not providing services to Student pursuant to his IEP, she was not a required participant for the March 28, 2022 IEP team meeting. (20 U.S.C. § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).)

Student also argued that a school psychologist was necessary to discuss Student's academics, placement, and negative behaviors, which were discussed at the March 28, 2022 IEP team meeting. Student offered the expert testimony of Dr. Marta Shinn, Ph.D. Shinn was a nationally certified bilingual school psychologist and held licenses in clinical and educational psychology. Shinn opined that a school psychologist was necessary to discuss a child's academics and behavior.

School psychologists are not the only individuals authorized to address a child's negative behaviors. (Ed. Code, § 56525(a) [authorizing board-certified behavior analysts to assess for and provide behavior intervention services]; Cal. Code Regs., tit. 5, § 3051.23(a) [listing individuals authorized to design and plan behavior interventions, including school psychologists and special education teachers].) Suzanne French Bain, Student's special day class teacher was an appropriately credentialed special education teacher and was present at the March 28, 2022 IEP team meeting.

Thus, the March 28, 2022 IEP team included an individual able to address Student's negative behaviors. Shinn's opinion that a school psychologist was necessary was not persuasive as it imposed a greater legal standard than the law requires. Bain could also discuss Student's academic needs.

Student failed to establish a procedural violation for Basart's non-attendance at the March 28, 2022 IEP team meeting. Even if, however, Basart or another school psychologist was a required member, no persuasive evidence was presented that the

omission impeded the student's right to a FAPE; significantly impeded the parents' opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. Thus, Student did not prove that violation was a denial of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2006); Ed. Code, § 56505, subds. (f)(2) & (j); *Doug C.*, *supra*, 720 F.3d at pp. 1043, 1047.)

Therefore, Student failed to prove that he was denied a FAPE because a school psychologist was not present at the March 28, 2022 IEP team meeting.

OCCUPATIONAL THERAPIST

Student argued that an occupational therapist was a necessary participant for the March 28, 2022 IEP team meeting. Newport-Mesa responded that all required participants attended the March 28, 2022 IEP team meeting.

Student failed to establish that an occupational therapist was a required member of Student's IEP team at the March 28, 2022 IEP team meeting. (20 U.S.C., § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).) As discussed previously, the March 28, 2022 IEP team meeting was the continuation of the March 24, 2022 IEP team meeting. The evidence established that Dr. Breanna Espero, the Newport-Mesa occupational therapist who conducted the occupational therapy portion of the March 2022 Multidisciplinary Report, presented her findings and discussed Student's possible need for occupational therapy services and related accommodations at the March 24, 2022 IEP team meeting.

Student did not prove that the IEP team discussed Student's needs related to occupational therapy at the March 28, 2022 IEP team meeting, or that an occupational therapist was otherwise a required member of the March 28, 2022 IEP team.

Student failed to establish a procedural violation for Espero's non-attendance at the March 28, 2022 IEP team meeting. Even if, however, Espero or another occupational therapist was a required member, no persuasive evidence was presented that the omission impeded the student's right to a FAPE; significantly impeded the parents' opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. Thus, Student did not prove that violation was a denial of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2006); Ed. Code, § 56505, subds. (f)(2) & (j); *Doug C.*, *supra*, 720 F.3d at pp. 1043, 1047.)

Therefore, Student failed to prove that he was denied a FAPE due to the lack of an occupational therapist at the March 28, 2022 IEP team meeting.

ADAPTED PHYSICAL EDUCATION TEACHER

Student argued that an adapted physical education teacher was a necessary participant for the March 28, 2022 IEP team meeting. Newport-Mesa responded that all required participants attended the March 28, 2022 IEP team meeting.

Student failed to establish that an adapted physical education teacher was a required member of Student's IEP team at the March 28, 2022 IEP team meeting. (20 U.S.C., § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).) As discussed previously, the March 28, 2022 IEP team meeting was the second part of Student's March 2022 triennial review. Though she did not testify, the evidence established that Kristine Dawson, the adapted physical education teacher who conducted the adapted physical education portion of the March 2022 Multidisciplinary Report, presented her findings and

discussed Student's possible need for adapted physical education services at the March 24, 2022 IEP team meeting. Similarly, the evidence established that Parents discussed their questions with Dawson at the March 24, 2022 IEP team meeting.

Student did not prove that the IEP team discussed Student's needs related to adapted physical education at the March 28, 2022 IEP team meeting, or that an adapted physical education teacher was otherwise a required member of the March 28, 2022 IEP team.

Student failed to establish a procedural violation for Dawson's non-attendance at the March 28, 2022 IEP team meeting. Even if, however, Dawson or another adapted physical education teacher was a required member, no persuasive evidence was presented that the omission impeded the student's right to a FAPE; significantly impeded the parents' opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. Thus, Student did not prove that violation was a denial of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subds. (f)(2) & (j); *Doug C.*, *supra*, 720 F.3d at pp. 1043, 1047.)

Therefore, Student failed to prove that he was denied a FAPE due to the lack of an adapted physical education teacher at the March 28, 2022 IEP team meeting.

ADMINISTRATOR

Student argued that an administrator was not present at the March 28, 2022 IEP team meeting. Newport-Mesa responded that all required participants attended the March 28, 2022 IEP team meeting.

Student did not establish that an administrator was absent from the March 28, 2022 IEP team meeting. Student argued that the IEP team meeting notes from the March 28, 2022 IEP team meeting did not reflect that an administrator was present. As determined previously, the evidence established that Principal Beck attended the March 24, 2022 IEP team meeting and acted as note taker. The notes did not reflect Beck's presence at the meeting and her role as the note taker. Therefore, the evidence established that the IEP team meeting notes were not an accurate list of who attended the meeting.

Student did not prove that an administrator did not attend the March 28, 2022 IEP team meeting. Therefore, Student failed to prove that he was denied a FAPE due to the lack of an administrator at the March 28, 2022 IEP team meeting.

ISSUE 1.c.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM MARCH 22, 2022, THROUGH THE END OF THE 2021-2022 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO ENSURE THAT A SCHOOL PSYCHOLOGIST WAS PRESENT AT THE MAY 5, 2022 IEP TEAM MEETING?

Student claimed that a school psychologist was a required member of Student's IEP team at the May 5, 2022 IEP team meeting, to discuss and plan for Student's behavior needs. Newport-Mesa responded that all necessary participants attended the May 5, 2022 IEP team meeting.

Student again relied on Shinn's opinion that a school psychologist was necessary to discuss Student's negative behaviors. As discussed above, school psychologists are not the only individuals authorized to address a child's negative behaviors. (Ed. Code,

§ 56525(a); Cal. Code Regs., tit. 5, § 3051.23(a).) Bain and Melissa Ault, both appropriately credentialed special education teachers, were present at the May 5, 2022 IEP team meeting. Ault was also a board-certified behavior analyst. Thus, the May 5, 2022 IEP team meeting included at least two individuals able to address Student's negative behaviors, and a school psychologist was not necessary for that reason. Student did not prove the school psychologist was necessary for any other reason.

Therefore, Student failed to prove that he was denied a FAPE because a school psychologist was not present at the May 5, 2022 IEP team meeting.

ISSUE 1.d.i.- i.v.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM MARCH 22, 2022, THROUGH THE END OF THE 2021-2022 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER GOALS IN THE AREAS OF EXECUTIVE FUNCTIONING, SENSORY PROCESSING SKILLS, FINE MOTOR SKILLS, AND VISUAL MOTOR SKILLS?

Student claimed that he required executive functioning, sensory processing, fine motor skills, and visual motor skills goals in the March 24, 2022 and March 28, 2022, and May 5, 2022 IEPs to receive a FAPE. Newport-Mesa responded that Student did not require goals in these areas to receive a FAPE.

An IEP must include a statement of annual goals designed to meet a student's unique educational needs. (20 U.S.C. § 1414(d)(1)(A); Ed. Code, § 56345, subd. (a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345, subd. (a)(2); *Letter to*

Butler (OSERS March 25, 1988). The IEP must show a direct relationship between the present levels of performance, the goals, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).) Therefore, a student must have a disability-related need to require a goal.

However, “an IEP is not required to contain every goal from which a student might benefit.” (*Capistrano Unif. Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1133 [cert. den. 143 S.Ct. 98 (Mem), 214 L.Ed.2d 20].) A goal may not be required if a student can benefit from their education using accommodations or modifications. (See *Notice of Interpretation*, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations) [discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C. § 1414(d)(1)(A)(i)(II)].) California “does not require ... additional information, beyond that explicitly required by” the IDEA. (*Capistrano Unif. Sch. Dist. v. S.W.*, *supra*, 21 F.4th at p. 1133 [citing Ed. Code, § 56345, subd. (i)].) An appropriate public education “does not mean the absolutely best or ‘potential-maximizing’ education for the individual child.” (*Los Angeles Unif. Sch. Dist. v. A.O. by and through Owens* (9th Cir. 2024) 92 F.4th 1159, 1172 [quoting *Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314](*Gregory K.*).)

When determining whether an IEP offers a student a FAPE, the IEP is assessed in light of information available when the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP “is a snapshot, not a retrospective;” it must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.* [quoting *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036].)

EXECUTIVE FUNCTIONING

Student argued that he required an executive functioning goal to receive a FAPE. The evidence established that executive functioning generally describes skills related to attention, time management, planning, and organization. Newport-Mesa asserted that the goals do address Student's executive functioning needs even if not specifically titled as executive functioning goals. As Student's expert Shinn conceded, Student's March 24, 2022, March 28, 2022, and May 5, 2022 IEPs included such a goal.

The March 24, 2022, IEP included a total of 13 annual goals. Included in these was a goal entitled "Slow Down, Think, Act." This goal required Student to check his schedule to assist in time management, consider his materials, and plan next steps to determine whether he needs to ask a question about materials or scheduling. These skills all fall within the category of executive functioning. The March 28, 2022, and May 5, 2022 IEPs also included this goal.

The area of need listed for the goal was behavior. The location of this goal is immaterial, because the law does not dictate that the required information be in a specific portion of the IEP, if it is included elsewhere. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2007); Ed. Code § 56345(h).) Thus, Student failed to prove that the March 24, 2022, March 28, 2022, and May 5, 2022 IEPs did not include a goal in the area of executive functioning.

Therefore, Student failed to prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year due to the lack of an executive functioning goal.

SENSORY PROCESSING SKILLS

Student argued that he required a sensory processing goal to receive a FAPE. Newport-Mesa argued that Student had a goal addressing sensory processing. Further, Newport-Mesa asserted that to the extent Student had additional sensory processing needs, they were adequately addressed via accommodations.

Student offered the expert testimony of Dr. Aja Roley. Roley held the required certification and licensure to practice as an occupational therapist in California. Roley had received additional certifications in sensory integration.

Roley's testimony was not persuasive. Her experience with Student consisted of approximately two and a half hours of testing Student related to an occupational therapy independent educational evaluation, called an Occupational Therapy IEE, in the early spring of 2024, with a report dated January 8, 2024. Thus, she was not involved with Student's education during the 2021-2022 school year. Roley did not conduct the entirety of the Occupational Therapy IEE, sharing the tasks with two other assessors. Roley had not reviewed the March 24, 2022, March 28, 2022, and May 5, 2022 IEPs as part of the Occupational Therapy IEE. She had only done so prior to testifying.

Roley never personally conducted a classroom observation, despite explaining the importance of conducting a classroom observation to better understand how a child's needs may present and to help develop supports for that child in that environment. Rather, one of her associates conducted a single, 15-minute-long observation of Student at New Vista, the non-public school he attended in the spring of 2024, as part of the

Occupational Therapy IEE. Thus, Roley lacked personal knowledge of Student's performance in any classroom environment, and the individual who conducted the observation did not testify.

Further, neither Roley, nor any of her associates, observed the classroom at Eastbluff Elementary School, where Student had attended at the time of the March 24, 2022, March 28, 2022, and May 5, 2022 IEPs. Roley did not speak with Eastbluff staff about Student's performance, needs, or abilities. Instead, the evidence established that Roley's opinions were based on her interpretations of the March 2022 Multidisciplinary Report and information from Parents. Finally, Student solicited the majority of Roley's testimony through leading questions, which further negatively affected her persuasiveness. Overall, Roley's testimony was given little weight.

Roley opined that the March 2022 Multidisciplinary Report showed that Student demonstrated significant sensory processing skills deficits. Roley gave a vague, conclusory opinion that Student generally required sensory processing goals, but did not adequately explain what the goals should have been or why they were needed.

Contrary to Roley's opinion, the evidence established that Parent reported more significant sensory concerns in the home setting than Student demonstrated at school. The evidence, including Newport-Mesa occupational therapist Espero's expert testimony, established that Student's sensory processing needs were addressed through accommodations for dynamic seating, tactile learning materials, noise-reduction headphones, and other self-regulation strategies approved by the occupational therapist. Roley's vague and conclusory opinion that these accommodations did not adequately address Student's sensory processing needs was not persuasive.

The evidence further established that the March 24, 2022, March 28, 2022, and May 5, 2022 IEPs included a goal entitled "Calmly share frustrations." The evidence, including Roley's testimony, established this goal was a self-regulation goal that addressed Student's sensory processing needs. As with the executive functioning goal discussed previously, the inclusion of this goal under the "Behavior" category does not change its character. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2007); Ed. Code § 56345, subd. (h)].) The goals and accommodations included in the March and May 2022 IEPs adequately addressed Student's sensory processing needs.

Therefore, Student failed to prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year due to the lack of a sensory processing goal.

FINE MOTOR SKILLS

Student argued that he required a fine motor skills goal in the March 24, 2022, March 28, 2022, and May 5, 2022 IEPs to receive a FAPE. Newport-Mesa asserted this was not an area of need requiring a goal.

Student again offered Roley's testimony. Roley opined that the March 2022 Multidisciplinary Report showed that Student demonstrated significant weaknesses in fine motor skills. While Roley referred to fine and visual motor skills interchangeably, she opined that fine motor deficits affected Student's ability to type on a computer or tablet keyboard.

Roley's opinions regarding Student's need for a fine motor skills goal was unpersuasive for the reasons explained previously. Contrary to Roley's opinion, the evidence established that Student could adequately type at a speed within the grade-

level average range. Student utilized a typing program to practice typing skills. While Student typed using two fingers rather than all 10, Student did not establish that this was an area of need requiring a goal. Nor did Student establish any other fine motor skills area of need requiring a goal in the March 24, 2022, March 28, 2022, or May 5, 2022 IEPs.

Therefore, Student failed to prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year due to the lack of a fine motor skills goal.

VISUAL MOTOR SKILLS

Student argued that he required a visual motor skills goal in the March 24, 2022, March 28, 2022, and May 5, 2022 IEPs to receive a FAPE. Newport-Mesa asserted this was not an area of need requiring a goal.

Student again offered Roley's testimony. Roley opined that the March 2022 Multidisciplinary Report showed that Student demonstrated significant weaknesses in visual motor skills, which manifested as difficulties with handwriting.

As discussed previously, Roley's opinions regarding Student's need for a visual motor skills goal were unpersuasive. Student did not prove that the impairments shown in the standardized visual motor assessment resulted in a significant educational impact, such that he required a visual motor skills goal.

Rather, the evidence established that other formal testing rated Student's handwriting as legible and functional. Student did not establish any visual motor skills area of need which required a goal in the March or May 2022 IEPs.

Therefore, Student failed to prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year due to the lack of a visual motor skills goal.

ISSUE 1.e.i. – v.i.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM MARCH 22, 2022, THROUGH THE END OF THE 2021-2022 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER APPROPRIATELY AMBITIOUS GOALS THAT ADDRESSED ALL OF STUDENT’S NEEDS IN THE AREAS OF READING COMPREHENSION, MATHEMATICS, SOCIAL SKILLS, BEHAVIOR, SELF-REGULATION, AND COMMUNICATION?

An IEP must include a statement of annual goals designed to meet a student’s unique educational needs. (20 U.S.C. § 1414(d)(1)(A); Ed. Code, § 56345, subd. (a).) However, “an IEP is not required to contain every goal from which a student might benefit.” (*Capistrano Unif. Sch. Dist. v. S.W.*, *supra*, 21 F.4th at p. 1133.) To provide a FAPE, annual goals must be appropriately ambitious in light of the student’s circumstances. (*Endrew F.*, *supra*, 580 U.S. at p. 402.)

READING COMPREHENSION

Student claimed that Newport-Mesa did not offer appropriately ambitious goals in all of Student’s reading comprehension areas of need in the March 24, 2022, March 28, 2022, or May 5, 2022 IEPs. Newport-Mesa responded that it offered appropriately ambitious goals to address Student’s reading comprehension needs.

Student offered psychologist Shinn's testimony in support of his claim. However, Shinn testified that she did not, "have any concerns with how the goal is written." Instead, Shinn opined that Student could have benefitted from a goal in the area of "reading pacing." Student did not establish that "reading pacing" was an area within the scope of reading comprehension.

Even if he had done so, Student failed to prove that he required a reading pacing goal. Shinn made general allusions to unspecified portions of the March 2022 Multidisciplinary Report which she believed showed that Student rushed through reading assignments. Nevertheless, Student did not establish that this purported weakness required a goal. (*Capistrano Unif. Sch. Dist. v. S.W.*, *supra*, 21 F.4th at p. 1133; *Los Angeles Unif. Sch. Dist. v. A.O.*, *supra*, 92 F.4th at p. 1172.)

Student also claimed that Newport-Mesa staff underrated his cognitive abilities, which resulted in goals that were not appropriately ambitious in light of Student's circumstances. (*Andrew F.*, *supra*, 580 U.S. at p. 402; see also *M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1200-01.) Student supported his argument with Shinn's opinions and a psychoeducational independent educational evaluation conducted by Shinn's company, completed in June 2024. However, the psychoeducational independent educational evaluation, called the Psychoeducational IEE was not supportive of Student's argument, and Shinn's opinions were not persuasive.

Newport-Mesa argued that the Psychoeducational IEE and Shinn's resulting opinions should be disregarded, because Student's IEP team had not reviewed the Psychoeducational IEE report at any of the IEP team meetings within the relevant timeframe for this Decision. Newport-Mesa further argued that its IEP offers should not be evaluated based on the information included in the Psychoeducational IEE that was

not otherwise available to the IEP team at the time of the IEP team meetings in question. (*Adams v. State of Oregon, supra*, 195 F.3d at 1149.) The evidence established that Student's IEP team did not review this report until August 30, 2024. Nevertheless, the information included in the Psychoeducational IEE may shed light on the reasonableness of earlier IEP offers. (*E.M. ex rel. E.M. v. Pajaro Valley Unif. Sch. Dis. Off. of Admin. Hrngs.* (9th Cir. 2011) 652 F.3d 999, 1006.) As such, the Psychoeducational IEE and Shinn's resulting opinions have some limited relevance to the analysis in this Decision.

Even considering the Psychoeducational IEE, the results do not support Student's position. The Psychoeducational IEE included comprehensive cognitive and intellectual functioning testing, utilizing the Reynolds Intellectual Assessment Scales, Second Edition. This assessment tool showed that Student had overall cognitive abilities within the moderately below average to significantly below average range, with some index scores in the below average ranges. These results were consistent with previous cognitive and intellectual functioning testing by Newport-Mesa prior to the March 24, 2022 IEP team meeting. Shinn's group conducted the formal testing for this assessment in April 2024, save one testing measure described below.

Shinn conducted an additional test of Student's nonverbal cognitive functioning two months later, in June 2024. Shinn did not adequately or persuasively explain why she administered this additional testing, or the timing of this testing. This tool, The Test of Nonverbal Intelligence, Fourth Edition, rendered a single overall nonverbal ability score, which showed Student within the average range. Shinn did not adequately or persuasively explain why this second test was more reliable than her own earlier testing or that of Newport-Mesa's in the March 2022 Multidisciplinary Report. Shinn's explanation for the discrepant scores was that the second test removed many language, communication, and motor skills demands included in the other testing tools. However,

those skills are necessary in an educational environment, and Shinn did not persuasively explain how a single score under conditions not typically reflective of the real world was a truer reflection of Student's ability.

The Psychoeducational IEE aside, Shinn's testimony was not persuasive. Throughout her testimony, Shinn demonstrated significant inconsistencies and contradictions. For example, Shinn criticized various goals, opining that they were based on an underestimation of Student's abilities. Shinn later opined that the goals did not meet Student's needs, because they were too advanced for him. Overall, Shinn's testimony was not persuasive and given little weight.

The evidence established that Student had a complex cognitive profile. Testing showed that he had overall below average cognitive and intellectual functioning abilities, with areas of more significant weakness. Student also demonstrated certain low average to average memory abilities. While Student's attention deficits impacted testing results, the record was unclear as to the extent. Student did not prove Newport-Mesa incorrectly considered Student's cognitive and intellectual functioning levels when developing goals at all relevant times for this Decision. Student similarly did not prove his abilities were different such that Student's goals were not appropriately ambitious. (*Endrew F.*, *supra*, 580 U.S. at p. 402.)

Therefore, Student failed to prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year due to the lack of appropriately ambitious reading comprehension goals that addressed all of Student's areas of need.

MATHEMATICS

Student claimed that Newport-Mesa did not offer appropriately ambitious goals in all of Student's mathematics areas of need. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's mathematics needs.

Student did not put on evidence regarding Student's math goals or other areas of math need in which Student required goals. Student also did not offer any persuasive argument or evidence that the mathematics goals offered were not appropriately ambitious in light of Student's circumstances. (*Endrew F., supra*, 580 U.S. at p. 402.)

Therefore, Student failed to prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year due to the lack of appropriately ambitious mathematics goals that addressed all of Student's needs.

SOCIAL SKILLS

Student claimed that the March 2022 and May 2022 IEPs did not include appropriately ambitious goals in social skills also called pragmatic language. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's social skills needs.

Student relied on the expert testimony of Dr. Abby Rozenberg, Ph.D. Rozenberg was a licensed and credentialed speech and language pathologist in California.

Rozenberg's testimony was not persuasive for several reasons. First, Student solicited Rozenberg's testimony predominantly through leading questions. Second, Rozenberg opined that a student must "always" have a goal for every area of speech and language deficit. Rozenberg's opinion is inconsistent with the law. (*Capistrano*

Unif. Sch. Dist. v. S.W., *supra*, 21 F.4th at p. 1133 [“an IEP is not required to contain every goal from which a student might benefit”].) Third, Rozenberg’s testimony repeatedly took the form of long and rambling monologues which were not always responsive to the questions asked. Fourth, Rozenberg would often revise previous responses based on further prompting and questioning by Student’s counsel, such that she adopted Student’s positions as her opinion. As a result, Rozenberg’s testimony appeared to have been coached. Lastly, Rozenberg never worked for a public school or provided speech and language services to special education students as a full-time school district employee. Rozenberg demonstrated a lack of familiarity with IEP documents and their content. For these reasons, Rozenberg’s entire testimony was not persuasive and given little weight.

Student claimed that the offered communication goals, which targeted his pragmatic language deficits, were not appropriately ambitious for Student. Student relied on Rozenberg’s testimony to support this claim. However, Rozenberg’s criticisms for the offered goals concerned immaterial differences of professional opinion between her and the speech pathologist who developed the goals with Student’s IEP team. For example, Rozenberg repeatedly indicated that she would have written the goals differently, but did not testify that the goals were defective. Rather, she opined that the goals met Student’s needs in the areas addressed by the goals. Thus, Student did not prove that the offered communication goals were not appropriately ambitious in light of Student’s unique circumstances. (*Endrew F.*, *supra*, 580 U.S. at p. 402.) Student did not establish any other areas of social skills need which required additional annual goals.

Student failed to prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year due to the lack of appropriately ambitious goals that addressed all of Student’s social skills needs.

BEHAVIOR

Student claimed Newport-Mesa did not offer appropriately ambitious goals in all of Student's behavior areas of need in the March and May 2022 IEPs. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's behavior needs.

Psychologist Shinn provided a conclusory opinion that Newport-Mesa should have offered goals in aggression and conduct problems. However, the evidence established that Newport-Mesa offered a goal to address Student's anger and frustration needs.

The goal entitled "Calmly share frustrations" required Student to use calming strategies when "angry or frustrated." This goal was included in the March 24, 2022, March 28, 2022, and May 5, 2022 IEPs. Student did not provide any persuasive evidence that this goal was not appropriately ambitious in light of Student's unique circumstances. (*Endrew F.*, *supra*, 580 U.S. at p. 402.)

Student did not prove that he had conduct problems which required a separate goal. For example, Student did not establish that he was subject to school discipline procedures for negative behaviors, or any other manifestation of conduct problems at school. Thus, Student failed to prove that he required a goal for conduct problems.

Student lastly argued that Newport-Mesa should have offered a behavior goal in the area of attention. Shinn generally referenced the March 2022 Multidisciplinary Report, stating that Student had significant attention needs which required a distinct attention goal. However, Student did not prove that he required such a goal. Rather,

the evidence established that goals and accommodations included in the March 24, 2022, March 28, 2022, and May 5, 2022 IEPs adequately addressed Student's attention needs.

Student also asserted that Newport-Mesa should have offered goals to address his purported depression and withdrawal needs. However, Shinn explained that these needs were not behavioral needs, but emotional needs. Student did not raise claims challenging the emotional goals at any time relevant to this Decision. Nevertheless, Student solicited testimony and dedicated portions of his closing brief to these claims. A party requesting the hearing is limited to the issues alleged in the complaint unless the other party has consented. (20 U.S.C. §1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Newport-Mesa did not consent to any additional issues. Therefore, any claims regarding the need for, or adequacy of, emotional goals at any time are not decided in this Decision.

Student failed to prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year due to the lack of appropriately ambitious goals that addressed all of Student's areas of behavior need.

SELF-REGULATION

Student claimed Newport-Mesa did not offer appropriately ambitious goals in all of Student's self-regulation areas of need in the March 24, 2022, March 28, 2022, or May 5, 2022 IEPs. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's self-regulation needs.

Student's occupational therapy expert Roley explained that these IEPs included a goal that addressed Student's self-regulation needs. Her critique about the goal was that an occupational therapist was not assigned to the goal as a service provider, not the adequacy of the goal itself. Student failed to prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year due to the lack of appropriately ambitious goals that addressed all of Student's self-regulation needs.

COMMUNICATION

Student claimed that he required goals in the areas of idiomatic language and expressive language. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's communication needs.

Student's speech and language expert Rozenberg opined that Student required goals in these areas based on her interpretation of the March 2022 Multidisciplinary Report. However, Rozenberg's opinion of Student's needs was based on incomplete information. Rozenberg did not demonstrate knowledge of whether, or to what extent, the areas of weaknesses or deficits shown in the standardized assessments impacted Student's education. For example, Rozenberg did not speak with Student's teachers or other providers who served in during the 2021-2022 school year to determine the educational impact of these weaknesses. Thus, Student did not establish that he had needs in the areas of idiomatic language and expressive language.

Even if Student had established idiomatic language and expressive language were areas of educational need, Student did not prove that he required goals in those

areas to receive a FAPE. As discussed previously, Rozenberg's belief that a student requires annual goals in all areas of deficit to receive a FAPE is inconsistent with the law. (*Capistrano Unif. Sch. Dist. v. S.W.*, *supra*, 21 F.4th at 1133.)

Student failed to prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year due to the lack of appropriately ambitious self-regulation goals that addressed all of Student's communication needs.

GOAL MEASURABILITY NOT AT ISSUE

Student did not raise claims regarding the measurability of the goals offered by Newport-Mesa at any time relevant to this Decision. Nevertheless, Student solicited testimony and dedicated portions of his closing brief to these claims. A party requesting the hearing is limited to the issues alleged in the complaint unless the other party has consented. (20 U.S.C. §1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Newport-Mesa did not consent to any additional issues.

Therefore, any claims regarding goal measurability are not decided in this Decision.

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ISSUE 1.f.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM MARCH 22, 2022, THROUGH THE END OF THE 2021-2022 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER A ONE-TO-ONE AIDE DURING THE REGULAR SCHOOL YEAR?

The IEP must identify the child's special education and related services and supplementary aids and services, including program modifications or supports. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(4)(2007); Ed. Code, § 56345, subd. (a)(4).) A one-to-one aide is a type of supplementary aid and service. (*D.R. v. Redondo Beach Unif. Sch. Dist.* (9th Cir. 2022) 56 F.4th 636, 646; see also 34 C.F.R. § 300.42.)

Student claimed that he required a one-to-one aide to address his attention needs and to otherwise access his education. Newport-Mesa responded that Student did not require a one-to-one aide to receive a FAPE.

Student did not prove that he required a one-to-one aide from March 22, 2022, through the end of the 2021-2022 school year. Student attempted to support his claim through psychologist Shinn's testimony. Shinn opined that Student's failure to meet his behavior goal related to organizing his workspace indicated that he required a one-to-one aide. Shinn's testimony was not persuasive for several reasons and given little weight.

First, Shinn improperly discounted Student's progress on this behavior goal. Throughout her testimony, Shinn treated Student's progress on goals simply as met or unmet, regardless of Student's level of progress on any given goal. She explained her

opinion that “not met is not met.” On cross examination, Shinn evasively reiterated her illogical opinion that a student only makes adequate progress if they meet their IEP goals.

Special education law does not embrace this binary view of goal progress. This method of evaluating the adequacy of an IEP relies on judging an IEP in hindsight and is in direct contrast to the law. (*Adams v. State of Oregon, supra*, 195 F.3d at 1149.) Additionally, school districts must review a child’s level of progress on goals when revising a child’s IEP, not just whether the goals were or were not met. (20 U.S.C. § 1414(d)(4)(A); 34 C.F.R. § 300.324(b).) Shinn failed to adequately credit Student’s progress on his behavior goal when he achieved 70% mastery, and the goal called for Student to demonstrate this skill at 80% mastery.

Shinn compounded this error by summarizing Student’s overall progress on all his previous goals as meeting less than 50% of them. Even by Shinn’s erroneous standard, this statement was incorrect as Student had met six of his 10 goals - more than 50%. Student had made significant progress on the goals that he did not meet, falling short by as little as 10% mastery for two of his unmet goals. Nevertheless, Shinn maintained her interpretation of Student’s goal progress and applied this reasoning throughout her testimony. This included her opinion that Student “absolutely” needed a one-to-one aide. Shinn repeated this improper method for evaluating progress on goals throughout her testimony, which negatively impacted her persuasiveness.

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It is notable that Shinn's opinion of adequate progress was inconsistent in her later testimony. Despite demanding perfection from Newport-Mesa, Shinn readily excused or otherwise downplayed Student's minimal progress at New Vista. This contrast revealed a significant bias that undermined Shinn's credibility and the persuasiveness of her entire testimony.

Second, Shinn did not consistently testify that Student required a one-to-one aide. Rather, she initially indicated that a child not meeting a behavior goal would call into question whether a one-to-one aide could be necessary. Student's counsel later prompted Shinn at multiple points in her testimony for her opinion on Student's need for a one-to-one aide. In response to counsel's coaching, Shinn provided increasingly ardent opinions that Student needed such an aide. Shinn demonstrated this pattern of responses on multiple topics throughout her testimony. These inconsistencies further negatively impacted Shinn's overall persuasiveness.

Lastly, Shinn did not demonstrate personal knowledge of Student's classroom environment during the 2021-2022 school year, including the existing supports built into that setting. Overall, Shinn's testimony did not establish Student's need for a one-to-one aide.

Rather, the evidence established that Student's needs were met in his classroom environment without a one-to-one aide. Newport-Mesa staff, including Student's classroom teacher Bain, universally and credibly explained that Student did not require a one-to-one aide to receive a FAPE. During the 2021-2022 school year, Student was placed primarily in a self-contained special day class. This classroom regularly had

between five and six children, including Student, and four adult staff. Student did not prove that this highly structured and staffed classroom could not meet his needs, such that he required additional one-to-one aide support.

Student did not prove that he required a one-to-one aide to receive a FAPE. Therefore, Student did not prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year, when Newport-Mesa did not offer him a one-to-one aide.

ISSUE 1.g.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM MARCH 22, 2022, THROUGH THE END OF THE 2021-2022 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER OCCUPATIONAL THERAPY SERVICES DURING THE REGULAR SCHOOL YEAR?

Student claimed that he required occupational therapy services in the March 24, 2022, March 28, 2022, and May 5, 2022 IEPs to address his fine motor, visual motor, sensory processing, and self-regulation needs. Newport-Mesa responded that Student did not require occupational therapy services to receive a FAPE.

The IEP must comprehensively describe the child's educational needs and the corresponding special education and related services that meet those needs. (*School Comm. of Burlington v. Dept. of Educ. of Mass.* (1985) 471 U.S. 359, 368, 105 S.Ct. 1996 (*Burlington*).) The IEP must identify the student's special education and related services and supplementary aids and services, including program modifications or supports. (*Ibid.* at p. 368; 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(4)(2007); Ed. Code,

§ 56345, subd. (a)(4).) Occupational therapy services are a related service. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(a); Ed. Code, § 56363, subd. (b).) In California, related services are called “designated instruction and services.” (Ed. Code, § 56363, sub. (a).)

As determined previously, Student did not prove that he had fine motor skills, visual motor skills, or sensory processing needs that required goals. Student also did not prove that he had additional self-regulation needs that required goals. Student likewise did not prove that he required occupational therapy services in the March and May 2022 IEPs. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

Student offered occupational therapist Roley’s testimony regarding Student’s need for occupational therapy services. She gave a similarly vague, conclusory, and unpersuasive opinion that Student required occupational therapy services, based on incomplete information regarding Student’s needs and abilities at the time of the March and May 2022 IEPs.

For example, Roley’s opinion that an occupational therapist was required to address Student’s self-regulation goal was not conclusive of Student’s need for occupational therapy services. Rather, “[t]he IDEA accords educators discretion to select from various methods of meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with an educational benefit.” (*Crofts v. Issaquah Sch. Dist. No. 411* (9th Cir. 2022) 22 F.4th 1048, 1056-57 [citing *R.P. ex rel. C.P. v. Prescott Unif. Sch. Dist.* (9th Cir. 2011) 631 F.3d 1117, 1122].) Student did not prove that a special education teacher could not address Student’s self-regulation needs, or that only an occupational therapist could. In fact, Student met this goal with the supports and services offered in the March and May 2022 IEPs. While Student’s

successes are not dispositive that he received a FAPE, it is evidence of the reasonableness of Newport-Mesa's IEP offers. (*E.M. v. Pajaro Valley Unif. Sch. Dis. Off. of Admin. Hrngs.*, *supra*, 652 F.3d at p. 1006.)

Student did not prove that he required occupational therapy services to receive a FAPE. Therefore, Student did not prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year, when Newport-Mesa did not offer him occupational therapy services.

ISSUE 1.h.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM MARCH 22, 2022, THROUGH THE END OF THE 2021-2022 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER SUFFICIENT SPEECH AND LANGUAGE SERVICES DURING THE REGULAR SCHOOL YEAR?

Student claimed that speech and language services were necessary to address several of Student's existing goals and should have had goals in additional areas of need, such that Student required more speech and language services than he was offered. Newport-Mesa responded that Student did not require additional speech and language services to receive a FAPE.

Student offered speech and language pathologist Rozenberg's testimony in support of his claims. Rozenberg opined that a speech and language pathologist should have been assigned to provide services related to Student's goal entitled "Slow

down, Think, Act.” She explained that such a goal was within the scope of a speech and language pathologist’s practice. Even assuming that was true, Rozenberg’s opinion is again inconsistent with the law.

As discussed previously, school districts have flexibility when determining how to meet a student’s unique needs. (*Crofts v. Issaquah Sch. Dist. No. 411*, *supra*, 22 F.4th at p. 1056-57 [citing *R.P. ex rel. C.P. v. Prescott Unif. Sch. Dist.*, *supra*, 631 F.3d at p. 1122].) Student did not prove that he required speech and language services to address this goal. Student made similar arguments that he required speech and language services to implement his “Social/Emotional” goals. Those arguments fail for the same reasons.

Student also claimed that he required two 30-minute-long group speech and language sessions per week, based on Rozenberg’s recommendation. However, Rozenberg based her recommendation on her unproven belief that Student required additional goals to receive a FAPE.

Student did not prove that he required additional speech and language services to receive a FAPE. Therefore, Student did not prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year, when Newport-Mesa did not offer additional speech and language services.

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ISSUE 1.i.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM MARCH 22, 2022, THROUGH THE END OF THE 2021-2022 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER SUFFICIENT INDIVIDUAL SPECIALIZED ACADEMIC INSTRUCTION SERVICES DURING THE REGULAR SCHOOL YEAR?

Student claimed that he required individual specialized academic instruction services to receive a FAPE, asserting he made limited academic progress which should have been addressed through individual instruction. Newport-Mesa responded that Student did not require individual specialized academic instruction to receive a FAPE.

Student supported this argument with psychologist Shinn's unpersuasive testimony. Shinn opined that it was "very, very clear" that Student required a higher level of support because she believed Student met half of his previous goals. Contrary to Shinn's testimony, Student's need for individual specialized academic instruction was not clear.

As determined above, Shinn was not persuasive, and her testimony given little weight. Moreover, Shinn did not testify that Student required individual specialized academic instruction. Rather, she believed that Student required a one-to-one aide for prompting and redirection.

The evidence established that Student did not require individual specialized academic instruction, and the offer of specialized academic instruction in the March and May 2022 IEPs was reasonably calculated to provide Student educational benefit.

Therefore, Student did not prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year, when Newport-Mesa did not offer individual specialized academic instruction.

ISSUE 1.j.i.-i.i.i.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM MARCH 22, 2022, THROUGH THE END OF THE 2021-2022 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER SPECIALIZED ACADEMIC INSTRUCTION, SPEECH AND LANGUAGE SERVICES, AND OCCUPATIONAL THERAPY DURING ESY?

School districts must provide extended school year services to students if such services are necessary for a FAPE. (34 C.F.R. § 300.106 (2006).) California Code of Regulations, title 5, section 3043, provides that extended school year services shall be provided for each individual with exceptional needs who requires special education and related services in excess of the regular academic year. These include students who have disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the student's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the student will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition. (*Ibid.*)

SPECIALIZED ACADEMIC INSTRUCTION

Student failed to prove that he required specialized academic instruction during the ESY period of the 2021-2022 school year. Student again relied on Shinn's unpersuasive testimony. Rather than giving an opinion as to how Student's disabilities

manifest in his unique situation such that he required ESY, Shinn made general comments about children with disabilities similar to Student's requiring constant instruction. Shinn also based her opinion on Student's need for ESY on her faulty interpretation of Student's progress on his previous IEP goals.

Student failed to prove that he was denied a FAPE when Newport-Mesa did not offer him specialized academic instruction during the 2021-2022 school year's ESY period.

SPEECH AND LANGUAGE SERVICES

Student failed to prove that he required speech and language services during the 2021-2022 school year's ESY period. Student again offered speech and language pathologist Rozenberg's unpersuasive opinion. When asked whether she believed Student required ESY services, Rozenberg's response was hesitant and not convincing. Rozenberg explained that Student required ESY services to maintain the growth he had made, but did not establish that Student would regress beyond his ability to recoup skills following the extended summer break.

Student met his communication goals with the supports and services offered in the March and May 2022 IEPs, thus supporting the reasonableness of Newport-Mesa's IEP offers. (*E.M. v. Pajaro Valley Unif. Sch. Dis. Off. of Admin. Hrngs.*, *supra*, 652 F.3d at p. 1006.)

Student failed to prove that he was denied a FAPE when Newport-Mesa did not offer him speech and language services during the 2021-2022 school year's ESY period.

OCCUPATIONAL THERAPY

Student failed to prove that he required occupational therapy services during the 2021-2022 school year's ESY period. As determined previously, Student failed to prove that he required occupational therapy services during the regular school year to receive a FAPE. Considering the purpose of ESY services is to prevent a student from regressing on progress made during the regular school year, Student did not require occupational therapy during ESY when he did not require it during the regular school year.

Student failed to prove that he was denied a FAPE when Newport-Mesa did not offer him occupational therapy services during the 2021-2022 school year's ESY period.

ISSUE 1.k.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM MARCH 22, 2022, THROUGH THE END OF THE 2021-2022 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER A SUFFICIENTLY SUPPORTIVE PLACEMENT?

Student claimed that he required a more supportive placement than offered in the March 24, 2022, March 28, 2022, and May 5, 2022 IEPs, specifically a non-public school. Student did not claim that he required any other type of placement at any time relevant to this Decision. Newport-Mesa asserted that Student did not require a non-public school placement to receive a FAPE.

School districts are required to provide each special education student with an appropriate program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids

and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114 (a)(2); Ed. Code, §§ 56031, 56033.5); *D.R. v. Redondo Beach Unif. Sch. Dist.*, *supra*, 56 F.4th at 643-44 [citing *Sacramento City Unif. Sch. Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404].) The IDEA also requires, to the maximum extent appropriate, that a child with a disability be educated with children who are not disabled. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56040.1, subd. (a).) The continuum of placement options includes non-public schools. (34 C.F.R. § 300.115; Ed. Code, § 56361.)

Student offered psychologist Shinn's unpersuasive testimony. Again, Shinn based her opinion on her erroneous interpretation of Student's previous IEP goal progress. She attempted to bolster her opinion by alluding to Student's purported successes at New Vista, following Parents' unilateral placement of him in September 2023. However, this information was not available to the IEP team at the March and May 2022 IEP team meetings. Thus, it has limited relevance to the analysis of whether these IEPs offered Student a FAPE. (*Adams v. State of Oregon*, *supra*, 195 F.3d at p. 1149; but see *E.M. v. Pajaro Valley Unif. Sch. Dis. Off. of Admin. Hrngs.*, *supra*, 652 F.3d at p. 1006.)

Nevertheless, when 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.*, *supra*, 811 F.2d at pp. 1314-15 [citing *Burlington*, *supra*, 471 U.S. 359].) A school district is not required to place a student in a program preferred by parents, even if that program will result in greater educational benefit to the student. (*Gregory K.*, *supra*, 811 F.2d at p. 1314.) For a school district's offer of special education to constitute a FAPE, the offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) An appropriate public

education “does not mean the absolutely best or ‘potential-maximizing’ education for the individual child.” (*Los Angeles Unif. Sch. Dist. v. A.O.*, *supra*, 92 F.4th at 1172 [quoting *Gregory K.*, *supra*, 811 F.2d at 1314].) Therefore, even if Shinn’s opinion that Student was successful at New Vista was true, something the record did not establish, his purported success would not be determinative of whether the March and May 2022 IEPs offered Student a FAPE.

Student failed to prove that he required a non-public school placement between March 22, 2022, and the end of the 2021-2022 school year, including ESY. Newport-Mesa’s offered program included significant supports and a low student to staff ratio. Student did not establish that his unique needs could not be met within Newport-Mesa’s offered placement at a less restrictive comprehensive school site, where he would have access to these significant supports, as well as the general education setting and typically developing peers.

Student did not prove he was denied a FAPE from March 22, 2022, through the end of the 2021-2022 school year, including ESY, when Newport-Mesa did not offer a non-public school placement.

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ISSUE 2.a.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO ENSURE THAT A SCHOOL PSYCHOLOGIST, OCCUPATIONAL THERAPIST, AND ADAPTED PHYSICAL EDUCATION TEACHER WERE PRESENT AT THE MARCH 14, 2023 IEP TEAM MEETING?

SCHOOL PSYCHOLOGIST

Student argued that a school psychologist was a necessary participant for the March 14, 2023 IEP team meeting. Newport-Mesa asserted that all required participants attended the March 14, 2023 IEP team meeting.

Student failed to establish that a school psychologist was a required member of Student's IEP team at the March 14, 2023 IEP team meeting. (20 U.S.C., § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).) The March 14, 2023 IEP team meeting was Student's annual review. At that time, Student was in seventh grade and attending Corona Del Mar Middle School. There were no new assessments conducted by a school psychologist to review at this meeting. Student did not establish any other reason why a school psychologist was necessary at this meeting.

Student again unpersuasively argued that a school psychologist was required to discuss Student's negative behaviors. Ault, Student's special education teacher and a board-certified behavior analyst, was present at the March 14, 2023 meeting and authorized to address negative behaviors. (Ed. Code, § 56525, subd. (a); Cal. Code Regs.,

tit. 5, § 3051.23(a).) Thus, an individual able to address Student's negative behaviors was present at the March 14, 2023 IEP meeting, and a school psychologist was not necessary.

Student failed to establish a procedural violation for a school psychologist's non-attendance at the March 14, 2023 IEP team meeting. Even if, however, a school psychologist was a required member, no persuasive evidence was presented that the omission impeded the student's right to a FAPE; significantly impeded the parents' opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. Thus, Student did not prove that violation was a denial of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2006); Ed. Code, § 56505, subds. (f)(2) & (j); *Doug C.*, *supra*, 720 F.3d at pp. 1043, 1047.)

Therefore, Student failed to prove that he was denied a FAPE because a school psychologist was not present at the March 14, 2023 IEP team meeting.

OCCUPATIONAL THERAPIST AND ADAPTED PHYSICAL EDUCATION TEACHER

Student argued that an occupational therapist and an adapted physical education teacher were necessary participants for the March 14, 2023 IEP team meeting. Newport-Mesa asserted that all required participants attended the March 14, 2023 IEP team meeting.

Student failed to establish that an occupational therapist or an adapted physical education teacher were required members of Student's IEP team at the March 14, 2023 IEP team meeting. (20 U.S.C., § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).) Student did

not prove that he required occupational therapy services, or that there was an occupational therapy assessment reviewed at the March 14, 2023 IEP team meeting. Student did not establish any other reason why an occupational therapist was a required member of Student's March 14, 2023 IEP team. Student also did not offer evidence to prove that he required adapted physical education services, or that there was an adaptive physical education assessment reviewed at the March 14, 2023 IEP team meeting. Student did not establish any other reason why an adapted physical education teacher was a required member of Student's March 14, 2023 IEP team.

Student failed to establish a procedural violation for an occupational therapist's or an adapted physical education teacher's non-attendance at the March 14, 2023 IEP team meeting. Even if, however, an occupational therapist or an adapted physical education teacher was a required member, no persuasive evidence was presented that the omission impeded the student's right to a FAPE; significantly impeded the parents' opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. Thus, Student did not prove that violation was a denial of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2006); Ed. Code, § 56505, subds. (f)(2) & (j); *Doug C.*, *supra*, 720 F.3d at pp. 1043, 1047.)

Therefore, Student failed to prove that he was denied a FAPE due to the lack of an occupational therapist or adapted physical education teacher at the March 14, 2023 IEP team meeting.

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ISSUE 2.b.i.-v.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER GOALS IN THE AREAS OF COMMUNICATION, SENSORY PROCESSING, SELF-REGULATION SKILLS; FINE MOTOR SKILLS, AND VISUAL MOTOR SKILLS?

COMMUNICATION

Student argued that he required a communication goal in the March 14, 2023 IEP to receive a FAPE. Newport-Mesa responded that the March 14, 2023 IEP included the necessary goal to address Student's communication needs.

Student asserted, and speech and language pathologist Rozenberg testified that the March 14, 2023 IEP did not include goals to address Student's communication needs. Despite Student's assertion and Rozenberg's testimony to the contrary, Student's March 14, 2023 IEP included a goal that addressed communication.

The March 14, 2023 IEP included a total of eight annual goals. Included in these was a goal entitled "Social Repair." This goal required Student to identify when he exhibits an inappropriate social behavior and modify his behavior moving forward. These skills all fall within the category of pragmatic language. Moreover, a speech and language pathologist was assigned as one of the service providers responsible for this goal. Therefore, this goal addressed an area of communication need.

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Rozenberg did not recognize the relevance of this goal to Student's communication needs, and initially testified that the March 14, 2023 IEP did not contain goals addressed by a speech and language pathologist. This error demonstrated Rozenberg's lack of knowledge of Student's March 14, 2023 IEP and further weakened the persuasiveness of her testimony.

The March 14, 2023 IEP contained a goal that addressed Student's communication needs. The location of this goal under the "Social/Emotional" category is not determinative of what the goal addressed. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2007); Ed. Code § 56345, subd. (h)].) Thus, Student failed to prove that the March 14, 2023 IEP did not include a communication goal. Student failed to prove he was denied a FAPE during the 2022-2023 school year due to the lack of a communication goal.

SENSORY PROCESSING SKILLS

Student argued that he required a sensory processing skills goal in the March 14, 2023 IEP to receive a FAPE. Newport-Mesa responded that Student did not require a sensory processing goal to receive a FAPE.

Student again offered occupational therapist Roley's testimony. Roley provided a vague and conclusory opinion that Student had "sensory concerns" in school which required a goal. Roley's opinion was not persuasive. Roley had not spoken with Student's teachers and staff at either Eastbluff Elementary or Corona Del Mar Middle School, the school sites Student had attended between the March and May 2022 IEPs and the March 14, 2023 IEP. Roley did not demonstrate an understanding or personal knowledge of the relevant classroom environment, including Student's strengths and

weaknesses in that setting. Instead, the evidence established that Roley based her opinions on her interpretations of the March 2022 Multidisciplinary Report, the March 14, 2023 IEP document, and information from Parents. As with her previous testimony, Student solicited the majority of Roley's opinions through leading questions, which further undermined her persuasiveness.

Student failed to prove that he had sensory processing skills needs at the time of the March 14, 2023 IEP. Roley suggested that Newport-Mesa had recognized these needs yet failed to offer goals. During this testimony she referenced what she incorrectly stated were new goals addressing Student's anger and frustrations. The section of the March 14, 2023 IEP Roley referenced was Newport-Mesa's report on one of Student's previous IEP goals from the March 2022 and May 2022 IEPs. Notably, Student had met this goal without the support of an occupational therapist.

Student failed to prove that he had sensory processing skills needs at the time of the March 14, 2023 IEP and thus failed to prove that he required a goal in the area of sensory processing skills. Student similarly failed to prove that he required a sensory processing skills goal at any other time during the 2022-2023 school year.

Therefore, Student failed to prove he was denied a FAPE during the 2022-2023 school year due to the lack of a sensory processing skills goal.

SELF-REGULATION SKILLS

Student argued that he required a self-regulation goal in the March 14, 2023 IEP to receive a FAPE. Newport-Mesa responded that the March 14, 2023 IEP included a goal that addressed Student's self-regulation needs.

Student again offered Roley's expert testimony. Roley opined that Student had self-regulation needs which required goals. However, Roley conceded that the March 14, 2023 IEP contained behavior goals which covered those needs. Roley's concern was not with the goals, but that they were not designated self-regulation goals with an occupational therapist assigned to them.

As with the communication goal discussed previously, location of these goals under the "Behavior" category is immaterial. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2007); Ed. Code § 56345, subd. (h)].) Thus, Student failed to prove that the March 14, 2023 IEP did not include a goal in the area of self-regulation. Nor did Student establish any other self-regulation skills area of need for which he required a goal in the March 14, 2023 IEP or at any other time during the 2022-2023 school year.

Therefore, Student failed to prove he was denied a FAPE during the 2022-2023 school year due to the lack of a self-regulation skills goal.

FINE MOTOR SKILLS

Student argued that he required a fine motor skills goal in the March 14, 2023 IEP to receive a FAPE. Newport-Mesa responded that Student did not require a fine motor skills goal to receive a FAPE.

Student again offered Roley's testimony. Roley provided an unpersuasive, conclusory opinion that Student required a fine motor skills goal based on the March 2022 Multidisciplinary Report and unspecified other information included in the March 14, 2023 IEP document.

Student did not establish that fine motor skills was an area of need which required a goal at the time of the March 14, 2023 IEP or at any other time during the 2022-2023 school year.

Therefore, Student failed to prove he was denied a FAPE during the 2022-2023 school year due to the lack of a fine motor skills goal.

VISUAL MOTOR SKILLS

Student argued that he required a visual motor skills goal in the March 14, 2023 IEP to receive a FAPE. Newport-Mesa responded that Student did not require a visual motor skills goal to receive a FAPE.

Student again offered Roley's testimony. As with fine motor skills, Roley provided an unpersuasive, conclusory opinion that Student required a visual motor skills goal based on the March 2022 Multidisciplinary Report and unspecified other information included in the March 14, 2023 IEP document.

Student did not establish that visual motor skills was an area of need which required a goal at the time of the March 14, 2023 IEP or at any other time during the 2022-2023 school year. Therefore, Student failed to prove he was denied a FAPE during the 2022-2023 school year due to the lack of a visual motor skills goal.

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ISSUE 2.c.i.-v.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER APPROPRIATELY AMBITIOUS GOALS THAT ADDRESSED ALL OF STUDENT'S NEEDS IN THE AREAS OF READING COMPREHENSION, MATHEMATICS, SOCIAL SKILLS, BEHAVIOR, AND EXECUTIVE FUNCTIONING?

READING COMPREHENSION

Student claimed that Newport-Mesa did not offer appropriately ambitious goals in all of Student's reading comprehension areas of need in the March 14, 2023 IEP. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's reading comprehension needs.

Student supported his claim with psychologist Shinn's testimony. Shinn again opined that Student could have benefitted from a goal in the area of "reading pacing," to help with comprehension. However, Shinn did not adequately explain that Student demonstrated a need in this area at the time of the March 14, 2023 IEP team meeting, or at any other point during the 2022-2023 school year. Student did not establish that this purported weakness required a goal.

Student also did not provide persuasive argument or evidence that the reading comprehension goal offered was not appropriately ambitious in light of Student's unique needs. (*Endrew F.*, *supra*, 580 U.S. at p. 402.)

Therefore, Student failed to prove he was denied a FAPE during the 2022-2023 school year due to the lack of appropriately ambitious goals that addressed all of Student's reading comprehension needs.

MATHEMATICS

Student argued that the mathematics multi-step word problem goal included in the March 14, 2023 IEP was not appropriately ambitious for Student, because Student lacked the requisite skills to attain that goal. Specifically, Student asserted that he did not have sufficient skills with multiplication or division problems to work on that goal. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's mathematics needs.

Shinn believed that Student did not have the requisite skills for the multi-step word problem goal, because he did not meet his previous multiplication or division goals. However, Ault explained that Student had made progress on his previous division and multiplication goals. But, because of how the goals were written, Student's level of progress was not fully reflected in the goal progress report. For example, Student's multiplication goal, which required him to memorize multiplication facts to 12, Ault reported that Student had memorized some facts, but not all facts to 12. Thus, she reported 0% progress. While this method of reporting progress is less than ideal, the evidence established that Student had made some progress on his previous mathematics goals. Moreover, the multi-step word problem goal required Student to continue working on multiplication and division problems which provided him another opportunity to master skills he may not have during the previous year.

Student did not provide persuasive argument or evidence that the mathematics goals offered were not appropriately ambitious in light of Student's unique needs. (*Endrew F., supra*, 580 U.S. at p. 402.) Student also did not prove other areas of mathematics need for which Student required an annual goal.

Therefore, Student failed to prove he was denied a FAPE during the 2022-2023 school year due to the lack of appropriately ambitious mathematics goals that addressed all of Student's needs.

SOCIAL SKILLS

Student argued that he required additional goals in social skills. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's social skills needs.

Student did not offer any persuasive evidence as to what additional goals he required to receive a FAPE. Student solicited testimony from speech and language pathologist Rozenberg, who gave an unpersuasive, conclusory opinion that Student had additional areas of need based on the results of the March 2022 Multidisciplinary Report. However, she did not clarify what areas of need were missing or adequately explain what other goals Student required for a FAPE. Moreover, Rozenberg did not demonstrate personal knowledge of Student's educational performance at that time, such as through interviewing Newport-Mesa staff who worked with him at that time, or reviewing relevant educational records. Rather, Rozenberg based her opinions on her reading of the March 14, 2023 IEP document. As explained previously, Rozenberg

demonstrated significant misinterpretations of the plain text of the March 14, 2023 IEP document, made multiple assumptions about the meaning of various entries, and demonstrated a poor understanding of the document.

Contrary to Student's assertion, the evidence established that the social skills goal, entitled "Social Repair" was reasonably calculated to address the root cause of Student's social interaction difficulties, and would be addressed by both a speech and language pathologist, as well as a special education teacher. Student also did not provide persuasive argument or evidence that the social skills goal offered was not appropriately ambitious in light of Student's unique needs. (*Endrew F., supra*, 580 U.S. at p. 402.) Student did not prove that he had other areas of social skills need which Student required annual goals.

Therefore, Student failed to prove he was denied a FAPE during the 2022-2023 school year due to the lack of appropriately ambitious social skills goals that addressed all of Student's social skills needs.

BEHAVIOR

Student claimed that he required a behavior goal for attention. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's attention needs.

Student offered psychologist Shinn's unpersuasive testimony. Shinn opined that the offered behavior goals met Student's needs, but that Student also required a separate behavior goal targeting his attention needs. However, Shinn did not explain

how the two offered goals, which called for Student to engage in assigned activities and avoid off-task behaviors did not adequately address Student's attention needs, or what the additional goal should have specifically addressed.

Instead, Shinn opined that the offered goal for Student to appropriately use classroom technology should have been revised to remove the portion of the goal that called for staff to remove Student's Chromebook when he misused it. She opined that removal of the device would prevent Student from learning to use the device correctly. Shinn misunderstood the goal, which did not instruct staff to remove the device. Rather, the baseline, or Student's starting point, reflected that staff would remove the device when Student used it incorrectly. The goal called for Student to use the device for the assigned purpose and remain on task throughout the activity. This error demonstrated Shinn's unfamiliarity with Student's IEPs. This further undermined her persuasiveness.

Student did not prove that he had behavior needs which required additional goals, or that the goals were not appropriately ambitious in light of Student's circumstances at any point during the 2022-2023 school year, including ESY. (*Endrew F.*, *supra*, 580 U.S. at p. 402.)

Therefore, Student failed to prove he was denied a FAPE during the 2022-2023 school year, including ESY, due to the lack of appropriately ambitious goals that addressed all of Student's behavior needs.

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EXECUTIVE FUNCTIONING

Student claimed that he required executive functioning goals for attention and focus. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's executive functioning needs.

Student's evidence and argument were duplicative of his claim for behavior goals and were unpersuasive for the same reasons. Thus, Student did not prove that he had executive functioning needs which required additional goals, or that the goals were not appropriately ambitious in light of Student's circumstances at any point during the 2022-2023 school year, including ESY. (*Endrew F., supra*, 580 U.S. at p. 402.) Therefore, Student failed to prove he was denied a FAPE during the 2022-2023 school year, including ESY, due to the lack of appropriately ambitious goals that addressed all of Student's executive functioning needs.

ISSUE 2.d.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER A ONE-TO-ONE AIDE DURING THE REGULAR SCHOOL YEAR?

Student did not prove that he required a one-to-one aide during the 2022-2023 school year. Newport-Mesa responded that Student did not require a one-to-one aide to receive a FAPE.

Student attempted to support his claim through psychologist Shinn's testimony. Shinn opined that Student's failure to meet all his goals was an indication that Student required a one-to-one aide. However, Shinn's testimony was not persuasive.

Shinn again counted Student's goal achievement as a binary between met and not met, and did not give credit to Student's partial achievement of goals. Shinn opined that a one-to-one aide would have been helpful to support Student meet his social and emotional goals, by prompting him to practice these skills more frequently.

However, Shinn did not demonstrate that she knew what level of prompting Student had received. Shinn claimed that she was familiar with Student's classroom at Corona Del Mar Middle School, because of unspecified past visits. Shinn did not demonstrate that she had personal knowledge of Student's classroom during the 2022-2023 school year. Moreover, when Shinn's company conducted the Psychoeducational IEE during the spring of 2024, Shinn did not personally conduct the classroom observation of the Corona Del Mar Middle School program. Thus, Shinn's opinions of Student's need for a one-to-one aide were based on assumptions and second-hand information about Student's classroom environment.

Shinn also gave conclusory opinions that Student required a one-to-one aide to address his academic and behavior needs. However, Shinn did not explain why Student needed a one-to-one aide in these areas when he met all of his reading goals, and two of three of his behavior goals without one-to-one aide support.

The evidence established that Student's needs were met in his classroom environment without a one-to-one aide. Newport-Mesa staff, including Student's classroom teacher Ault, universally and credibly testified that Student did not require a one-to-one aide to receive a FAPE. During the 2022-2023 school year, Student was placed primarily in a special education separate setting class. While the record was not clear as to the exact student to staff ratio in Student's class during the 2022-2023 school

year, Ault credibly explained that there were no more than 15 students, along with herself and two instructional aides. Student did not prove that this program could not meet his needs, such that he required additional one-to-one adult support.

Student did not prove that he required a one-to-one aide to receive a FAPE. Therefore, Student did not prove he was denied a FAPE during the 2022-2023 school year, when Newport-Mesa did not offer him a one-to-one aide.

ISSUE 2.e.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER OCCUPATIONAL THERAPY SERVICES DURING THE REGULAR SCHOOL YEAR?

Student claimed that he required occupational therapy services in the March 14, 2023 IEP to address his purported fine motor, visual motor, sensory processing, and self-regulation needs. Newport-Mesa responded that Student did not require occupational therapy services to receive a FAPE.

As discussed earlier, Student did not prove that he had educational needs in the areas of fine motor skills, visual motor skills, or sensory processing that required goals. Student also did not prove that his self-regulation needs were not addressed by the behavior goals included in the March 14, 2023 IEP. Student likewise did not prove that he required occupational therapy services in the March 14, 2023 IEP, or at any other point during the 2022-2023 school year.

Student offered occupational therapist Roley's testimony regarding Student's need for occupational therapy services. She gave a similarly vague, conclusory, and unpersuasive opinion that Student required occupational therapy services, based on incomplete information regarding Student's needs and abilities at the time of the March 14, 2023 IEP. Roley again opined that an occupational therapist was required to address Student's self-regulation and behavior needs. However, her opinion was not persuasive and inconsistent with the law. (*Crofts v. Issaquah Sch. Dist. No. 411*, *supra*, 22 F.4th at pp. 1056-57 [citing *R.P. ex rel. C.P. v. Prescott Unif. Sch. Dist.*, *supra*, 631 F.3d at p. 1122].) Student did not prove that a special education teacher could not address Student's self-regulation needs, or that only an occupational therapist could.

Student did not prove that he required occupational therapy services during the 2022-2023 school year to receive a FAPE. Therefore, Student did not prove he was denied a FAPE when Newport-Mesa did not offer him occupational therapy services in the March 14, 2023 IEP or at any other time during the 2022-2023 regular school year.

ISSUE 2.f.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER SUFFICIENT SPEECH AND LANGUAGE SERVICES DURING THE REGULAR SCHOOL YEAR?

Student claimed that he required additional speech and language services than what Newport-Mesa offered in the March 14, 2023 IEP. Newport-Mesa responded that Student did not require additional speech and language services to receive a FAPE.

Student again offered speech and language pathologist Rozenberg's testimony. She again opined that Student required two 30-minute group speech and language service sessions per week. Rozenberg explained that her opinion was based on her belief that Student required additional speech and language goals, and by extension required additional services to meet those goals.

Student did not prove that he required additional speech and language goals to receive a FAPE, thus undermining his argument for additional speech and language services. (Cal. Code Regs., tit. 5, § 3040, subd. (b).) Student's failure to prove the need for additional speech and language goals notwithstanding, Rozenberg's testimony and opinions were not persuasive for the reasons explained previously.

The evidence established that Student did not require additional speech and language services at any time during the 2022-2023 school year. The offer of speech and language services in the March 14, 2023 IEP was reasonably calculated to provide Student educational benefit based on the information available to the IEP team at that time.

Therefore, Student did not prove he was denied a FAPE during the 2022-2023 school year, when Newport-Mesa did not offer additional speech and language services.

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ISSUE 2.g.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER SUFFICIENT INDIVIDUAL SPECIALIZED ACADEMIC INSTRUCTION DURING THE REGULAR SCHOOL YEAR?

Student claimed that he required individual specialized academic instruction services to receive a FAPE. Student argued that he demonstrated limited academic progress which should have been addressed through individual instruction. Newport-Mesa responded that Student did not require individual specialized academic instruction to receive a FAPE.

Student offered psychologist Shinn's unpersuasive testimony. Notably, Shinn did not testify that Student required individual specialized academic instruction. Rather, she believed that he required a one-to-one aide for prompting and redirection. Student did not present any persuasive evidence that he required individual specialized academic instruction at any point during the 2022-2023 school year.

The evidence established that Student did not require individual specialized academic instruction at any time during the 2022-2023 school year. The offer of specialized academic instruction in the March 14, 2023 IEP was reasonably calculated to provide Student educational benefit based on the information available to the IEP team at that time. Student did not prove he was denied a FAPE during the 2022-2023 school year, when Newport-Mesa did not offer individual specialized academic instruction.

ISSUE 2.h.i.-iii.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER SPECIALIZED ACADEMIC INSTRUCTION, SPEECH AND LANGUAGE SERVICES, AND OCCUPATIONAL THERAPY SERVICES DURING EXTENDED SCHOOL YEAR?

SPECIALIZED ACADEMIC INSTRUCTION

Student failed to prove that he required specialized academic instruction during the 2022-2023 ESY period. Shinn opined that Student required ESY services because he was not meeting his IEP goals and was regressing. However, Shinn explained that her opinion about Student regressing was that he had met fewer goals than in the previous school year. Shinn did not identify skills in which Student had regressed, but made unpersuasive generalizations based on her interpretation of Student's goal progress. Student did not establish that he demonstrated regression such that he met the criteria for ESY. (Cal. Code Regs., tit. 5, § 3043.)

Instead, special education teacher Ault credibly explained that Newport-Mesa did not offer ESY because staff did not believe Student would regress beyond his ability to recoup those skills within a reasonable time. Ault specifically described Student's skills following Newport-Mesa's winter break as an example of Student's ability to recoup lost skills over an extended break. Student failed to prove that he was denied a FAPE when Newport-Mesa did not offer him specialized academic instruction during the 2022-2023 school year's ESY period.

SPEECH AND LANGUAGE SERVICES

Student failed to prove that he required speech and language services during the 2022-2023 school year's ESY period. Speech and language pathologist Rosenberg opined that Student required speech and language services during the 2022-2023 school year's ESY period because, "[Student] did not meet any of the goals that were working on communication and pragmatic language." Rozenberg's stated reasoning behind her opinion was erroneous. Student met both of his previous goals.

Student's counsel seemingly recognized Rozenberg's error and attempted to rehabilitate her testimony with subsequent questioning. Even with this additional prompting, Rozenberg did not persuasively explain Student's need for speech and language services during the 2022-2023 school year's ESY period.

Student failed to prove that he was denied a FAPE when Newport-Mesa did not offer him speech and language services during the 2022-2023 school year's ESY period.

OCCUPATIONAL THERAPY SERVICES

Student failed to prove that he required occupational therapy services during the 2022-2023 school year's ESY period. As determined previously, Student failed to prove that he required occupational therapy services during the regular school year to receive a FAPE. Considering the purpose of ESY services is to prevent a student from regressing on progress made during the regular school year, Student did not require occupational therapy during ESY when he did not require it during the regular school year.

Student failed to prove that he was denied a FAPE when Newport-Mesa did not offer him occupational therapy services during the 2022-2023 school year's ESY period.

ISSUE 2.i.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO OFFER A SUFFICIENTLY SUPPORTIVE PLACEMENT?

Student claimed that he required a non-public school placement to receive a FAPE, because he was not meeting his IEP goals. Newport-Mesa asserted that Student did not require a non-public school placement to receive a FAPE.

Student again relied on psychologist Shinn's unpersuasive testimony. However, Shinn did not persuasively explain how a non-public school would have addressed Student's lack of progress on goals. In fact, New Vista did not work on Student's annual goals after Parents unilaterally placed him there.

For example, Student claimed that he did not meet his previous social skills goals. The evidence established that Student had struggled with social skills within the general education setting. For example, he would destroy peers' artwork during his general education art class. The evidence established that New Vista did not have any general education students. Therefore, placing him in a non-public school would remove Student's access to general education peers and prevent him from working on his social and emotional needs within the general education setting. Shinn previously opined that removing Student's Chromebook would prevent him from learning the skills necessary to appropriately use classroom technology. This same reasoning would apply to removing Student from the general education setting. Thus, Student's own expert's opinion undermined his argument for a non-public school placement.

Student failed to prove that he required a non-public school placement during the 2022-2023 school year, including ESY. Student did not establish that his unique needs could not be met within Newport-Mesa's offered placement at a less restrictive comprehensive school site, where he would have access to significant supports described previously, and the general education setting with typically developing peers. Student did not prove that he could not receive a FAPE in the placement offered by Newport-Mesa.

Student did not prove he was denied a FAPE during the 2022-2023 school year, including ESY, when Newport-Mesa did not offer a non-public school.

ISSUE 3.a.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, INCLUDING ESY, BY FAILING TO ENSURE THAT A SCHOOL PSYCHOLOGIST, OCCUPATIONAL THERAPIST, AND ADMINISTRATOR WERE PRESENT AT THE MAY 30, 2024 IEP TEAM MEETING?

SCHOOL PSYCHOLOGIST

Student failed to establish that a school psychologist was a required member of Student's IEP team at the May 30, 2024 IEP team meeting. (20 U.S.C., § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).) The purpose of the May 30, 2024 IEP team meeting was to review the speech and language independent educational evaluation, called the Speech and Language IEE, conducted by Rozenberg. This IEP team meeting was also a continuation of Student's annual review, which began on March 26, 2024. At that time, Student was in eighth grade and attending New Vista School after Parents unilaterally

placed him there in September 2023. There were no new assessments conducted by a school psychologist to be reviewed at this meeting. Student did not establish any other reason why a school psychologist was necessary.

Student again unpersuasively argued that a school psychologist was required to discuss Student's negative behaviors. Ault, Student's former special education teacher and a board-certified behavior analyst, was present at the May 30, 2024 IEP team meeting and authorized to address negative behaviors. (Ed. Code, § 56525, subd. (a); Cal. Code Regs., tit. 5, § 3051.23(a).) Thus, an individual able to address Student's negative behaviors was present at the May 30, 2024 IEP team meeting, and a school psychologist was not necessary.

Student also argued that a school psychologist was necessary for planning Student's transition to high school. However, Student did not prove that a school psychologist was uniquely authorized to plan such transitions, or that a school psychologist was necessary for the IEP team to plan for that transition.

Student failed to establish a procedural violation for school psychologist's non-attendance at the May 30, 2024 IEP team meeting. Even if, however, a school psychologist was a required member, no persuasive evidence was presented that the omission impeded the student's right to a FAPE; significantly impeded the parents' opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. Thus, Student did not prove that violation was a denial of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2006); Ed. Code, § 56505, subds. (f)(2) & (j); *Doug C.*, *supra*, 720 F.3d at pp. 1043, 1047.)

Therefore, Student failed to prove that he was denied a FAPE because a school psychologist was not present at the May 30, 2024 IEP team meeting.

OCCUPATIONAL THERAPIST

Student failed to establish that an occupational therapist was a required member of Student's IEP team at the May 30, 2024 IEP team meeting. (20 U.S.C., § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).) Student did not prove that occupational therapy services were discussed, or that there was an occupational therapy assessment reviewed at the May 30, 2024 IEP team meeting. Student did not establish any other reason why an occupational therapist was a required member of Student's May 30, 2024 IEP team.

Student failed to establish a procedural violation for an occupational therapist's non-attendance at the March 28, 2022, IEP team meeting. Even if, however, an occupational therapist was a required member, no persuasive evidence was presented that the omission impeded the student's right to a FAPE; significantly impeded the parents' opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. Thus, Student did not prove that violation was a denial of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2006); Ed. Code, § 56505, subds. (f)(2) & (j); *Doug C.*, *supra*, 720 F.3d at pp. 1043, 1047.)

Therefore, Student failed to prove that he was denied a FAPE due to the lack of an occupational therapist at the May 30, 2024 IEP team meeting.

ADMINISTRATOR

Student failed to establish that an administrator was not present at the March 14, 2023 IEP team meeting. During the hearing, Student conceded that Kim Doyle, a special education coordinator for Newport-Mesa, attended the IEP team meeting as the required administrator. Student failed to prove that he was denied a FAPE due to the lack of an administrator at the May 30, 2024 IEP team meeting.

ISSUES 3.b.i.-iv. AND 4.a.i.-iv.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM THE BEGINNING OF THE 2023-2024 SCHOOL YEAR THROUGH AUGUST 16, 2024, BY FAILING TO OFFER GOALS IN THE AREAS OF READING COMPREHENSION, SENSORY PROCESSING, FINE MOTOR SKILLS, AND VISUAL MOTOR SKILLS?

Issues 3 and 4 overlap significantly. Each of the sub-issues in Issue 4 corresponds with one of the sub-issues in Issue 3. Moreover, Issue 4 includes claims about various portions of the May 30, 2024 IEP, such that Student was denied a FAPE from the date of that IEP through August 16, 2024. Student's claims regarding the May 30, 2024 IEP are fully analyzed in Issue 3, and the analysis would be duplicative for Issue 4. The evidence established that there were no other IEP team meetings between May 30, 2024, and August 16, 2024. The evidence also established that the ESY period during the summer of 2024 lasted from June 17, 2024 to July 18, 2024. Because of the significant overlap between Issue 3 and 4 and the respective timeframes at issue, the overlapping sub-issues are analyzed together with a combined timeframe of the beginning of the 2023-2024 school year through August 16, 2024.

READING COMPREHENSION

Student claimed that Newport-Mesa should have offered him a reading comprehension goal in the March and May 2024 IEPs. Newport-Mesa responded Student did not demonstrate a need for a reading comprehension goal based on the information available to the IEP team at the March and May 2024 IEP team meetings.

Student failed to prove that Newport-Mesa should have offered such a goal, because the information available to Student's IEP team at the time of the March and May 2024 IEPs did not indicate that Student required a reading comprehension goal to receive a FAPE. (*Adams v. State of Oregon, supra*, 195 F.3d at p. 1149 [quoting *Fuhrmann v. East Hanover Bd. of Educ., supra*, 993 F.2d at p. 1036].)

Student had attended New Vista since September 2023. By the time of the March 26, 2024 IEP team meeting, Student had been placed outside of Newport-Mesa for most of the 2023-2024 school year. As a result, Newport-Mesa staff did not have updated personal knowledge of Student's educational needs and abilities. Nevertheless, Newport-Mesa was obligated to identify accurate present levels of performance as part of Student's March 26, 2024 annual review IEP.

In preparation for that IEP, Newport-Mesa staff took significant steps to secure this information. For example, special education teacher Ault, with support from other staff at Newport-Mesa, developed a questionnaire for New Vista staff, seeking updated information on Student's then-current present levels of performance. New Vista ultimately provided Newport-Mesa staff with limited information regarding Student's needs and abilities, including math, communication, and behavior. However, New Vista did not provide clear updated information on Student's reading and writing skills. Instead, Newport-Mesa staff received Student's report card from New Vista, which indicated that he received an "A-" in his language arts class. The report card indicated that class was modified, but did not explain how it was modified.

Ault also observed Student at New Vista. She observed Student's math and social skills classes. Ault did not observe Student's language arts class. Ault credibly explained that she wanted to observe Student more, but that she was not given

permission by New Vista. Because Ault was not able to observe Student engaging in reading and writing tasks, Newport-Mesa staff had to rely on the information they had when crafting annual goals in the March and May 2024 IEPs. That information included feedback from New Vista staff that Student had met the previous reading goals, and his report card grade in language arts for the first semester of the 2023-2024 school year. Based on that information, Newport-Mesa concluded that Student did not demonstrate the need for a reading comprehension goal in the March or May 2024 IEPs.

New Vista provided similarly sparse information on Student's math and writing present levels. However, Parents indicated that Student had math and writing needs and Newport-Mesa developed goals in those areas. The record did not establish that Parents raised similar concerns with reading comprehension or requested goals in that area. Rather, Parents raised concerns with Student's motivation to read beyond what was required for school. While parents are not required to request goals in the areas necessary for a student to receive a FAPE, the absence of Parents' or Student's counsel's request for a reading comprehension goal at either the March 26, 2024, or May 30, 2024 IEP team meeting supports Newport-Mesa's determination that such a goal was not necessary for Student to receive a FAPE.

Moreover, Student did not offer persuasive evidence at hearing that he required a reading comprehension goal to receive a FAPE. Student again offered psychologist Shinn's unpersuasive testimony that Student required a goal for "reading pacing." Shinn again made general allusions to unspecified teacher reports that she believed showed that Student would rush through reading assignments. Nevertheless, Student did not establish that "reading pacing" was a skill within the scope of reading comprehension, or that this purported weakness required a goal. (*Capistrano Unif. Sch. Dist. v. S.W.*, *supra*, 21 F.4th at p. 1133; *Los Angeles Unif. Sch. Dist. v. A.O.*, *supra*, 92 F.4th at 1172.

Student did not prove that he required a reading comprehension goal in the March 26, 2024, or May 30, 2024 IEPs or at any other time from the beginning of the 2023-2024 school year through August 16, 2024. Therefore, Student failed to prove he was denied a FAPE from the beginning of the 2023-2024 school year through August 16, 2024, due to the lack of a reading comprehension goal.

SENSORY PROCESSING SKILLS

Student argued that he had sensory processing skills deficits which required a goal. Newport-Mesa responded that Student did not require a sensory processing goal to receive a FAPE.

Student again relied on occupational therapist Roley's testimony to support his argument. Roley opined that Student demonstrated significant sensory processing needs which required goals and direct occupational therapy services.

Roley's opinion regarding Student's sensory processing needs during the 2023-2024 school year were based on an Occupational Therapy IEE she conducted with one of her colleagues, Dr. Kelly Auld-Wright, in January 2024. Auld-Wright did not testify and only Roley presented this report to Student's IEP team. As discussed below, this assessment did not provide reliable and complete information, which undermined the persuasiveness of Roley's testimony.

Despite recognizing the importance of observing a child in their classroom setting to better understand their sensory processing needs, Roley did not personally conduct any classroom observations of Student's then-current placement at New Vista,

or the placement proposed by Newport-Mesa. Rather, Roley relied on second-hand reporting from one of her associates who conducted a 15-minute-long observation of Student. This individual did not testify.

Several of the assessment tools did not provide reliable results. For example, Roley and Auld-Wright utilized three questionnaire-based assessment tools:

1. the Adaptive Behavior Assessment System, Third Edition;
2. the Sensory Processing Measure; and
3. the Behavioral Rating Inventory of Executive Functions, Second Edition.

Roley and Auld-Wright provided the response forms to Parent as well as New Vista. Roley credibly explained that the school forms should have been filled out by a teacher who was familiar with Student, such as a teacher who had Student for multiple class periods.

However, the school forms were completed by Juhi Sharma, the Director of New Vista, who conceded that she did not regularly work with Student. Rather, she interacted intermittently with Student, such as when addressing matters of school discipline and during a single week period when she assisted in teaching him a lesson on math fractions. Roley was unaware of Sharma's role at New Vista and assumed that she was Student's teacher. As such, Roley did not consider Sharma's limited interactions with Student when evaluating her responses to the questionnaires. Therefore, because Sharma was not a valid respondent for these assessment tools, the results and Roley's opinions which stemmed from them were significantly less persuasive.

Roley and Auld-Wright also conducted the Evaluation in Ayres Sensory Integration, to assess Student's sensory processing and other occupational therapy-related needs. However, this assessment tool was not validated for children of Student's age. Roley's report included a description of the Evaluation in Ayres Sensory Integration which explained that it had been norm-referenced for children between the ages of three and 12. However, at the time Roley assessed Student, he was 13 years and seven months old. Student was therefore outside the applicable age range.

Anthony Gallegos, a Newport-Mesa occupational therapist, credibly explained that assessment tools are generally not valid when used for individuals outside of the normed age range. Gallegos, who held the necessary license and credential to provide occupational therapy to students in California schools, raised this concern at the March 26, 2024 IEP team meeting where Roley reviewed her report with the rest of Student's IEP team. Nevertheless, Roley did not establish that the Evaluation in Ayres Sensory Integration was valid for Student given his age at the time the test was administered. Thus, the Evaluation in Ayres Sensory Integration also did not provide reliable results.

Roley did not seek or receive any input from Newport-Mesa staff who previously worked with Student. Roley only reviewed the March 2022 Multidisciplinary Report and a draft of the March 14, 2023 IEP while conducting the Occupational Therapy IEE. The lack of Newport-Mesa staff input and the minimal records review that did not include records from New Vista caused another absence of significant and relevant information.

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Roley's testimony was mostly solicited through leading questions. During cross examination, Roley was evasive and repeatedly reluctant to answer simple and direct questions. Overall, Roley's opinions regarding Student's occupational therapy needs, including sensory processing, were given little weight.

Student did not prove that he required goals in sensory processing skills. Rather, the evidence established the March 26, 2024, and May 30, 2024 IEPs included multiple accommodations to address Student's sensory processing needs. These accommodations were consistent with those offered in previous IEPs, and which had supported Student. Student did not prove that he required a sensory processing skills goal in the March 26, 2024, or May 30, 2024 IEPs or at any other time from the beginning of the 2023-2024 school year through August 16, 2024.

Therefore, Student failed to prove he was denied a FAPE from the beginning of the 2023-2024 school year through August 16, 2024, due to the lack of a sensory processing skills goal.

FINE MOTOR SKILLS

Student argued that he had fine motor skills deficits, specifically typing, which required a goal. Newport-Mesa responded that Student did not require a fine motor skills goal to receive a FAPE.

Student again relied on Roley's unpersuasive testimony. As explained previously, Roley's opinion regarding Student's needs during the 2023-2024 school year were based on an Occupational Therapy IEE, which did not provide reliable and complete information. Student did not prove that any typing deficits he had impacted his ability

to access his education. Rather, the evidence established that he could type 14 words per minute with 96% accuracy. Student did not prove that this typing skill was inadequate.

Student did not establish that fine motor skills was a need which required a goal at the time of the March 26, 2024, or May 30, 2024 IEPs or at any other time from the beginning of the 2023-2024 school year through August 16, 2024.

Therefore, Student failed to prove he was denied a FAPE from the beginning of the 2023-2024 school year through August 16, 2024 due to the lack of a fine motor skills goal.

VISUAL MOTOR SKILLS

Student argued that he had visual motor skills deficits, specifically handwriting, which required a goal. Newport-Mesa responded that Student did not require a visual motor skills goal to receive a FAPE.

Student again relied on Roley's unpersuasive testimony. As discussed previously, Roley's opinion regarding Student's needs during the 2023-2024 school year were based on an Occupational Therapy IEE, which did not provide reliable and complete information. Student did not prove that any visual motor skills deficits he had impacted his ability to access his education, such that he required a goal to receive a FAPE.

Student did not establish that visual motor skills was a need which required a goal at the time of the March 26, 2024, or May 30, 2024 IEPs or at any other time from the beginning of the 2023-2024 school year through August 16, 2024.

Therefore, Student failed to prove he was denied a FAPE from the beginning of the 2023-2024 school year through August 16, 2024 due to the lack of a fine motor skills goal.

ISSUES 3.c.i.-vi. AND 4.b.i.-vi.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM THE BEGINNING OF THE 2023-2024 SCHOOL YEAR THROUGH AUGUST 16, 2024, BY FAILING TO OFFER APPROPRIATELY AMBITIOUS GOALS THAT ADDRESSED ALL OF STUDENT'S NEEDS IN THE AREAS OF MATHEMATICS, SOCIAL SKILLS, EXECUTIVE FUNCTIONING, BEHAVIOR, COMMUNICATION, AND SELF-REGULATION?

MATHEMATICS

Student claimed that the March 26, 2024, and May 30, 2024 IEPs did not include appropriately ambitious goals that addressed all of Student's mathematics needs. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's mathematics needs.

The March 26, 2024, and May 30, 2024 IEPs included a total of 18 annual goals, including two math goals. Student did not offer persuasive evidence challenging Student's math goals or establishing other areas of math need in which Student required goals. Student also did not offer any persuasive argument or evidence that the mathematics goals offered were not appropriately ambitious in light of Student's circumstances. (*Endrew F.*, *supra*, 580 U.S. at p. 402.) Therefore, Student failed to

prove he was denied a FAPE from the beginning of the 2023-2024 school year through August 16, 2024, due to the lack of appropriately ambitious mathematics goals that addressed all of Student's needs.

SOCIAL SKILLS

Student claimed that the March 26, 2024, and May 30, 2024 IEPs did not include appropriately ambitious goals that addressed all of Student's social skills needs. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's social skills needs.

The March and May 2024 IEPs contained five social skills goals, including goals addressing Student's needs with appropriate conversation, using appropriate language, and repairing social breakdowns. Student did not offer persuasive evidence or argument that he had social skills needs or the need for additional goals at any time from the beginning of the 2023-2024 school year through August 16, 2024. In fact, Shinn conceded that the "exercising boundaries" goal was appropriate for Student and met his need.

Student also did not offer any persuasive argument or evidence that the social skills goals offered were not appropriately ambitious in light of Student's circumstances. (*Endrew F., supra*, 580 U.S. at p. 402.) Student failed to prove he was denied a FAPE from the beginning of the 2023-2024 school year through August 16, 2024, due to the lack of appropriately ambitious social skills goals that addressed all of Student's needs.

EXECUTIVE FUNCTIONING

Student argued that the goals offered in the March 26, 2024 and May 30, 2024 IEPs did not fully address his executive functioning needs. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's executive functioning needs.

Psychologist Shinn provided a conclusory opinion that attention was still a concern and that there was not an attention goal in the IEP. However, the March and May 2024 IEPs included multiple goals organized under "Behavior" that addressed Student's attention needs.

One example was the goal entitled "Appropriate Technology Use." This goal required Student to remain on task for the duration of an activity. The March and May 2024 IEPs also included a goal entitled "On Task Behavior." This goal also called for Student to remain on task during educational activities and was developed in response to concerns with Student's difficulties with sustained attention.

Student did not offer persuasive argument or evidence that the executive functioning goals offered were not appropriately ambitious in light of Student's circumstances. (*Endrew F., supra*, 580 U.S. at p. 402.)

Therefore, Student failed to prove he was denied a FAPE from the beginning of the 2023-2024 school year through August 16, 2024, due to the lack of appropriately ambitious executive functioning goals that addressed all of Student's needs.

BEHAVIOR AND SELF-REGULATION

Student claimed that the goals offered in the March 26, 2024, and May 30, 2024 IEPs did not fully address his behavior and self-regulation needs. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's behavior and self-regulation needs.

Student did not offer persuasive evidence or argument that the offered goals did not meet his needs or were not appropriately ambitious in light of Student's circumstances. (Endrew F., *supra*, 580 U.S. at p. 402.) Student failed to prove he was denied a FAPE from the beginning of the 2023-2024 school year through August 16, 2024, due to the lack of appropriately ambitious behavior and self-regulation goals that addressed all of Student's needs.

COMMUNICATION

Student claimed that the communication goals offered in the March 26, 2024, and May 30, 2024 IEPs did not fully address all of Student's communication needs. Newport-Mesa responded that it offered appropriately ambitious goals to address Student's communication needs.

Student offered speech and language pathologist Rozenberg's unpersuasive testimony. Rozenberg opined that goal entitled "Calmly Share Frustrations" should have had a speech and language pathologist assigned as a person responsible for implementing the goal. Rozenberg offered a similar critique of the goal entitled "Self Talk Validation." Rozenberg's opinion was not persuasive. Student had previously met these goals without the support of a speech and language pathologist. Newport-Mesa offered these goals again in the March and May 2024 IEPs because Student's skills in

these areas had regressed since Parents placed him at New Vista. Rozenberg did not appear to be aware of Student's history with these goals, despite offering opinions on the previous IEPs which contained those goals.

Rozenberg also critiqued the wording of multiple goals in the March and May 2024 IEPs, indicating that she would have written them differently. Student did not establish that Rozenberg's suggested edits were necessary, that the goals did not meet Student's needs, or were not appropriately ambitious.

The evidence established that the March and May 2024 IEPs included four communication goals that addressed Student's needs in the areas of figurative language, making inferences, interpreting nonverbal language, and semantics. These goals adequately addressed Student's communication needs and were appropriately ambitious in light of Student's circumstances. (*Endrew F., supra*, 580 U.S. at p. 402.)

Therefore, Student failed to prove he was denied a FAPE from the beginning of the 2023-2024 school year through August 16, 2024, due to the lack of appropriately ambitious communications goals that addressed all of Student's needs.

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ISSUE 3.d. AND 4.c.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM THE BEGINNING OF THE 2023-2024 SCHOOL YEAR THROUGH AUGUST 16, 2024, BY FAILING TO OFFER A ONE-TO-ONE AIDE DURING THE REGULAR SCHOOL YEAR?

Student claimed that he required a one-to-one aide to receive a FAPE. Newport-Mesa replied that Student did not require a one-to-one aide to receive a FAPE.

Student did not prove that he required a one-to-one aide at any time from the beginning of the 2023-2024 school year through August 16, 2024. Student offered psychologist Shinn's unpersuasive testimony. Shinn opined that Student required a one-to-one aide, based on what she believed were his successes at New Vista, which included one-to-one aide support. As explained previously, the law does not compare a parent's chosen program and a school district's offered program to determine which provides more benefit. (*Gregory K., supra*, 811 F.2d at 1314-15 [citing *Burlington, supra*, 471 U.S. 359].)

Even if the law supported Shinn's analysis, the record did not establish that Student was more successful with a one-to-one aide. For example, Shinn believed that the one-to-one aide had been supportive in reducing Student's negative behaviors. However, the evidence established that Student engaged in significant negative behaviors during the 2023-2024 school year while at New Vista. New Vista Director Sharma explained that most of her interactions with Student were when he was removed from class due to negative behaviors when his aide was unable to adequately support him. She explained these incidents occurred frequently, at times daily.

Student's maladaptive behaviors increased while at New Vista. As reflected in the March 26, 2024 IEP, Student no longer demonstrated adequate skills for calmly sharing frustrations and engaging in validating self-talk. Student had previously met these goals as reflected in the March 14, 2023 IEP. Student did not reconcile this significant increase in maladaptive behaviors with his argument that a one-to-one aide helped his behavior.

The evidence established that Student's needs could be met in the offered program at Newport-Mesa. Newport-Mesa staff, including Student's previous special education teacher Ault, universally and credibly testified that Student did not require a one-to-one aide to receive a FAPE. The program offered by Newport-Mesa was highly structured and included a low student to staff ratio. An observation conducted by one of Shinn's associates showed that the history class Student would have been placed in consisted of nine students, a teacher, and two instructional aides. The English language arts classroom consisted of seven students, Ault, two instructional aides, a school nurse, and four one-to-one aides assigned to specific children.

While the record was unclear whether this observation reflected the complete attendance of the students assigned to these classrooms, Ault credibly explained that her classroom did not have more than 15 students and was typically staffed by herself and two instructional aides. Student did not prove that this program could not meet his needs, such that he required additional one-to-one adult support.

Student did not prove that he required a one-to-one aide to receive a FAPE at any time from the beginning of the 2023-2024 school year through August 16, 2024. Therefore, Student failed to prove he was denied a FAPE from the beginning of the 2023-2024 school year through August 16, 2024, when Newport-Mesa did not offer him a one-to-one aide.

ISSUE 3.e. AND 4.d.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM THE BEGINNING OF THE 2023-2024 SCHOOL YEAR THROUGH AUGUST 16, 2024, BY FAILING TO OFFER SUFFICIENT OCCUPATIONAL THERAPY SERVICES DURING THE REGULAR SCHOOL YEAR?

Student claimed that he required more occupational therapy services than offered by Newport-Mesa in the March 26, 2024, and May 30, 2024 IEPs. Specifically, Student argued that he required 60 minutes per week of individual occupational therapy services in a separate setting, in addition to the 30 minutes per month of consultation services offered by Newport-Mesa. Newport-Mesa responded that Student did not require additional occupational therapy services to receive a FAPE.

As discussed earlier, Student did not prove that he had educational needs in the areas of fine motor skills, visual motor skills, or sensory processing that required goals in the March 26, 2024, or May 30, 2024 IEPs, or at any other time from the beginning of the 2023-2024 school year through August 16, 2024. Student's failure to prove that he required these goals to receive a FAPE, undermined his argument for additional occupational therapy services. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

Student's failure to prove the need for occupational therapy goals notwithstanding, Student did not prove that he required additional occupational therapy services in the March 26, 2024, or May 30, 2024 IEPs or at any other time from the beginning of the 2023-2024 school year through August 16, 2024.

Student offered occupational therapist Roley's vague, conclusory, and unpersuasive opinion that Student required additional occupational therapy services. Roley relied on her Occupational Therapy IEE, which she presented to Student's IEP team on March 26, 2024. As explained previously, Roley's report lacked significant relevant information, and included assessment tools which did not produce reliable results. Roley's opinions based on the results of the Occupational Therapy IEE were not persuasive.

Student did not prove that he required additional occupational therapy services from the beginning of the 2023-2024 school year through August 16, 2024, to receive a FAPE. Therefore, Student did not prove he was denied a FAPE when Newport-Mesa did not offer him additional occupational therapy services from the beginning of the 2023-2024 school year through August 16, 2024.

ISSUE 3.f. AND 4.e.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM THE BEGINNING OF THE 2023-2024 SCHOOL YEAR THROUGH AUGUST 16, 2024, BY FAILING TO OFFER SUFFICIENT SPEECH AND LANGUAGE SERVICES DURING THE REGULAR SCHOOL YEAR?

Student claimed that he required more speech and language services than what Newport-Mesa offered in the March 26, 2024 and May 30, 2024 IEPs. Newport-Mesa responded that Student did not require additional speech and language services to receive a FAPE.

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Student again offered speech and language pathologist Rozenberg's testimony. She again opined that Student required two 30-minute group speech and language service sessions per week. Rozenberg explained that her opinion was based on her belief that Student required additional speech and language goals, and by extension required additional services to meet those goals.

Student did not prove that he required additional speech and language goals to receive a FAPE, thus undermining his argument for additional speech and language services. (Cal. Code Regs., tit. 5, § 3040, subd. (b).) Student's failure to prove the need for additional speech and language goals notwithstanding, Rozenberg's opinions that Student required additional speech and language services were not persuasive.

For example, Rozenberg explained that there were seven goals to which a speech and language pathologist was assigned. She believed that more than the 30 minutes per week of direct group services and 60 minutes per month of consultation were needed to address those goals.

Rozenberg's opinion was not persuasive. Rozenberg failed to recognize that a speech and language pathologist was not exclusively assigned to five of the seven identified goals. For those five goals, the speech and language pathologist shared responsibility with a special education teacher. Throughout her testimony, Rozenberg opined that a speech and language pathologist was necessary to address any goals that involved Student's use of language. However, Student did not prove that he required a speech and language pathologist to implement the goals Rozenberg critiqued. (*Crofts v. Issaquah Sch. Dist. No. 411, supra*, 22 F.4th at 1056-57 [citing *R.P. ex rel. C.P. v. Prescott Unif. Sch. Dist., supra*, 631 F.3d at 1122].)

Student did not establish that the offered services were insufficient. In previous school years, Student had met two speech and language goals with 30 minutes per week of service. Thus, the evidence established that 30 minutes per week of service was reasonably calculated to allow Student to meet two goals assigned to only a speech and language pathologist. The additional consultation was reasonably calculated to address the other five goals, considering shared responsibility with the special education teacher.

Student did not prove that he required additional speech and language services from the beginning of the 2023-2024 school year through August 16, 2024, to receive a FAPE. Therefore, Student did not prove he was denied a FAPE when Newport-Mesa did not offer him additional speech and language services from the beginning of the 2023-2024 school year through August 16, 2024.

ISSUES 3.g. AND 4.f.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM THE BEGINNING OF THE 2023-2024 SCHOOL YEAR THROUGH AUGUST 16, 2024, BY FAILING TO OFFER SUFFICIENT INDIVIDUAL SPECIALIZED ACADEMIC INSTRUCTION?

Student claimed that he required individual specialized academic instruction services to receive a FAPE. Student argued that he demonstrated limited academic progress which should have been addressed through individual instruction. Newport-Mesa responded that Student did not require individual specialized academic instruction to receive a FAPE.

Student offered psychologist Shinn's unpersuasive testimony. As with previous school years, Shinn did not testify that Student required individual specialized academic instruction. Rather, she believed that he required a one-to-one aide for prompting and

redirection. Student also tied his argument for individual instruction to his need for placement at New Vista. However, Sharma explained that New Vista did not provide individual instruction to students. Student did not reconcile this contradiction. Student did not present persuasive evidence that he required individual specialized academic instruction at any point from the beginning of the 2023-2024 school year through August 16, 2024.

The evidence established that Student did not require individual specialized academic instruction at any time from the beginning of the 2023-2024 school year through August 16, 2024. Rather, the offer of specialized academic instruction in the March and May 2024 IEPs was reasonably calculated to provide Student educational benefit based on the information available to the IEP team at that time.

Therefore, Student did not prove he was denied a FAPE from the beginning of the 2023-2024 school year through August 16, 2024, when Newport-Mesa did not offer individual specialized academic instruction.

ISSUES 3.h. AND 4.g.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM THE BEGINNING OF THE 2023-2024 SCHOOL YEAR THROUGH AUGUST 16, 2024, BY FAILING TO OFFER OCCUPATIONAL THERAPY SERVICES DURING ESY?

Student claimed that Newport-Mesa did not offer him occupational therapy services during the 2023-2024 school year's ESY period. However, the May 30, 2024 IEP, which was the last IEP convened prior to the end of the 2023-2024 regular school year, included occupational therapy services during the ESY period. No other IEP team

meetings occurred between May 30, 2024, and August 16, 2024, and the ESY period lasted from June 17, 2024, to July 18, 2024. Thus, the relevant IEP offer for the ESY period over the summer of 2024 included occupational therapy services.

Student failed to prove he was denied a FAPE from the beginning of the 2023-2024 school year through August 16, 2024, due to the lack of occupational therapy services during the 2023-2024 school year's ESY period.

ISSUES 3.i. AND 4.h.: DID NEWPORT-MESA UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE FROM THE BEGINNING OF THE 2023-2024 SCHOOL YEAR THROUGH AUGUST 16, 2024, BY FAILING TO OFFER A SUFFICIENTLY SUPPORTIVE PLACEMENT?

Student claimed that he required a more supportive placement, namely a non-public school, to receive a FAPE. Newport-Mesa responded that Student did not require a non-public school placement to receive a FAPE.

Student again offered psychologist Shinn's unpersuasive testimony. Shinn opined that Student made progress at New Vista on goals developed by Newport-Mesa, when he did not make progress in a Newport-Mesa program. She further opined that Newport-Mesa should have compared Student's progress on goals at New Vista compared with his progress at a Newport-Mesa program. However, the law does not compare a parent's chosen placement and a school district's offered placement to determine which provides more benefit. (*Gregory K.*, *supra*, 811 F.2d at 1314-15 [citing *Burlington*, *supra*, 471 U.S. 359].)

Even assuming such a comparison was proper, Shinn's opinion that Student made more progress on his goals at New Vista was incorrect. Student met more goals at the time of his March 14, 2023 annual review than he had at his March 26, 2024 annual review. He also regressed in his skills while at New Vista, no longer meeting four goals that he previously had met at Newport-Mesa. Even by Shinn's erroneous standard, Student made less progress at New Vista than he did at Newport-Mesa.

Shinn also opined that Student was meeting grade-level standards at New Vista. Shinn explained her interpretation of Student's report card from the 2023-2024 school year as showing Student was "making progress and earning grades at grade level" However, Shinn's interpretation of Student's grades was not accurate.

New Vista's Director Sharma explained that the grades reported on Student's report card were not reflective of Student's achievement of grade-level standards. Rather, the grades reflected Student's accomplishments based on his needs. Sharma further explained that Student was enrolled in the same math class during the 2024-2025 school year that he had taken in the 2023-2024 school year, because Student had failed that math class. Sharma did not credibly or persuasively explain how Student earned passing math grades during the 2023-2024 school year but needed to repeat the same math class during the 2024-2025 school year.

Sharma conceded that Student was not working at grade-level standards in other classes, such as U.S. History, which was modified to between the fourth- and fifth-grade level. Student's language arts class was also modified. Thus, Student's report card provided a false impression of Student's achievement. Shinn's critical misunderstanding of Student's report card further undermined the persuasiveness of her testimony, and Student's overall argument.

Student failed to prove that he required a non-public school placement to receive a FAPE from the start of the 2023-2024 school year to August 16, 2024. Student did not establish that his unique needs could not be adequately met within Newport-Mesa's offered placement at a less restrictive comprehensive school site, where he would have access to significant supports, as well as the general education setting and typically developing peers.

Therefore, Student failed to prove that he was denied a FAPE from the start of the 2023-2024 school year to August 16, 2024, when Newport-Mesa did not offer him a non-public school placement.

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.a.:

Newport-Mesa did not deny Student a FAPE from March 22, 2022, through the end of the 2021-2022 school year, including ESY, by failing to ensure that an administrator was present at the March 24, 2022 IEP team meeting.

Newport-Mesa prevailed on Issue 1.a.

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ISSUE 1.b.:

Newport-Mesa did not deny Student a FAPE from March 22, 2022, through the end of the 2021-2022 school year, including ESY, by failing to ensure that a school psychologist, adapted physical education teacher, and administrator were present at the March 28, 2022 IEP team meeting.

Newport-Mesa prevailed on Issue 1.b.

ISSUE 1.c.:

Newport-Mesa did not deny Student a FAPE from March 22, 2022, through the end of the 2021-2022 school year, including ESY, by failing to ensure that a school psychologist was present at the May 5, 2022 IEP team meeting.

Newport-Mesa prevailed on Issue 1.c.

ISSUE 1.d.i.-iv.:

Newport-Mesa did not deny Student a FAPE from March 22, 2022, through the end of the 2021-2022 school year, including ESY, by failing to offer goals in the areas of executive functioning, sensory processing, fine motor skills, and visual motor skills.

Newport-Mesa prevailed on Issue 1.d.i.-iv.

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ISSUE 1. e.i.-vi.:

Newport-Mesa did not deny Student a FAPE from March 22, 2022, through the end of the 2021-2022 school year, including ESY, by failing to offer appropriately ambitious goals that addressed all of Student's needs in the areas of reading comprehension, mathematics, social skills, behavior, self-regulation, and communication.

Newport-Mesa prevailed on Issue 1.e.i.-vi.

ISSUE 1.f.:

Newport-Mesa did not deny Student a FAPE from March 22, 2022, through the end of the 2021-2022 school year, including ESY, by failing to offer a one-to-one aide during the regular school year.

Newport-Mesa prevailed on Issue 1.f.

ISSUE 1.g.:

Newport-Mesa did not deny Student a FAPE from March 22, 2022, through the end of the 2021-2022 school year, including ESY, by failing offer occupational therapy services during the regular school year.

Newport-Mesa prevailed on Issue 1.g.

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ISSUE 1.h.:

Newport-Mesa did not deny Student a FAPE from March 22, 2022, through the end of the 2021-2022 school year, including ESY, by failing offer sufficient speech and language services during the regular school year.

Newport-Mesa prevailed on Issue 1.h.

ISSUE 1.i.:

Newport-Mesa did not deny Student a FAPE from March 22, 2022, through the end of the 2021-2022 school year, including ESY, by failing offer sufficient individual specialized academic instruction during the regular school year.

Newport-Mesa prevailed on Issue 1.i.

ISSUE 1.j.i.-iii.:

Newport-Mesa did not deny Student a FAPE from March 22, 2022, through the end of the 2021-2022 school year, including ESY, by failing to offer specialized academic instruction, speech and language services, and occupational therapy services during ESY.

Newport-Mesa prevailed on Issue 1.j.i.-iii.

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ISSUE 1.k.:

Newport-Mesa did not deny Student a FAPE from March 22, 2022, through the end of the 2021-2022 school year, including ESY, by failing to offer a sufficiently supportive placement.

Newport-Mesa prevailed on Issue 1.k.

ISSUE 2.a.:

Newport-Mesa did not deny Student a FAPE during the 2022-2023 school year, including ESY, by failing to ensure that a school psychologist, occupational therapist, and adapted physical education teacher were present at the March 14, 2023 IEP team meeting.

Newport-Mesa prevailed on Issue 2.a.

ISSUE 2.b.i.-v.:

Newport-Mesa did not deny Student a FAPE during the 2022-2023 school year, including ESY, by failing to offer goals in the communication, sensory processing, self-regulation, fine motor skills, and visual motor skills.

Newport-Mesa prevailed on Issue 2.b.i.-v.

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ISSUE 2.c.i.-v.:

Newport-Mesa did not deny Student a FAPE during the 2022-2023 school year, including ESY, by failing to offer appropriately ambitious goals that addressed all of Student's needs in the areas of reading comprehension, mathematics, social skills, behavior, and executive functioning.

Newport-Mesa prevailed on Issue 2.c.i.-v.

ISSUE 2.d.:

Newport-Mesa did not deny Student a FAPE during the 2022-2023 school year, including ESY, by failing to offer a one-to-one aide during the regular school year.

Newport-Mesa prevailed on Issue 2.d.

ISSUE 2.e.:

Newport-Mesa did not deny Student a FAPE during the 2022-2023 school year, including ESY, by failing to offer occupational therapy services during the regular school year.

Newport-Mesa prevailed on Issue 2.e.

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ISSUE 2.f.:

Newport-Mesa did not deny Student a FAPE during the 2022-2023 school year, including ESY, by failing to offer sufficient speech and language services during the regular school year.

Newport-Mesa prevailed on Issue 2.f.

ISSUE 2.g.:

Newport-Mesa did not deny Student a FAPE during the 2022-2023 school year, including ESY, by failing to offer sufficient individual specialized academic instruction during the regular school year.

Newport-Mesa prevailed on Issue 2.g.

ISSUE 2.h.i.-iii.:

Newport-Mesa did not deny Student a FAPE during the 2022-2023 school year, including ESY, by failing to offer specialized academic instruction, speech and language services, and occupational therapy services during ESY.

Newport-Mesa prevailed on Issue 2.h.i.-iii.

ISSUE 2.i.:

Newport-Mesa did not deny Student a FAPE during the 2022-2023 school year, including ESY, by failing to offer a sufficiently supportive placement.

Newport-Mesa prevailed on Issue 2.i.

ISSUE 3.a.:

Newport-Mesa did not deny Student a FAPE during the 2023-2024 school year, including ESY, by failing to ensure that a school psychologist, occupational therapist, and administrator were present at the May 30, 2024 IEP team meeting.

Newport-Mesa prevailed on Issue 3.a.

ISSUE 3.b.i.-iv.:

Newport-Mesa did not deny Student a FAPE during the 2023-2024 school year, including ESY, by failing to offer goals in reading comprehension, sensory processing, fine motor skills, and visual motor skills.

Newport-Mesa prevailed on Issue 3.b.i.-iv.

ISSUE 3. c.i.-vi.:

Newport-Mesa did not deny Student a FAPE during the 2023-2024 school year, including ESY, by failing to offer appropriately ambitious goals that addressed all of Student's needs in mathematics, social skills, executive functioning, behavior, communication, and self-regulation.

Newport-Mesa prevailed on Issue 3.c.i.-vi.

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ISSUE 3.d.:

Newport-Mesa did not deny Student a FAPE during the 2023-2024 school year, including ESY, by failing to offer a one-to-one aide during the regular school year.

Newport-Mesa prevailed on Issue 3.d.

ISSUE 3.e.:

Newport-Mesa did not deny Student a FAPE during the 2023-2024 school year, including ESY, by failing to offer sufficient occupational therapy services during the regular school year.

Newport-Mesa prevailed on Issue 3.e.

ISSUE 3.f.:

Newport-Mesa did not deny Student a FAPE during the 2023-2024 school year, including ESY, by failing to offer sufficient speech and language services during the regular school year.

Newport-Mesa prevailed on Issue 3.f.

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ISSUE 3.g.:

Newport-Mesa did not deny Student a FAPE during the 2023-2024 school year, including ESY, by failing to offer sufficient individual specialized academic instruction during the regular school year.

Newport-Mesa prevailed on Issue 3.g.

ISSUE 3.h.:

Newport-Mesa did not deny Student a FAPE during the 2023-2024 school year, including ESY, by failing to offer occupational therapy services during ESY.

Newport-Mesa prevailed on Issue 3.h.

ISSUE 3.i.:

Newport-Mesa did not deny Student a FAPE during the 2023-2024 school year, including ESY, by failing to offer a sufficiently supportive placement.

Newport-Mesa prevailed on Issue 3.i.

ISSUE 4.a.i.-iv.:

Newport-Mesa did not deny Student a FAPE from the beginning of the 2024-2025 school year through August 16, 2024, by failing to offer, in the May 30, 2024 IEP, goals in reading comprehension, sensory processing, fine motor skills, and visual motor skills.

Newport-Mesa prevailed on Issue 4.a.i.-iv.

ISSUE 4.b.i.-vi.:

Newport-Mesa did not deny Student a FAPE from the beginning of the 2024-2025 school year through August 16, 2024, by failing to offer, in the May 30, 2024 IEP, appropriately ambitious goals that addressed all of Student's needs in mathematics, social skills, executive functioning, behavior, communication, and self-regulation.

Newport-Mesa prevailed on Issue 4.b.i.-vi.

ISSUE 4.c.:

Newport-Mesa did not deny Student a FAPE from the beginning of the 2024-2025 school year through August 16, 2024, by failing to offer, in the May 30, 2024 IEP, a one-to-one aide during the regular school year.

Newport-Mesa prevailed on Issue 4.c.

ISSUE 4.d.:

Newport-Mesa did not deny Student a FAPE from the beginning of the 2024-2025 school year through August 16, 2024, by failing to offer, in the May 30, 2024 IEP, sufficient occupational therapy services during the regular school year.

Newport-Mesa prevailed on Issue 4.d.

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ISSUE 4.e.:

Newport-Mesa did not deny Student a FAPE from the beginning of the 2024-2025 school year through August 16, 2024, by failing to offer, in the May 30, 2024 IEP, sufficient speech and language services during the regular school year.

Newport-Mesa prevailed on Issue 4.e.

ISSUE 4.f.:

Newport-Mesa did not deny Student a FAPE from the beginning of the 2024-2025 school year through August 16, 2024, by failing to offer, in the May 30, 2024 IEP, sufficient individual specialized academic instruction during the regular school year.

Newport-Mesa prevailed on Issue 4.f.

ISSUE 4.g.:

Newport-Mesa did not deny Student a FAPE from the beginning of the 2024-2025 school year through August 16, 2024, by failing to offer, in the May 30, 2024 IEP, occupational therapy services during the ESY.

Newport-Mesa prevailed on Issue 4.g.

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ISSUE 4.h.:

Newport-Mesa did not deny Student a FAPE from the beginning of the 2024-2025 school year through August 16, 2024, by failing to offer, in the May 30, 2024 IEP, a sufficiently supportive placement.

Newport-Mesa prevailed on Issue 4.h.

ORDER

- a. Student did not prevail on any issues.
- b. All of Student's requested relief is denied.

RIGHT TO APPEAL THIS DECISION

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

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings