

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

THE CONSOLIDATED MATTERS INVOLVING:
PARENT ON BEHALF OF STUDENT, AND
SNOWLINE JOINT UNIFIED SCHOOL DISTRICT

CASE NO. 2023110431

CASE NO. 2024010262

DECISION

MARCH 22, 2024

On November 14, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student naming Snowline Joint Unified School District, called Snowline, in case number 2023110431. On January 9, 2024, OAH received a due process hearing request from Snowline naming Student in case number 2024010262. On January 12, 2024, OAH consolidated the two cases, and identified Student's case as the primary case for determining statutory deadlines.

Administrative Law Judge Jennifer Kelly heard this matter by videoconference on January 23, 24, 25, 30, and 31, and February 1, 2024.

Attorneys Robert Burgermeister and Constance Zarkowski represented Student. Attorney Sheila Bayne attended the morning session of day 1 of the hearing. Parent attended all hearing days on Student's behalf. Attorney Danielle Gigli represented Snowline. Pamela DeRenard, Snowline's Director of Student Support Services, attended all hearings days on its behalf, except for the afternoon of February 1, 2024. Snowline's Superintendent Ryan Holman attended the hearing on the afternoon of February 1, 2024. Sheila Parisian, Coordinator for Due Process and Compliance for the Desert Mountain Special Education Local Plan Area, called SELPA, attended all hearing days on Snowline's behalf.

At the parties' request, the matter was continued to February 26, 2024, for written closing briefs. The record was closed, and the matter was submitted on February 26, 2024.

ISSUES

A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

On the second day of hearing, Student withdrew Issue 1 relating to a bus incident, Issue 2(b) regarding Snowline's failure to offer extended school year services, and Issue 3(b) regarding Snowline's failure to assess Student in functional behavior, as stated in the Order Following Prehearing Conference for Hearing by Videoconference dated January 12, 2024, called PHC Order. The remaining issues for hearing, as clarified on the first day of hearing and reflected on the record, are stated below. Following the hearing, Issue 1 was split into separate issues for clarity to analyze and distinguish a September 9, 2022 IEP, and a November 28, 2022 IEP. Issue 3 was separated into

sub-issues to separately analyze claims relating to implementation of behavior intervention services in a September 9, 2022 IEP, and a November 28, 2022 IEP. No change in substance has been made. The issues set forth in the PHC Order were renumbered to reflect these changes. (See *J.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified Sch. Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090; but see *M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].)

STUDENT'S ISSUES

1. Did Snowline deny Student a FAPE in a September 9, 2022 IEP, by:
 - a. failing to address Student's regression;
 - b. failing to offer home and clinic based applied behavior analysis services;
 - c. failing to offer parent training in behavior and speech and language;
 - d. failing to offer placement in the least restrictive environment; and
 - e. predetermining Student's placement offer?
2. Did Snowline deny Student a FAPE in a November 28, 2022 IEP, by:
 - a. failing to address Student's regression;
 - b. failing to offer home and clinic based applied behavior analysis services;
 - c. failing to offer parent training in behavior and speech and language;
 - d. failing to offer placement in the least restrictive environment; and
 - e. predetermining Student's placement offer?

3. Did Snowline deny Student a FAPE during the 2022-2023 school year by:
 - a. failing to implement behavior intervention services offered in the September 9, 2022 IEP;
 - b. failing to implement behavior intervention services offered in the November 28, 2022 IEP, and
 - c. improperly restraining Student by untrained staff and failing to notify Parent of the incident?

SNOWLINE'S ISSUE

4. Did Snowline's December 7, 2023 IEP, offer Student a FAPE in the least restrictive environment such that Snowline may implement the IEP without parental consent?

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.) All

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future references to the Code of Federal Regulations are to the 2006 version. 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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected.
(20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6), (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this consolidated matter, Student and Snowline each had the burden of proof as to their respective issues. 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 eight years old and in third grade at the time of the hearing. Student resided with her adoptive parent, called Parent, until approximately April 2023, when she was removed from Parent's custody by San Bernardino Child and Family Services. At the time of hearing, Student remained in foster care and attended Joshua Circle Elementary School operated by the San Bernardino County Superintendent of Schools, called San Bernardino. Student qualified for special education under the categories of other health impairment, speech and language impairment, and autism.

ISSUES 1(a) THROUGH 1(e): APPROPRIATENESS OF FAPE OFFER IN THE SEPTEMBER 9, 2022 IEP

Student contends Snowline denied her a FAPE in a September 9, 2022 IEP, by failing to address regression in academics and behavior, and failing to offer home and clinic based applied behavior analysis services, parent training in behavior and speech and language, and placement in the least restrictive environment. Student further contends the placement offer in the September 9, 2022 IEP, was predetermined.

Snowline contends the parties entered into a settlement agreement with an effective date of October 11, 2022, pertaining to an earlier filed OAH due process complaint. Snowline further contends Parent waived all of Student's claims related to the September 9, 2022 IEP, including whether it offered Student a FAPE, and anything related to Snowline's conduct and omissions through October 11, 2022.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C.

§§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.) In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate considering the child's circumstances. (*Board of Education of the Hendrick Hudson Central Sch. 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.*))

Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) and (b) [in California, related services are also called designated instruction and services].)

In determining whether an educational program constituted a FAPE, a court must conduct a two-part inquiry. First, the court must decide whether the school district complied with the procedures under the IDEA, and second, whether the IEP developed and offered to a student pursuant to those procedures was reasonably calculated to enable the child to receive educational benefit appropriate considering the child's circumstances. (*Rowley, supra*, 458 U.S. 176, 206-207; *Endrew F., supra*, 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

To meet its substantive obligation under the IDEA, a school district must offer an IEP reasonably calculated to enable a child to make progress appropriate in view of the child's circumstances. (*Endrew F.*, *supra*, 580 U.S. 386, 399.) The IDEA does not require a school district to provide an eligible child with every special education service necessary to maximize the child's potential. (*Rowley*, *supra*, 458 U.S. 176, 201.) An appropriate education does not mean the absolute best education or a potential-maximizing education for the disabled child. (*Id.* at p. 197, n. 21.)

An IEP is evaluated based on information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP is a snapshot, not a retrospective. (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041 (*Fuhrmann*).) It must be developed in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

SEPTEMBER 9, 2022 IEP AND STUDENT'S WAIVER OF CLAIMS

The first day of instruction for the 2022-2023 school year was August 11, 2022. Student did not attend school between August 11, 2022, and October 4, 2022. Neither party offered evidence regarding the reasons for Student's absences during this period. On March 11, 2022, Parent filed a due process hearing request naming Snowline in OAH case number 2022030433. The case was still pending at the start of the 2022-2023 school year. That case involved, among other issues, Parent's allegations that Snowline denied Student a FAPE by failing to assess Student in all areas of suspected disability

and provide Student a one-to-one aide during transportation to and from school. The complaint alleged Student was not properly supervised during transportation, which prevented Student from attending school in September and October 2021.

Student's operative IEP at the start of the 2022-2023 school year was a September 9, 2022 IEP, to which Parent provided written consent on September 26, 2022. Student was eligible for special education under the categories of other health impairment, speech and language impairment, and autism. Student had needs in

- math,
- language arts,
- fine motor,
- behavior, and
- speech and language.

She required a small group setting outside the general education setting to remediate her academic, communication, fine motor, and behavioral deficits. The September 9, 2022 IEP contained 11 goals in

- English language arts,
- mathematics,
- behavior,
- fine motor, and
- speech and language.

The IEP provided a variety of program accommodations to enable Student to advance appropriately towards attaining her IEP goals. Those accommodations included visual

timers and schedules, verbal prompts and modeling of appropriate behavior, regular breaks, and access to sensory items. To help Student achieve her goals, the IEP offered Student:

- specialized academic instruction for 1,560 minutes weekly in a special day class setting;
- a one-to-one behavior aide through a non-public agency;
- daily transportation to and from school;
- 120 minutes monthly occupational therapy services delivered in two, 30-minute sessions through a pull-out model, and two, 30-minute sessions through a push-in model; and
- 30 minutes of group speech and language services delivered four times monthly, and 30 minutes of individual speech and language services four times monthly.

Parent and Snowline resolved their dispute in OAH case number 2022030433 and signed a general release and settlement agreement on October 11, 2022. Parent was represented by an attorney in that OAH case, including in the negotiation and drafting of the general release and settlement agreement. The parties agreed Snowline would pay a specified amount of money for compensatory education and agreed to Student's prospective special education and services, in exchange for a release of claims and waivers and a dismissal of OAH case number 2022030433. The parties agreed to Student's special education and services as follows:

- placement in a special day classroom at Vista Verde Elementary School, called Vista Verde;
- curb-to-curb transportation;

- 60 minutes weekly individual speech services provided by a speech-language pathologist;
- one-to-one aide services, provided by a non-public agency, for the entirety of Student's school day, including during transportation to and from school;
- compensatory education by a non-public agency;
- Snowline would conduct assessments in functional behavior, speech, augmentative and alternative communication, and audiology; and
- a minimum of three hours of training in working with students with disabilities for bus drivers employed by Snowline who interacted with Student in the past or during the 2022-2023 school year.

The parties also agreed to schedule Student's three-year review IEP team meeting no later than January 20, 2023, to review Snowline's assessments in functional behavior, speech, augmentative and alternative communication, and audiology, and to develop Student's next IEP.

STUDENT WAIVED HER RIGHT TO CHALLENGE THE FAPE OFFER IN THE SEPTEMBER 9, 2022 IEP

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a [FAPE] to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1030.) However, OAH's jurisdiction with respect to settlement agreements is limited. OAH does not have jurisdiction to determine whether a party failed to comply with the terms of an

agreement settling IDEA claims. (*Id.* at p. 1030.) The IDEA confers on federal district courts, and state courts of competent jurisdiction, subject matter jurisdiction to enforce written settlement agreements reached through a resolution meeting or mediation. (20 U.S.C. § 1415(e)(2)(F)(iii); 34 C.F.R. §§ 300.506(b)(6) and (7), 300.510(d), 300.537.) Further, the California Department of Education has jurisdiction to address claims a school district violated the terms of a settlement agreement relating to the provision of a FAPE, regardless of whether the settlement was reached in an IDEA mandated resolution session or mediation. (Cal. Code Regs., tit. 5, §§ 3201, subd. (c)(1), and 3202, subd. (b)(1).)

OAH has jurisdiction to decide whether a school district denied a FAPE and violated the IDEA by failing to provide placement, services, and goals pursuant to the terms of a settlement agreement. (*Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603, at *4) (*Pedraza*) (district court held OAH had jurisdiction to adjudicate claims that student was denied a FAPE as the result of violation of a mediated settlement agreement where the parties acknowledged in the settlement agreement the agreed upon services constituted a FAPE.) OAH also will determine whether a party has waived a claim pursuant to a settlement agreement. (See, e.g., *Student v. Mt. Diablo Unified Sch. Dist.* (2023) OAH consolidated case numbers 2023010234 and 2022120477; *Student v. Glendora Unified Sch. Dist.* (2020) OAH case number 2020101057.) OAH decisions are not binding precedent but may be persuasive. (Cal. Code Regs., tit. 5, § 3085.)

In determining whether a party has waived a claim pursuant to a settlement agreement, OAH interprets the settlement agreement using the same rules that generally apply to interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d

702, 704.) “Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties’ expressed objective intent, not their unexpressed subjective intent, governs.” (*Id.* at p. 686.) If the plain meaning of the contractual language is clear and explicit, it governs. (Civ. Code, § 1638.) “The whole of the contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.” (Civ. Code, § 1641.) If a contract is ambiguous, or susceptible to more than one meaning, then extrinsic evidence may be used to interpret the contract. (*Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40.) A contract may not be interpreted to render one of its other provisions meaningless. (Civ. Code, § 1641; *Turlock Irrigation Dist. v. Federal Energy Regulatory Commission* (9th Cir. 2018) 903 F.3d 862, 872.)

The October 11, 2022 general release and settlement agreement between Student and Snowline was unambiguous as to the claims waived by Student. The parties’ agreement resolved all issues and disputes between them, including those relating to Student’s placement, eligibility, and all substantive and procedural matters under the IDEA, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Unruh Act, and a June 17, 2022 claim under the Torts Claim Act, through the agreement end date, called Agreement End Date, which was dated October 11, 2022. More specifically, Parent waived and released Snowline from

“any and all claims, demands, and causes of action that exist[ed] through the Agreement End Date, including, but not limited to, compensatory education, attorneys’ fees arising out of Student’s education, reimbursement for educational services, independent educational evaluations, and compliance issues, whether known or unknown ...”

Parent also waived the protections of Civil Code section 1542, which provides that a general release does not extend to claims that were not known or suspected by the releasing party at the time they executed the release, that would have materially affected the settlement if known. Therefore, Parent waived both known and unknown claims through October 11, 2022.

In exchange for the promises made in the settlement agreement, Parent provided an explicit, clear, and unambiguous waiver of claims that included a general release and discharge through October 11, 2022. The waiver specifically did not include:

- Parent's right to enforce the terms of the settlement agreement through the California Department of Education, the courts, or any other appropriate means, but not through OAH;
- any FAPE offer made by Snowline in Student's three-year evaluation IEP, to be completed no later than January 20, 2023; and
- Parent's right to request independent educational evaluations following completion of Snowline's assessments in speech and language, augmentative and alternative communication, and audiology.

At hearing, Student did not dispute the settlement agreement waived Student's claims under the IDEA, whether known or unknown, through October 11, 2022. On January 24, 2024, day two of the due process hearing, Student withdrew her issue regarding certain behavior incidents which occurred on the school bus during the 2021-2022 school year, numbered as Issue 1 in the PHC Order. However, Student did not withdraw her claims under Issue 1 (numbered as Issue 2(a) through (f) in the PHC Order) relating to whether the September 9, 2022 IEP offered her a FAPE. On days two

and six of the due process hearing, the Administrative Law Judge asked Student's attorney if Student intended to withdraw claims specifically relating to the September 9, 2022 IEP's FAPE offer. On the record, Student's attorney conceded the general release barred Student from alleging denial of a FAPE prior to October 11, 2022. However, Student did not withdraw her claim the September 9, 2022 IEP denied her a FAPE during the due process hearing or thereafter. In her closing brief, Student continued to argue the September 9, 2022 IEP failed to offer Student a FAPE.

On the last day of hearing and in her closing brief, Student argued OAH had jurisdiction to determine whether Snowline breached the settlement agreement. Student's argument fails for several reasons. OAH generally lacks jurisdiction to hear implementation or enforcement issues related to settlement agreements. (*Wyner, supra*, 223 F.3d 1026, 1030; *Pedraza, supra*, 2007 WL 949603, at *5 (issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education's compliance procedure).) OAH has jurisdiction to hear claims related to failure to implement a settlement agreement as to terms the parties agreed were necessary to provide Student a FAPE. (*Pedraza, supra*, at *5.) For OAH to have jurisdiction to adjudicate claims alleging FAPE denials resulting from violations of a settlement agreement, the parties must acknowledge that the terms of the settlement agreement constituted a FAPE. (*Pedraza, supra*, at **4-5.) Here, the October 11, 2022 settlement agreement did not state its terms constituted a FAPE.

Further, Student's complaint did not allege, nor did Student offer any evidence at hearing, of any breach of the settlement agreement by Snowline. Moreover, Parent had agreed to file any actions to enforce the settlement agreement with the California

Department of Education, or courts of competent jurisdiction, but not with OAH. For these reasons, Student waived her right to seek to enforce the settlement agreement through OAH.

The October 11, 2022 settlement agreement unambiguously waived all claims predating the Agreement End Date, which included the offer of special education and services in the September 9, 2022 IEP. Therefore, Parent waived any claims challenging the adequacy of the September 9, 2022 IEP's FAPE offer. This fact was known to Student's attorneys at the time of the due process hearing, but they continued to advance claims barred by the settlement agreement's clear and unambiguous waiver. Therefore, Student's claims challenging the appropriateness of the September 9, 2022 IEP were frivolous, unreasonable, and without foundation. (20 U.S.C. § 1415(i)(3)(B)(i)(II), (III).) Snowline prevailed on Issue 1, sub-issues (a) through (e).

ISSUE 2(a) THROUGH (e): APPROPRIATENESS OF FAPE OFFER IN THE NOVEMBER 28, 2022 IEP

Student contends Snowline denied her a FAPE in a November 28, 2022 IEP, by failing to offer home and clinic based applied behavior analysis services, parent training in behavior and speech and language, and placement in the least restrictive environment. Student further contends the November 28, 2022 IEP failed to address Student's regression in academics and behavior, and the placement offer was predetermined.

Snowline contends the parties' October 11, 2022 settlement agreement, as modified on November 21, 2022, determined Student's placement. Snowline further contends the November 28, 2022 IEP memorialized the parties' agreement to change Student's placement from Vista Verde to Joshua Circle Elementary School, called Joshua

Circle, and did not otherwise modify Student's goals, services, or supports. Snowline argues Student's challenges to the November 28, 2022 IEP, including her claims placement was not in the least restrictive environment and was predetermined, are barred by the October 11, 2022 settlement agreement.

OCTOBER 26, 2022 ADDENDUM IEP TEAM MEETING TO DISCUSS STUDENT'S BEHAVIORS AND PLACEMENT AND DEVELOPMENT OF BEHAVIOR INTERVENTION PLAN

Following the parties' execution of the October 11, 2022 settlement agreement, Snowline agreed to Parent's request to hold an addendum IEP team meeting on October 26, 2022. The purpose of the meeting was to address Parent's concerns about Student's behaviors and placement at Vista Verde. Student did not challenge the appropriateness of the October 26, 2022 addendum IEP in her complaint, and it, therefore, was not at issue in this hearing. However, the October 26, 2022 IEP team meeting is relevant to Student's claims that Snowline predetermined the November 28, 2022 IEP, failed to offer Student a placement in the least restrictive environment, and did not implement Student's behavior intervention services.

Parental participation in the development of an IEP is essential under the IDEA. (*Winkelman v. Parma City Sch. Dist.* (2007) 550 U.S. 516, 524.) Parental participation is "[a]mong the most important procedural safeguards." (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001 267 F.3d 877, 882.) The parents of a child with a disability must be afforded an opportunity to participate in IEP team meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of a FAPE to the child. (34 C.F.R. § 300.01(b).)

When developing, reviewing, or revising an IEP, the IEP team should determine whether behavioral supports are needed to ensure a FAPE to the child, including:

- 1) special education and related services;
- 2) supplementary aids and services; and
- 3) program modifications or supports for school personnel. (34 C.F.R. §§ 300.320(a)(4), 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1); Office of Special Education and Rehabilitative Services “Questions and Answers Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions,” Question A-4 (July 19, 2022).)

When a child’s behaviors impede their learning or that of others, the IDEA requires the IEP team to consider the use of positive behavioral interventions and supports and other strategies to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) A behavior intervention plan is the “systematic implementation of procedures that result in long lasting positive changes in the individual’s behavior.” (Cal. Code Regs., tit. 5, § 3001, subd. (d).) It includes the design, evaluation, implementation, and modification of the student’s individual or group instruction or environment, including behavioral instruction, to produce significant improvement in the student’s behavior through skill acquisition and the reduction of problematic behavior. (Cal. Code Regs., tit. 5, § 3001, subd. (b).)

Behavior intervention plans must be designed or planned by personnel who hold certain credentials, licenses, or educational qualifications. (Cal. Code Regs., tit. 5, § 3051.23, subd. (a).) Qualified personnel, include but are not limited to personnel who hold a pupil personnel services credential in school counseling or school

psychology, a licensed marriage and family therapist, or a licensed school psychologist or psychologist. In addition, a board-certified behavior analyst may design, plan, and implement behavior intervention services. (Ed. Code, § 56325, subd. (a).) Individuals who provide behavioral intervention, including implementation of behavior plans, must either be qualified to design or plan behavioral intervention, or be under the supervision of an individual qualified to design or plan behavior intervention and possess a high school diploma or its equivalent and receive the specific level of supervision required in the pupil's IEP. (Cal. Code Regs., tit. 5, § 3051.23, subd. (a) and (b).)

Student attended approximately five days of school at Vista Verde over a two-week period in October 2022. Student attended a mild-to-moderate special day class taught by special education teacher Tania Serobyan. Serobyan held a preliminary mild-to-moderate special education teaching credential. Prior to working at Snowline, she was a long-term substitute teacher in another school district. Serobyan also previously worked as a behavior specialist in the private setting with children who had mild-to-moderate and moderate-to-severe learning disabilities. Serobyan's special day class had 12 students. The class had one dedicated paraeducator who supported Serobyan during small and whole group activities. Some of the students, including Student, had one-to-one aides.

By all accounts, Student was an energetic, friendly, and eager child who thrived when playing with friends and receiving adult attention. She loved dancing, drawing, and painting. However, Student had academic, communication, fine motor, and significant behavioral challenges due to her disabilities, which impacted her ability to

access her education. At hearing, Serobyen explained during the five days Student attended Serobyen's class in October 2022, she engaged in at least six instances of physical aggression towards staff and peers, including

- spitting,
- biting,
- kicking,
- pushing, and
- throwing objects.

Student threatened to kill a classmate with a pencil. Serobyen evacuated the classroom two or three times for 10 to 20 minutes because of Student's aggressive behaviors. Student frequently eloped by running away from her group when walking to recess or physical education and resisted getting on the school van at the end of the day. To elope means running away from a designated area without the supervising adult's permission.

Student was supported by a one-to-one aide through an outside agency. Student stayed on task while working with her aide if rewarded with preferred activities or tokens. Student sometimes engaged in attention seeking behavior, such as spitting.

Michelle Lockley was a credentialed special education teacher at Vista Verde with nine years of experience in special education. Lockley was familiar with Student because she served as Student's case manager during the 2021-2022 school year and oversaw the development and implementation of Student's IEP during that school year. Lockley also acted as a mentor teacher during the 2022-2023 school year. She provided Serobyen guidance and advice about strategies for helping Student make progress

towards her IEP goals. Lockley helped Serobyan to develop strategies to address Student's behaviors, such as creating activities interesting to Student and breaking assignments into smaller parts. Lockley observed Student on several occasions during fall 2022. At hearing, she described an incident where Student aggressively tried to kick a peer while walking towards the school van after school. Student's one-to-one aide stepped between Student and the other child to deescalate the conflict.

School psychologist Elizabeth Barnes, assistant principal Danielle Salazar, DeRenard, Serobyan, speech-language pathologist Jennifer Yazzie, occupational therapist Wendy Ottosi, a general education teacher, and Desert Mountain SELPA program specialist Renee Garcia attended the October 26, 2022 addendum IEP team meeting. Parent also attended and actively participated in that meeting. Parent contributed her input and concerns about Student's safety on the school van and at school. Parent believed Student had been improperly restrained on the school van and treated unfairly by the driver. Parent expressed her unhappiness with Student's placement at Vista Verde. She believed Snowline's staff unfairly denied Student access to preferred activities if she engaged in certain behaviors.

Snowline's IEP team members listened and responded to Parent's concerns. DeRenard updated the IEP team on Snowline's efforts to locate an aide through a non-public agency to ride with Student on the school van. The IEP team discussed the need for the one-to-one aide to be trained on how to address Student's maladaptive behaviors.

Barnes, a licensed school psychologist for Snowline, responded to Parent's specific concerns about Student's behaviors, including elopement. Barnes held a doctoral degree in school psychology and had substantial experience working as a

school psychologist. Her responsibilities included evaluating students for special education eligibility, supporting IEP teams in meeting students' needs, providing school psychological services, conducting functional behavior assessments, and developing behavior intervention plans. Barnes attended approximately 80 IEP team meetings annually. Barnes' substantial experience as a school psychologist, her detailed knowledge of Student's behavioral needs, and her clear and straightforward testimony rendered her testimony persuasive.

In preparation for the October 26, 2022 addendum IEP team meeting, Barnes observed Student in the mild-to-moderate classroom and spoke with Serobyen about Student's behaviors. Serobyen reported Student eloped two to five times per hour and missed instructional time. During her observation, Barnes observed Student elope from the classroom two times. Student's one-to-one aide followed Student and returned with her to the classroom.

At the time of the October 26, 2022 addendum IEP team meeting, Snowline was preparing to assess Student in psychoeducation and functional behavior in advance of Student's three-year review IEP team meeting. Barnes explained to Parent the functional behavior assessment would consist of observing Student's behaviors in more depth and determine the function, or cause, of the behaviors. Barnes proposed the team adopt an interim behavior intervention plan to address Student's elopement behaviors, specifically Student's conduct of leaving designated areas, such as the classroom, playground, and cafeteria, and walking or running around campus.

The interim behavior intervention plan sought to replace Student's elopement behaviors with on-task behavior, including participating in class activities for five minutes with no more than three redirections. To meet this objective, Student would

be provided a token board. A token board was a visual support that tracked Student's progress towards achieving her goal to remain on-task for five minutes. The token board visually displayed a predetermined reward Student was working to earn. The predetermined awards included a short, timed break from the classroom activity and access to positive adult attention. Student's classroom teacher and aide would remind Student of class expectations before transitions and post a visual representation of class expectations on Student's desk. The behavior intervention plan was attached to the October 26, 2022 addendum IEP.

Snowline also added 480 minutes monthly behavior intervention supervision services to be provided by a non-public agency to Student's related services. The behavior intervention supervision services were added pursuant to the requirement that individuals providing behavioral intervention, including implementation of behavior plans, must be qualified to design or plan behavioral intervention or be under the supervision of an individual qualified to design or plan behavior interventions. (Cal. Code Regs., tit. 5, § 3051.23(a) and (b).)

SNOWLINE'S OFFER TO CHANGE STUDENT'S PLACEMENT TO JOSHUA CIRCLE

In addition to her concerns about Student's safety, Parent was unhappy with Student's placement at Vista Verde. Parent believed Student would benefit from a program for children with autism. Parent asked about other available program options. The IEP team discussed three programs, including autism classes operated by San Bernardino located at Vista Verde, West Creek Elementary School, and Joshua Circle. Snowline did not have moderate-to-severe special day classes and contracted with San Bernadino to place its students who required higher levels of support. The IEP team,

including Parent, agreed Student would benefit from an age and grade appropriate autism class with a low student to teacher ratio. More specifically, the IEP team agreed Student would benefit from a smaller class size and additional classroom aide support, particularly due to Student's attention seeking behaviors.

Snowline revised its placement offer in the October 26, 2022 addendum IEP to reflect placement at an age-appropriate autism special day class operated by San Bernardino at Joshua Circle. Parent provided written consent to the October 26, 2022 addendum IEP on November 13, 2022. The parties further agreed to modify the October 11, 2022 settlement agreement to reflect Student's new placement. On November 21, 2022, Parent provided written consent to a modification of the October 11, 2022 settlement agreement. Other than Student's placement, no other terms of the settlement agreement were changed.

NOVEMBER 28, 2022 IEP TEAM MEETING TO TRANSITION STUDENT TO JOSHUA CIRCLE

Snowline convened an IEP team meeting on November 28, 2022. The purpose of the IEP team meeting was to discuss Student's transition from Vista Verde to Joshua Circle. As agreed in the October 11, 2022 settlement agreement, the statutory timelines for Student's IEP were adjusted to reflect Student's three-year review evaluation due on January 20, 2023.

The IEP team members at the November 28, 2022 IEP team meeting included Parent, DeRenard, special education teacher Jessica Caro-Rojas, and San Bernardino's representative special education principal David Mobley. A general education teacher could not attend, and Parent was given the option to either proceed with the meeting

without that team member, or to reconvene the IEP team meeting at another time. Parent gave her written permission to proceed with the IEP team meeting and excuse the general education teacher.

At that IEP team meeting, Caro-Rojas reviewed the classroom structure and schedule. The IEP team agreed to accept the present levels and goals from Student's September 9, 2022 IEP, as amended on September 26, 2022. Upon completion of the three-year review evaluation, the IEP team would reconvene to establish Student's present levels of performance and develop new goals. The IEP team also increased Student's one-to-one individual aide services from 390 minutes daily, or 1,950 minutes weekly, to 2,490 minutes weekly to align with Joshua Circle's bell schedule. The IEP team confirmed Student's program as follows:

- placement in a grade-appropriate class for students with moderate-to-severe disabilities provided by San Bernardino and located at Joshua Circle Elementary within the Hesperia Unified School District;
- 1,740 minutes weekly specialized academic instruction;
- occupational therapy services 30 minutes two times monthly through a pull-out model, and 30 minutes two times monthly push-in services;
- speech and language services 30 minutes four times monthly in a group setting, and 30 minutes four times monthly individual services;
- 2,490 minutes weekly intensive individual services, which consisted of a one-to-one aide, provided through a non-public agency;

- 480 minutes monthly behavior intervention services, which consisted of behavior supervision, provided through a non-public agency;
- transportation services two times daily through a non-public agency; and
- bus aide services two times daily through a non-public agency.

Parent consented in writing to the November 28, 2022 IEP on December 3, 2022.

ISSUE 2(a): NO FAPE DENIAL BY FAILURE TO ADDRESS REGRESSION IN THE NOVEMBER 28, 2022 IEP

Student contends Snowline denied her a FAPE in the November 28, 2022 IEP by failing to address Student's regression. Student further contends the November 28, 2022 IEP team was aware Student was prone to regression and the IEP team did nothing to address the regression. Student further contends Parent expressed concern to the team that Student was not functioning at grade level.

Snowline contends Student did not satisfy her burden of proving Student had regressed academically or behaviorally as of the November 28, 2022 IEP team meeting. Snowline further contends any regression Student experienced were addressed by extended school year services for the 2022-2023 school year offered in a February 6, 2023 IEP.

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)). If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit,

and comported with the child's IEP, then the school district provided a FAPE. (*Id.* at pp. 1313-1315.) An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 (IEP not required to provide for an "education ... designed according to the parent's desires").) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the child. (*Ibid.*)

An IEP must state whether extended school year services are offered. (Ed. Code, § 56345, subd. (b)(3).) Extended school year services must be provided if the IEP team determines they are necessary for a student to receive a FAPE. (34 C.F.R. § 300.106(a)(2).) Extended school year services are special education and related services that are provided beyond the normal school year, in accordance with the student's IEP, and at no cost to parents. (34 C.F.R. § 300.106(b).)

In California, extended school year services

"shall be provided for each student with exceptional needs who has disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the child's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely the will child attain the level of self-sufficiency and independence that otherwise would be expected in view of their disabling condition." (Cal. Code Regs., tit. 5, § 3043.)

Student did not prove Snowline denied her a FAPE in the November 28, 2022 IEP by failing to appropriately address her academic, speech and language, fine motor, or behavior needs, specifically by failing to consider Student's regression in those areas.

Student questioned Parent and Desert Mountain SELPA program specialist Renee Garcia, Salazar, Barnes, DeRenard, Serobyan, speech-language pathologist Jennifer Yazzie, and occupational therapist Wendy Ottosi regarding whether Student demonstrated regression at the time of the November 28, 2022 IEP. None of them testified Student required any additional or alternative goals, placement, related services, accommodations, modifications, or any other program or supports other than what was offered in the November 28, 2022 IEP.

Student did not produce evidence demonstrating Student had regressed in any area at the time of the November 28, 2022 IEP team meeting. For example, Student did not introduce goal progress reports or elicit testimony from any witness about Student's lack of progress towards her IEP goals. Student did produce any evidence about additional or alternate goals, services, accommodations, or modifications Student purportedly required to address her regression or risk of regression.

In her closing brief, Student argued Snowline failed to address regression in the September 9, 2022 IEP, even though any challenge to the September 9, 2022 FAPE offer was waived in the October 11, 2022 settlement agreement. Other than referring to Student's known academic, communication, and behavior challenges which existed in fall 2022, Student did not explain what additional or alternative services should have been offered in the November 28, 2022 IEP. Further, it was unclear at hearing and in her closing brief if Student's claim for regression was based on Student's belief she required extended school year services, or some other service or support. Snowline established at hearing Student was offered extended school year services for summer 2023 in a February 6, 2023 IEP, which prompted Student to withdraw Issue 2(b) as stated in the PHC Order regarding failing to offer extended school year services. Other than argue

Snowline failed to address Student's regression, Student did not specify how Student had regressed, in what areas, or what services or supports she required other than what were offered in the November 28, 2022 IEP.

In summary, Student failed to specify or produce evidence establishing the November 28, 2022 IEP's FAPE offer failed to address Student's regression. Accordingly, Student failed to meet her burden of proof on this issue. Snowline prevailed on Issue 2(a).

ISSUE 2(b): NO FAPE DENIAL BY FAILING TO OFFER HOME AND CLINIC BASED APPLIED BEHAVIOR ANALYSIS SERVICES IN THE NOVEMBER 28, 2022 IEP

Student contends Snowline denied her a FAPE in the November 28, 2022 IEP by failing to offer home and clinic based applied behavior analysis therapy services, which she needed to access her education.

Snowline contends Student did not require home or clinic based applied behavior analysis services to receive a FAPE. Snowline further contends the behavior interventions it offered to Student in the November 28, 2022 IEP were appropriate and reasonably calculated to provide Student educational benefit.

The IEP team may address a student's behavior deficits through annual goals. (34 C.F.R. § 300.320(a)(2)(i).) Furthermore, an IEP may include modifications, supports for teachers, and any related services necessary for a student to achieve their behavioral goals. (34 C.F.R. § 300.320(a)(4).)

A school district is not required to address the emotional or behavioral problems a student may have, regardless of where and when those problems manifest, when the student demonstrates educational progress in the classroom. (*San Rafael Elementary School Dist. v. California Special Educ. Hearing Office* (N.D. Cal. 2007) 482 F.Supp.2d 1152, 1161 (*San Rafael*), citing *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467 (*County of San Diego*) (behavioral and emotional goals are addressed through an IEP when they “affect academic progress, school behavior, [...] and socialization”).) A school district is required to address behavioral problems extraneous to the academic setting “only to the extent they affect the educational progress of the student.” (*San Rafael, supra*, 482 F.Supp.2d 1152, 1161-1162.) The appropriateness of an IEP is determined by “whether the child makes progress toward the goals set forth in [his or] her IEP.” (*County of San Diego, supra*, 93 F.3d at 1467.)

Student failed to meet her burden of proof on Issue 2(b). At hearing and in her closing brief, Student referred to Parent’s reports at the September 9, 2022 IEP team meeting about Student’s self-injurious behaviors at home, such as scratching her face and biting her nails until they bled. Parent did not express concerns about Student’s behavioral issues at home at the November 28, 2022 IEP team meeting. At hearing, Parent testified Student’s behavior at school “was not as bad as it was reported at school.”

Student’s expert, Dr. Sookyung Shin, testified in support of Student’s contention Student required applied behavior analysis services in the home setting through her IEP. Shin held a master’s degree in special education and a doctoral degree in special education from the University of Kansas. Shin had experience as a graduate teaching assistant in teaching children with disabilities, grant writing, and as a special education

consultant and advocate. From 2017 through the date of hearing, Shin's primary occupation was as a certified nurse aide and certified medication aide at an assisted living facility for elderly patients.

Shin held no professional certifications in special education, school psychology, teaching, pupil personnel services, or educational administration in California or any other state. She was not a licensed teacher, school psychologist, speech-language pathologist, occupational therapist, or attorney in any state. At the time of hearing, Shin was working towards obtaining an early childhood teaching license from the Kansas Department of Education. Shin was familiar with the concepts of applied behavior analysis through her graduate program, but she was not a board-certified behavior analyst. Shin's lack of education, training, and experience as a special education teacher, school psychologist, or behaviorist rendered her opinions unpersuasive. Shin's willingness to offer opinions on professional matters outside her expertise adversely affected her credibility and persuasiveness.

Shin spoke with Parent but did not review Student's educational records. Shin's knowledge of Student was limited to a review of documents uploaded by the parties into OAH's electronic evidence program and a one-hour telephone call with Parent three days before the due process hearing. She also reviewed photographs of Student and three videos of Student in the home setting, which were each between 30 to 60 seconds long.

On day six of the hearing, Student's counsel represented to the Administrative Law Judge that Shin had conducted an extensive interview of Student. However, Shin testified she had never met or observed Student. Shin did not conduct any assessments of Student, nor was she licensed or certified to do so. Shin's testimony reflected her lack

of knowledge and understanding of Student and Student's unique educational, communication, and behavioral needs. Therefore, Shin's testimony was unpersuasive, and her opinions were given little weight.

Shin opined Student could benefit from applied behavior analysis services at home. Shin did not explain which specific behaviors Student exhibited in the home that required modification through applied behavior analysis, or why this was necessary for Student to make progress towards her IEP goals. Although Shin believed Student could benefit from applied behavior analysis therapy in the home setting, the law does not require schools to offer disabled children services for which they could receive maximum benefit. (*Rowley, supra*, 458 U.S. 176, 197, n. 21.)

Shin's opinion conflicted with the testimony of Snowline's IEP team members, and Parent. No witness, other than Shin, recommended Snowline provide Student with applied behavior analysis therapy in the home setting during the 2022-2023 school year. Further, none of Snowline or San Bernardino's 12 witnesses at hearing opined Student required applied behavior analysis therapy at home to receive a FAPE. Even if Snowline had notice of Student's behavior issues at home, Student did not establish applied behavior analysis therapy in the home or clinic setting was necessary for Student to make progress towards her IEP goals.

It was undisputed Student had behavioral challenges at school. Student demonstrated maladaptive behaviors over the five school days she attended Vista Verde in October 2022, including elopement and aggression towards her peers and one-to-one aide. Snowline acted promptly in addressing Student's maladaptive

behaviors, including developing an interim behavioral intervention plan to immediately address Student's elopement behavior, which was considered by the October 26, 2022 addendum IEP team and agreed to by Parent.

The behavioral intervention plan determined Student's elopement behavior was impeding her learning because she left instructional areas without permission. The changes and supports to remove Student's elopement behavior included

- ignoring Student's off-task behavior that did not pose a safety risk,
- redirecting Student using nonverbal gestures,
- removing peers from the immediate vicinity if the off-task behavior sought peer attention,
- frequent breaks when Student demonstrated on-task behavior,
- adult check-ins with Student, and
- verbal praise.

The behavioral intervention plan included the targeted replacement behavior of attending to task and included strategies for Student to learn the replacement behaviors. Student's special education teacher and one-to-one aide were responsible for implementing the behavioral intervention plan.

In summary, the behavior supports offered in the November 28, 2022 IEP, as adopted from the September 9, 2022 IEP and the October 26, 2022 addendum IEP, including a behavior goal targeting Student's attention to task, a one-to-one-aide during school and transportation, behavior supervision, and a behavior intervention plan, were reasonably calculated to provide Student educational benefit at that time.

Student failed to prove by a preponderance of the evidence that Snowline denied her a FAPE in the November 28, 2022 IEP by failing to offer Student home or clinic based applied behavior analysis services. Snowline prevailed on Issue 2(b).

ISSUE 2(c): NO FAPE DENIAL BY FAILING TO OFFER PARENT TRAINING IN THE NOVEMBER 28, 2022 IEP

Student contends Parent needed to receive training at home to support Student's behavioral and speech and language needs. Snowline contends Parent did not need to receive training in behavior or speech and language for Student to receive a FAPE.

The IDEA regulations permit school districts to offer parent training to assist a parent in understanding the special needs of their child, to provide the parent with information about child development, and help the parent acquire necessary skills to support implementation of their child's IEP. (34 C.F.R. § 300.34(c)(8)(i)-(iii); Ed. Code, § 56363, subd. (b)(11).) As with other related services, school districts are responsible for providing parent counseling and training when the child's IEP team determines it is necessary for the child to receive a FAPE. (U.S. Dept. of Education, Assistance to States for the Education of Children with Disabilities, and Preschool Grants for Children with Disabilities (71 Fed. Reg. 46573, Aug. 14, 2006).)

Student failed to prove Snowline denied her a FAPE by failing to offer parent training in behavior or speech and language in the November 28, 2022 IEP. Neither Parent, nor any of the educational professionals who testified, opined Parent required training in speech and language and behavior for Student to receive a FAPE. Further, none of the witnesses testified it was necessary for Parent to receive training in behavior or speech and language to understand Student's special needs, development, or to

acquire necessary skills to facilitate the implementation of Student's IEP. Student also failed to prove how Parent training was necessary to support Student in managing her behaviors or communicating at school.

Snowline provided Student individual and group speech and language services each week by experienced speech-language pathologists at Snowline and San Bernardino operated schools. Student had two speech-language goals which were implemented by Snowline and San Bernardino's speech-language pathologists. As discussed above, Student also had behavioral goals and interventions, including a one-to-aide, behavior supervision services, and a behavior intervention plan. The IEP properly identified the professionals responsible for implementing Student's behavior goals as the special education teacher and Student's one-to-one aide.

At hearing, Parent did not testify she requested training at any time. Testimony from DeRenard confirmed that Desert Mountain SELPA offered parent training through the Real Talk program, a free program available for parents of children with autism. The program consisted of virtual meetings for parents and provided specific strategies and supports for children with autism. Parent was provided information at the October 26, 2022 addendum IEP team meeting about parent training available through the Desert Mountain SELPA. Student did not dispute this program was available to Parent, or offer evidence whether Parent attended any of these training sessions.

Shin testified in support of Student's request for Parent training. She opined Student could benefit from parental training on behaviors related to autism or on Student's assistive technology device. However, neither the September 9, 2022 or November 28, 2022 IEP teams determined Student required an assistive technology device or services. Therefore, Shin's testimony on this issue did not make sense and

was not persuasive. Even though Shin opined Parent training would be beneficial, Shin did not explain what type of training Parent required, which of Student's needs would be addressed, who would conduct the training, or how Parent training was necessary for Student to meet her IEP goals. In summary, there was a lack of evidence demonstrating Student required parent training in her IEP to make progress towards her IEP goals.

Student failed to prove by a preponderance of the evidence that Snowline denied her a FAPE by failing to offer Parent training in behavior or speech and language in the November 28, 2022 IEP. Snowline prevailed on Issue 2(c).

ISSUE 2(d): PLACEMENT WAS OFFERED IN THE LEAST RESTRICTIVE ENVIRONMENT IN THE NOVEMBER 28, 2022 IEP

Student contends the November 28, 2022 IEP failed to offer Student placement in the least restrictive environment. Student further contends the least restrictive environment for Student was placement in a general education classroom with one-to-one aide support.

Snowline contends Parent agreed to placement in a moderate-to-severe classroom operated by San Bernardino at Joshua Circle in the October 11, 2022 settlement agreement, as modified on November 21, 2022, and therefore Student waived her right to challenge the appropriateness of the placement offer. Alternatively, Snowline contends a moderate-to-severe special day class was the least restrictive environment for Student due to her academic, communication, fine motor, and behavioral deficits.

Special education placement means that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to an

individual with exceptional needs, as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings. (Cal. Code Reg., tit. 5, § 3042.) School districts are required to provide each special education student with a program in the least restrictive environment. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114; Ed. Code, § 56342, subd. (b).) School districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers, and that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, §§ 56031, 56033.5.) This requirement reflects the IDEA's "strong preference" for educating children with disabilities in a regular classroom environment. (*Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834 (*Poolaw*).)

In determining the educational placement of a child with a disability, a school district must ensure that:

- the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into consideration the requirement that children be educated in the least restrictive environment;
- placement is determined annually based upon the child's IEP and is as close as possible to the child's home;
- unless the IEP specifies otherwise, the child must attend the school that they would attend if non-disabled;

- in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or the quality of services they need; and
- a child with a disability is not removed from education in an age-appropriate regular classroom solely because of needed modifications to the general education curriculum. (34 C.F.R. § 300.116; Ed. Code, § 56342.)

To determine whether a special education student can be satisfactorily educated in a regular education environment, the following four factors must be evaluated and balanced:

1. the educational benefits available in the general education classroom, supplemented with appropriate aids and services, as compared with the educational benefits of the special education classroom;
2. the nonacademic benefits of interaction with children without disabilities;
3. the effect the student has on the teacher and children in the regular class; and
4. the costs of mainstreaming the student.

(*Sacramento City Unified Sch. Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) (adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)).

If it is determined a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has

been mainstreamed to the maximum extent appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050.) The continuum of program options includes, but is not limited to, in increasing order of restrictiveness:

- 1) regular education;
- 2) resource specialist programs;
- 3) designated instruction and service;
- 4) special classes;
- 5) non-public nonsectarian schools;
- 6) state special schools;
- 7) specially designed instruction in settings other than classrooms;
- 8) itinerant instruction in settings other than classrooms; and
- 9) instruction using telecommunication, and instruction in the home, in hospitals, or other institutions. (Ed. Code, § 56361.)

Student failed to prove the November 28, 2022 IEP's placement offer was not in the least restrictive environment because: Parent agreed to placement in the moderate-to-severe special day class in the parties' October 11, 2022 settlement agreement, as modified on November 21, 2022; and alternatively, placement in the moderate-to-severe special day class at Joshua Circle was the least restrictive environment for Student.

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STUDENT WAIVED HER RIGHT TO CLAIM PLACEMENT AT JOSHUA CIRCLE WAS NOT IN THE LEAST RESTRICTIVE ENVIRONMENT

As discussed in the analysis of Issue 1, the parties agreed to Student's prospective placement and IEP services in a moderate-to-severe special day classroom at Joshua Circle in the October 26, 2022 addendum IEP consented to by Parent on November 13, 2022. The October 11, 2022 settlement agreement was modified to reflect the change of placement and signed by Parent on November 21, 2022.

In her closing brief, Student argues Parent retained the right to challenge the placement at Joshua Circle because it was not in the least restrictive environment. However, the language of the settlement agreement is not reasonably susceptible to this interpretation. Under statutory rules of contract interpretation, the mutual intention of the parties, at the time the contract was formed, governs interpretation. (Civ. Code, § 1636.) The parties' intent is to be inferred, if possible, solely from the written provisions of the contract. (Civ. Code, § 1639; see e.g., *Market Insurance Corp. v. Integrity Insurance Co.* (1987) 188 Cal.App.3d 1095, 1098 (The objective intent as evidenced by the words of the instrument, not the parties' subjective intent, governs).) The "clear and explicit" meaning of the contract provisions, interpreted in their "ordinary and popular sense" unless "used by the parties in a technical sense or special meaning given to them by usage," controls judicial interpretation. (Civ. Code, §§ 1638, 1644.) When interpreting a contract, the court ascertains the parties' intention solely from the words used, but it also considers the circumstances under which the contract was made and the matter to which it relates. (Civ. Code, §§ 1639, 1647; *Arriagarazo v. BMW of North America, LLC* (2021)

64 Cal.App.5th 742, 748.) “The whole of the contract is to be taken together, so as to give effect to every other part, if reasonably practicable, each clause helping to interpret the other.” (Civ. Code, § 1641.)

The objective intent of the settlement agreement, when read as a whole and considering the circumstances, was to document the parties’ agreement to Student’s placement and services, together with payment of compensatory education, in exchange for a general release and waiver of claims. Parent expressly waived the right to challenge Student’s offered educational program, as delineated in the settlement agreement, which necessarily included Student’s waiver of the right to challenge her placement at Joshua Circle. An interpretation allowing Parent to challenge the appropriateness of Student’s placement would render superfluous or inexplicable the detailed settlement provisions about Student’s placement. (*R.W.L. Enterprises v. Oldcastle, Inc.* (2017) 17 Cal.App.5th 1019, 1026 (an interpretation which gives effect to all provisions of the contract is preferred to one which renders part of the writing superfluous, useless, or inexplicable).) The clear and explicit language of the settlement agreement, and all its provisions, prevents Parent from challenging the appropriateness of Student’s placement at Joshua Circle. Therefore, Student waived the right to challenge her placement at Joshua Circle, including the claim it was not in the least restrictive environment.

STUDENT’S PLACEMENT IN A MODERATE-TO-SEVERE SPECIAL DAY CLASS WAS THE LEAST RESTRICTIVE ENVIRONMENT

Even if Student had not waived her right to challenge the placement at Joshua Circle in the October 11, 2022 settlement agreement, as modified on November 21, 2022, Snowline did not deny Student a FAPE by offering placement at Joshua Circle.

Student failed to present any evidence that suggested she needed anything other than the moderate-to-severe special day class at Joshua Circle to receive a FAPE in the least restrictive environment. Snowline's witnesses confirmed Student would not have been able to effectively learn in a regular education setting, even with one-to-one aide support. Testimony from Serobyen, Lockley, Caro-Rojas, and Barnes supported Student's placement in a moderate-to-severe special day class based upon Student's academic, fine motor, communication, and behavior needs. Parent believed Student required a more restrictive environment. Parent explicitly requested at the October 26, 2022 addendum IEP team meeting that Student be moved from the mild-to-moderate special day class to a special day class for children who required a higher level of support, which prompted the IEP team's discussion of placement options and agreement to Student's placement to Joshua Circle.

The weight of the evidence proved Student required a more restrictive placement than a regular classroom. The first factor under *Rachel H.* considers the educational benefits of full-time placement in a regular classroom. Snowline's IEP team members agreed Student could not obtain educational benefit in a full-time regular classroom, even with the support of a one-to-one aide. At the time of the November 28, 2022 IEP team meeting, Student had attended only five out of 70 school days. In reading, Student struggled with letter identification and sound-letter correspondence. She had difficulty writing the alphabet from memory. She could write six out of 26 letters in the correct order without a visual model. When she wrote without a visual model, her letters and numbers were reversed or upside down. She could write her first and last name, but sometimes transposed or eliminated letters. Student could write numbers between one and nine, but she sometime wrote numbers backwards or upside down. She had difficulty writing with appropriate letter formation, sizing, and baseline

orientation. She struggled to open packages. She had difficulty maintaining attention to task and engaged in elopement and aggressive behaviors. Student was not yet toilet trained. The first factor under *Rachel H.* weighed heavily in favor of a more restrictive placement.

The second factor under *Rachel H.* considers the nonacademic benefits of placement in the regular classroom. Student would receive little nonacademic benefit from participating with her general education peers. Although Student was social and showed empathy towards her classmates, she also engaged in altercations with her classmates and one-to-one aide in the mild-to-moderate special day class. She eloped from her work area or the classroom when she did not receive attention or was presented with a non-preferred task. She was aggressive towards her peers and one-to-one aide. None of the witnesses at hearing, including Parent, testified Student could obtain a social benefit in the regular classroom. The second factor under *Rachel H.* also weighed in favor of a more restrictive placement.

The third factor considers the effect the child with a disability has on the teacher and children in the regular classroom. Student had a negative impact on her teacher and peers. Student displayed aggression towards her peers and aides. She threatened to kill a classmate with a pencil. She spit at a classmate, requiring staff to block the classmate from lunging at Student. Caro-Rojas spent a significant amount of time redirecting and managing Student's behavior, which took time away from other students in the classroom. The third factor also weighed in favor of a more restrictive placement.

The fourth *Rachel H.* factor considers the cost of placing the child with a disability full-time in a regular classroom. Here, cost was not a factor in determining Student's placement. Accordingly, the fourth factor under *Rachel H.* was neutral.

Balancing the *Rachel H.* factors, along with persuasive testimony from Snowline's and San Bernadino's 12 witnesses about Student's needs in academics, communication, fine motor, and behavior, Student could not receive educational benefit from full inclusion in general education, even with the use of supplementary aids and services. Student required a more restrictive placement to obtain educational benefit and meet her IEP goals.

Having determined Student could not be educated full-time in a general education environment, the least restrictive environment analysis requires a further determination whether placement in the moderate-to-severe special day class provided Student mainstreaming opportunities to the maximum extent appropriate considering the continuum of placement options. (*Daniel R.R., supra*, 874 F.2d 1036, 1050.) Special day classes serve students with similar and more intensive needs. (Ed. Code, § 56364.2.) Students may be enrolled in special day classes only when the nature or severity of the disability is such that education in the regular class with the use of supplementary aids and services, including curriculum modification and behavioral support, cannot be achieved satisfactorily. (*Ibid.*) School districts must ensure that each child with a disability participates in activities with nondisabled pupils to the maximum extent appropriate to the needs of the individual with exceptional needs, including nonacademic and extracurricular services and activities. (*Ibid.*) Mild-to-moderate and moderate-to-severe special day classrooms are at the same level of restrictiveness on the continuum of placement options because California law does not differentiate between these placements. (Ed. Code, §§ 56360, 56361, and 56364.2.)

The November 28, 2022 IEP provided Student mainstreaming opportunities during nutrition breaks, lunch, recess, physical education, and extracurricular activities. The preponderance of the evidence proved Student received mainstreaming opportunities to the maximum extent appropriate. Student offered no evidence to the contrary.

Snowline's offer of placement in the November 28, 2022 IEP was objectively reasonable based on the information available to the IEP team at the time the IEP was developed. Student had goals in

- reading,
- writing,
- math,
- speech and language,
- fine motor, and
- behavior.

She struggled with inattention, elopement, and aggressive behavior. She had communication and fine motor needs. The smaller class size with a lower student to teacher ratio and embedded supports in the moderate-to-severe special day class at Joshua Circle was reasonably calculated to provide Student educational benefit in the least restrictive environment. Snowline prevailed on Issue 2(d).

ISSUE 2(e): NO PREDETERMINATION OF THE NOVEMBER 28, 2022 IEP

Student contends Snowline predetermined her placement offer in the November 28, 2022 IEP because it did not consider Parent's concerns about Student. Snowline contends the parties considered the continuum of placement options and agreed to Student's placement in the moderate-to-severe special day class

in the parties' October 11, 2022 settlement agreement, as modified on November 21, 2022, and therefore Student waived her right to challenge the placement. Snowline further contends it did not predetermine the placement offer, but rather it was discussed and agreed to by the October 26, 2022 addendum IEP team, including Parent.

Student did not prove the November 28, 2022 IEP was predetermined for two reasons. First, for the same reasons discussed in Issue 2(d), Student waived the right to challenge the November 28, 2022 IEP's placement offer in the November 21, 2022 amended settlement agreement. Second, the evidence did not prove the placement offer was predetermined or that Parent was denied parental participation in its development.

A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23 Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1485 (*Target Range*), superseded in part by statute on other grounds.) Participation must be more than mere form; it must be meaningful. (*Deal v. Hamilton County Board of Educ.* (6th Cir. 2004) 392 F.3d 840, 858 [citations omitted] (*Deal*).) A school district cannot independently develop an IEP, without meaningful participation, and then present the IEP to the parent for ratification. (*Target Range, supra*, 960 F.2d 1479, 1484.) A school district that predetermines the child's program and does not consider the parents' requests with an open mind denies the parents the right to participate in the IEP process. (*Deal, supra*, 392 F.3d 840, 858.)

Predetermination of a student's placement is a procedural violation under the IDEA. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(b) and (c)(1); Ed. Code, § 56304,

subd. (a).) In determining the educational placement of a disabled student, the public agency must ensure that the placement is based on the child's IEP. (34 C.F.R §§ 300.116(b)(2); 300.552.)

A school district predetermines an offer when it presents one placement option at an IEP team meeting and is unwilling to consider other alternatives. (*Deal, supra*, 392 F.3d 840, 857-858; *H.B., et al., v. Las Virgenes Unified Sch. Dist.* (9th Cir. 2007) 239 Fed.Appx. 342, 344; *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131 (*Vashon Island*) ("a school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification").) A school district's unwillingness to consider any other placement also constitutes predetermination. (*K.D. ex rel. C.L v. Dept's of Educ., Hawaii* (9th Cir. 2011) 665 F.3d 1110, 1123.) A district may not arrive at an IEP team meeting with a "take it or leave" it offer. (*J.G. Douglas County Sch. Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn. 10, citing *Vashon Island, supra*, 337 F.3d 1115, 1131.)

Student presented no evidence that the November 28, 2022 IEP's placement offer was predetermined. None of the witnesses at hearing testified they had discussed Student's program with other IEP team members prior to the October 26, 2022 addendum IEP or the November 28, 2022 IEP team meetings. None of Snowline's IEP team members determined Student's placement on their own before these IEP team meetings or without the participation of all IEP team members, including Parent.

Parent attended and participated in Student's October 26, 2022 addendum IEP and November 28, 2022 IEP team meetings held to transition Student to Joshua Circle. The October 26, 2022 addendum IEP team, including Parent, had a robust discussion

about Student's safety and the appropriate placement in consideration of her needs, and came to a consensus about Student's need for a more structured setting with a smaller class size and additional adult support. Following the October 26, 2022 addendum IEP team meeting, Parent agreed to Student's placement at Joshua Circle.

Student failed to present any evidence that Snowline arrived at the October 26, 2022 or November 28, 2022 IEP team meetings with a predetermined placement offer. Furthermore, Student did not present evidence that Snowline was unwilling to consider any placement options other than the ones it offered at those meetings. Student failed to show by a preponderance of the evidence that Snowline denied her a FAPE by predetermining her placement offer in the November 28, 2022 IEP. Snowline prevailed on Issue 2(e).

ISSUE 3(a) AND (b): NO FAILURE TO IMPLEMENT BEHAVIOR INTERVENTION SERVICES DURING THE 2022-2023 SCHOOL YEAR

Student contends Snowline failed to implement behavior intervention services offered in the September 9, 2022 IEP, as amended, and the November 28, 2022 IEP. Student contends she did not receive any one-to-one aide services or behavior supervision services during the 2022-2023 school year. Student further contends Snowline did not develop a behavior intervention plan.

Snowline contends it provided Student a one-to-one aide during the school day, including during daily transportation, and behavior supervision services pursuant to the September 9, 2022 IEP, the October 26, 2022 addendum IEP, and the November 28, 2022 IEP at all relevant times during the 2022-2023 school year. Snowline further contends it developed a behavior intervention plan to address Student's elopement

behavior, to which Parent consented on November 13, 2022, and implemented it with fidelity during the 2022-2023 school year. Snowline further contends Student waived any claim Snowline failed to implement behavior intervention services prior to October 11, 2022.

Following the development of an IEP, special education and related services shall be made available to the child with a disability in accordance with their IEP. (34 C.F.R. § 300.323(c)(2); Ed. Code § 56344, subd. (b).) A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to the child and those required by the IEP. (*Van Duyn v. Baker Sch. Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822 (*Van Duyn*) ("[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail").) "There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a [FAPE]." (*Id.* at p. 822.) A brief gap in the delivery of services, for example, may not be a material failure to implement a student's IEP. (*Sarah Z. v. Meno Park City Sch. Dist.* (N.D. Cal. May 30, 2007, No. C 06-4098 PJH) 2007 WL 1574569 at *7.) When a student alleges a FAPE denial based on an IEP implementation failure, the student must prove the failure was material, or that the services provided to the disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn, supra*, 502 F3d. at p. 822.) A child's educational progress, or lack of it, might be one indicator whether a discrepancy in services was material. (*Id.* at p. 815.)

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CALIFORNIA DEPARTMENT OF EDUCATION INVESTIGATION REPORT

A Parent may file a complaint with the California Department of Education in lieu of filing a due process hearing complaint with OAH. (Ed. Code, § 56500.2; Cal. Code Regs., tit. 5, § 4650 et seq.) The California Department of Education is required to investigate the claim within 60 days and file a written report. (*Ibid.*) If the California Department of Education finds the allegations of the complaint to be true, it may order a school district to take corrective action to address the violation. (Cal. Code Regs., tit. 5, § 4670.) Decisions by the California Department are entitled to some weight but are not binding on OAH. (See *People v. Sims* (1982) 32 Cal.3d 468, 479.)

In July 2023, Parent filed a compliance complaint with the California Department of Education alleging multiple violations under the IDEA by Snowline. Following its investigation, the California Department of Education issued an Investigation Report on September 18, 2023, and found Snowline in compliance on three of eight issues. The California Department of Education found Snowline out of compliance on five issues, including, as relevant to this case, a failure to provide Student the total required minutes of one-to-one aide support during the 2022-2023 school year. As a corrective action, the California Department of Education directed Snowline to develop a plan to ensure Student had a one-to-one aide during the school day and on the school van on days Student's assigned one-on-one aide was not available. Snowline was required to include a list of alternate individuals to provide aide services, such as non-public agency staff, and to document the days aide services were provided to Student during transportation. To comply with the corrective order, on October 19, 2023, Snowline

developed a written plan for Student's aide support when her dedicated aide was unavailable. The plan included Snowline using its own employees to provide aide support and maintaining a daily service log.

The weight of the evidence proved Snowline provided Student's behavior intervention services during the 2022-2023 school year, and any gaps in services were not material. More specifically, the testimony and documentary evidence proved Snowline materially implemented the September 9, 2022 IEP, the October 26, 2022 addendum IEP, and the November 28, 2022 IEP's behavior intervention services. Further, to the extent there were any minor gaps in the provision of behavior intervention services, the corrective action mandated by the California Department of Education was sufficient to remedy any deficiency.

STUDENT WAIVED ANY IMPLEMENTATION CLAIMS BETWEEN THE START OF THE SCHOOL YEAR ON AUGUST 10, 2022 AND THE OCTOBER 11, 2022 SETTLEMENT AGREEMENT

As discussed in Issue 1, Student waived all claims, known or unknown, against Snowline that arose prior to the October 11, 2022 settlement agreement. Therefore, Student waived any claims that Snowline denied her a FAPE by failing to implement behavior intervention services prior to October 11, 2022. Student's claim Snowline failed to implement behavior intervention services is limited to the period October 11, 2022, through the end of the 2022-2023 school year.

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SNOWLINE MATERIALLY IMPLEMENTED THE SEPTEMBER 9,
2022 IEP'S BEHAVIOR INTERVENTION SERVICES FROM
OCTOBER 12, 2022, THROUGH NOVEMBER 13, 2022

Snowline materially implemented the September 9, 2022 IEP's behavior intervention services between October 12, 2022, and November 13, 2022, the date Parent provided written consent to the October 26, 2022 addendum IEP. The September 9, 2022 IEP, as amended on September 26, 2022, required Snowline to provide Student:

- a one-to-one aide through a non-public agency 390 minutes daily; and
- a one-to-one aide through a non-public agency twice daily during transportation.

The September 9, 2022 IEP expressly stated Snowline was responsible for providing services when Student was in attendance, consistent with Snowline's calendar, excluding holidays, vacations, and non-instructional days. Student's one-to-one aide services were implemented on all school days Student attended Vista Verde. Snowline's witnesses, including special education teachers Serobyan and Lockley, school psychologist Barnes, and director DeRenard, offered consistent and persuasive testimony confirming Student was supported by a one-to-one aide on all days Student attended Vista Verde in October 2022, including during transportation on the school van.

DeRenard was Snowline's Director of Student Support Services. DeRenard was an experienced administrator and educator with over 27 years-experience as a special education teacher or administrator. DeRenard was a thoughtful and informed administrator who was familiar with Snowline's special education program and IEP

obligations. DeRenard attended Student's IEP team meetings during the 2022-2023 school year and communicated frequently with Parent. More specifically, starting in July 2022, DeRenard regularly communicated with Parent by telephone and email about Student's one-to-one aides and transportation.

DeRenard was responsible for overseeing Snowline's contracts with non-public agencies who provided related services to Snowline's students with disabilities. At hearing, DeRenard confirmed Student had a dedicated one-to-one aide during the school day, and during transportation to and from school, during Student's attendance at Vista Verde in October 2022. Serobyen, Lockley, and Barnes offered consistent testimony confirming Student's one-to-one aide support. Their testimony was corroborated by documentary evidence, including a contract between Desert Mountain SELPA and Maxim Healthcare Staffing Services. Maxim Healthcare Staffing Services provided one-to-one aide support to Student during the school day and daily transportation effective October 3, 2022, and continuing through sometime in late October 2022.

Starting November 1, 2022, Student's one-to-one aide and behavior supervision services were provided by Autism Behavior Services, a non-public agency. At hearing, behavior supervisor Jennifer Cowley offered persuasive testimony confirming Student's one-to-one aide services, including during transportation on the school van, and behavior supervision services starting November 1, 2022, and continuing through the 2022-2023 school year. Cowley's testimony was corroborated by service logs from Autism Behavior Services.

Student began attending school at Joshua Circle in November 2022. At hearing, the evidence was unclear about the date Student began attending Joshua Circle. Snowline's witnesses, including DeRenard, Barnes, Caro-Rojas, and Cowley

persuasively and consistently testified Student was provided one-to-one aide support and behavior supervision services at Joshua Circle on all days Student attended school in November 2022. Student offered no persuasive evidence disputing their testimony.

Parent had ongoing concerns about sending Student to school on the school van, which carried over from the prior school year. For example, during the 2021-2022 school year, Student sometimes eloped from her seat and had to be restrained with a harness on the school van. At hearing, Parent testified she sometimes did not send Student to school because Snowline did not provide a one-to-one aide to accompany Student on the school van, or Parent did not trust the one-to-one aide that was provided. At hearing, Parent testified Student missed three weeks of school because Snowline did not provide Student a one-to-one aide on the school van. Parent did not specify the month or days this occurred, and Parent's testimony was vague about whether Parent did not send Student to school on some days because there was no transportation aide, or she did not trust the transportation aide, or for some other reason. Parent also hesitated and seemed unsure when questioned about whether Student was not provided a one-to-one aide during transportation after the October 12, 2022 settlement agreement, which undermined the persuasiveness of Parent's testimony.

Parent did not dispute Student had a one-to-one aide during her attendance at Vista Verde. Rather, Parent believed Student's aides were not properly trained and did not treat Student appropriately. For example, Parent testified about an event when Student came home from school with her hair redone by the aide. Parent believed Student's one-to-one aide was not focused on helping Student with her behaviors and schoolwork. Parent also believed Student's one-to-one aide did not accurately report Student's behaviors during the school day. She explained the aide would draw happy

faces on Student's daily progress reports even on days where Student engaged in inappropriate behaviors. Parent offered no testimony disputing Student was provided one-to-one aide services after she transferred to Joshua Circle.

Parent believed Snowline made false accusations of child abuse to San Bernardino Child and Family Services in retaliation for Parent advocating for Student, resulting in San Bernardino Child and Family Services removing Student from Parent's custody in April 2023. Parent's distrust of Snowline led her to refrain from participating at the IEP team meetings. Although Parent was a strong advocate for Student, Parent's overall testimony was discredited by inconsistencies concerning the timing of events, her inability to remember key dates or whether she consented to the IEP documents at issue, and when Student began school at Joshua Circle. As a result of these inconsistencies, Parent's testimony was given little weight.

Student failed to meet her burden of proving by a preponderance of the evidence that Snowline denied her a FAPE by failing to implement the September 9, 2022 IEP's behavior intervention services from October 12, 2022, through November 13, 2022. To the extent there was a gap in services, Student did not prove any shortfall fell significantly short of the services required by Student's IEP. (*Van Duyn, supra*, 502 F.3d 811, 815, 821.)

SNOWLINE PROVIDED STUDENT BEHAVIOR INTERVENTION SERVICES PURSUANT TO THE OCTOBER 26, 2022 ADDENDUM IEP FROM NOVEMBER 13, 2022, THROUGH DECEMBER 3, 2022

Parent consented to the October 26, 2022 addendum IEP on November 13, 2022. Accordingly, Snowline was required to implement the behavior intervention services in

the October 26, 2022 addendum IEP from November 13, 2022, through December 3, 2022, the date Parent consented to the November 28, 2022 IEP, as discussed below.

The October 26, 2022 addendum IEP required Snowline to provide the following services to address Student's behaviors:

- 390 minutes daily one-to-one aide support through a non-public agency;
- 480 minutes monthly behavior supervision services; and
- a one-to-one aide through a non-public agency twice daily during transportation.

In addition, Snowline was required to implement Student's behavior intervention plan.

The preponderance of the evidence established Snowline provided Student a one-to-one aide during the school day, and on the school van, during the eight school days between November 13, 2022, and December 3, 2022. Snowline also provided behavior supervision services during this period. DeRenard and Caro-Rojas' testimony was persuasive in establishing Snowline provided Student one-to-one aide support during the school day, and during daily transportation on the school van, together with behavior supervision services, during this period. Student offered no evidence to the contrary.

Caro-Rojas was Student's special education teacher at Joshua Circle starting in November 2022, and continuing through the 2022-2023 school year. Caro-Rojas held a moderate-to-severe special education teaching credential and had worked as a special education teacher for almost 10 years. Caro-Rojas' class had 12 students. Caro-Rojas was supported by two assigned paraeducators. Three students in the classroom, including Student, had dedicated one-to-one aides.

Caro-Rojas's testimony persuasively showed Student was provided behavior intervention services at Joshua Circle throughout the 2022-2023 school year. When Student initially started in Caro-Rojas' class in November 2022, Student engaged in maladaptive behaviors, including elopement, physical aggression towards her aide, and lack of self-control. When asked to complete a task, Student sustained attention only 20 to 40 percent of the time with multiple verbal prompts. In adaptive functioning, Student did not consistently use the restroom and wore pull-ups. Student eloped from the classroom or her work area two to five times per hour for three to 10 minutes. Student kicked her aide between one to two times per week. She eloped from areas within the classroom, verbally protested, or ignored the adult's request. Sometimes she climbed on tables to avoid working on tasks.

Caro-Rojas and Student's one-to-one aide implemented the behavior intervention plan and Student's IEP accommodations, including visual schedules, breaks, access to the sensory room, and positive reinforcers. Caro-Rojas opined Student's behaviors could be managed with the accommodations and positive behavior rewards incorporated into Student's IEP. When Student became dysregulated, her aide would accompany her to a sensory room. A sensory room is a specially designed environment that creates a safe place for students to self-regulate and manage anger, over-stimulation, and stress. The sensory room had padded walls, a bean bag chair, and sensory items.

After Student settled into the classroom routine, her behaviors improved. Socially, Student had friends and socialized with her classmates. Caro-Rojas did not observe any altercations between Student and her classmates. Caro-Rojas sent home daily communication logs to Parent and provided quarterly progress reports.

Caro-Rojas also communicated from time to time with Parent by telephone and email correspondence. At hearing, Caro-Rojas could not recall Parent expressing concern about Student's behaviors at school, during transportation, or at home.

Student failed to offer any credible testimony or documentary evidence showing Snowline did not implement the October 26, 2022 addendum IEP's behavior intervention services from November 13, 2022, through December 3, 2022. Student did not prove by a preponderance of the evidence that Snowline denied her a FAPE during this period by failing to implement Student's behavior intervention services.

SNOWLINE IMPLEMENTED THE BEHAVIOR INTERVENTION
SERVICES IN THE NOVEMBER 28, 2022 IEP FROM DECEMBER 3,
2022, THROUGH THE END OF THE 2022-2023 SCHOOL YEAR

Parent consented to the November 28, 2022 IEP on December 3, 2022. Student's November 28, 2022 IEP was her operative IEP for the remainder of the 2022-2023 school year. The November 28, 2022 IEP required Snowline to provide Student the following behavior services:

- 2,490 minutes weekly one-to-one aide services through a non-public agency;
- 480 minutes monthly behavior supervision services through a non-public agency; and
- bus aide services two times daily through a non-public agency.

At hearing, multiple witnesses, including DeRenard, Barnes, Caro-Rojas, Mobley, Cowley, speech-language pathologist Erin Tetley, and program specialist Dakota Cates

confirmed Snowline provided Student one-to-one aide services during the school day and transportation on all days Student attended school at Joshua Circle. Snowline also provided Student 480 minutes monthly behavior supervision services through Autism Behavior Services. Their testimony was corroborated by documentary evidence, including service provider logs and attendance records.

Snowline's witnesses, including Caro-Rojas, Cowley, and Barnes persuasively testified about Student's progress towards her behavior goals at Joshua Circle. Student's progress towards her behavior goals supports a finding that the behavior intervention services in the November 28, 2022 IEP were materially implemented from December 3, 2022, through the end of the 2022-2023 school year. (*Van Duyn, supra*, 502 F.3d at p. 822.)

Caro-Rojas' testimony highlighted Student's progress towards her behavioral goals during her attendance at Joshua Circle. Caro-Rojas attended Student's November 28, 2022 IEP team meeting, and continuation meetings held on February 6 and 17, 2023. At hearing, Caro-Rojas opined Student made progress towards her behavior goals at a February 17, 2023 IEP continuation team meeting. Specifically, Student met her behavior goal of sustaining attention to task using a timer for up to three-minutes with one or less verbal prompts. Student also met her functional behavioral goal of using a visual schedule to use the restroom with one verbal prompt. Caro-Rojas persuasively and articulately opined that Student's IEP accommodations and behavioral intervention plan offered in the November 28, 2022 IEP, together with support by Student's one-to-one aide and behavior supervision services, were implemented during the 2022-2023 school year. Caro-Rojas further opined the behavior interventions were effective and resulted in Student meeting her behavior goals.

Behavior supervisor Cowley's testimony further demonstrated Student's progress towards her behavior goals. Cowley provided behavior intervention supervision services to Student starting in March 2023, and continuing through the date of hearing. Cowley held a master's degree in special education with an emphasis in applied behavior analysis. At hearing, Cowley's testimony was persuasive based upon her experience and strong understanding of Student and her behavioral needs. Student's one-to-one aide supported Student during the school day and implemented Student's behavior goals. As the behavior supervisor, Cowley was tasked with observing Student, collecting data, and overseeing implementation of the behavior intervention services. Cowley opined at hearing that Student's behavior intervention services offered in the November 28, 2022 IEP were successfully implemented at Joshua Circle throughout the 2022-2023 school year and Student met her behavioral goals.

Barnes offered persuasive testimony about Student's significant behavior improvements after her transfer to Joshua Circle in November 2022. Barnes conducted psychoeducational and functional behavior assessments for Student in preparation for Student's three-year review evaluation. In connection with these assessments, Barnes observed Student over 10 hours at Joshua Circle. Barnes observed Student across various settings, including in the classroom, during unstructured time, and during testing. Barnes observed Student at Joshua Circle on December 15, 16, and 29, 2022, and January 18, 20, and 2023, during whole group instruction, small group work, free time, recess, lunch, and dismissal.

At hearing, Barnes offered detailed and thorough testimony about Student's progress at Joshua Circle resulting from implementation of Student's behavior intervention services. Student had difficulties transitioning from whole group instruction. She sometimes left her seat but returned with verbal prompting.

She successfully used a token board and timer and could sustain attention to task for up to 10 minutes. During recess, Barnes observed Student's engaging in positive social behaviors, such as taking turns with a peer using a tricycle. Student also demonstrated some unusual and disruptive behaviors, such as making inappropriate comments and hitting a peer. Student responded well to verbal redirection.

At hearing, Barnes convincingly opined Student's behaviors had decreased compared to her behaviors at Vista Verde. Specifically, at Vista Verde Student engaged in frequent elopement, spitting, and physical aggression. Student still displayed some of these behaviors, but they occurred less frequently. Barnes observed only one incident of elopement over nine hours of observation of Student at Joshua Circle, compared to eloping two to five times per hour at Vista Verde. Student also displayed less physical aggression compared to her behaviors at Vista Verde.

Barnes made recommendations for updating Student's behavior intervention plan, which included the need to develop functionally equivalent replacement behaviors such as asking for breaks and requesting help from adults. At hearing, Barnes explained the functionally equivalent replacement behaviors had a teaching component, meaning Student's teacher would teach Student the skills to replace the targeted behaviors.

In her closing brief, Student argued Snowline did not provide any one-to-one aide services or behavior supervision services during the 2022-2023 school year. This assertion was contrary to the overwhelming weight of the evidence, including Parent's testimony. Student's attorney represented in her closing brief no behavior interventions were provided during the 2022-2023 school year. The attorney who signed the closing brief was not present during the hearing, except for a brief appearance on day one of

the hearing. These statements were contrary to the mountain of evidence introduced at hearing and violated counsel's duty of candor to the tribunal. (Rules Prof. Conduct, rule 3.3(a)(1).)

In summary, the preponderance of the evidence proved Student benefitted from the November 28, 2022 IEP's behavior intervention services. Student could generally stay on task and transition between activities with the support of her one-to-one aide. Student benefitted from use of a token board and timer to remain on task. Student responded positively to adult attention, a visual schedule, and instruction board. Student stay seated most of the time and participated in circle time activities. Student raised her hand to take turns and earned timed breaks in the sensory room. Student met her behavior goal of sustaining attention for up to three minutes. She also met her goal of following a visual schedule and requesting to use the restroom. Student's significant behavioral progress weighs in favor of a finding that Snowline materially implemented Student's behavior intervention services.

Student failed to meet her burden of proving by a preponderance of the evidence that Snowline denied her a FAPE from December 3, 2022, through the end of the 2022-2023 school year, by failing to provide behavior intervention services offered in the November 28, 2022 IEP. Snowline prevailed on Issues 3(a) and (b).

ISSUE 3(c): NO IMPROPER RESTRAINT OF STUDENT DURING THE 2022-2023 SCHOOL YEAR

Student contends Snowline denied her a FAPE when untrained staff improperly restrained her. Student further contends Snowline failed to notify Parent of restraints

used on Student. Snowline contends Student was not restrained during the 2022-2023 school year and therefore, it had no reason to prepare an emergency report or notify Parent.

Throughout the hearing, Student's attorney questioned Snowline's and San Bernardino's witnesses about whether they were aware of any individual using a "crisis prevention intervention" technique to restrain Student. Student did not elicit testimony from any witness about the meaning of a "crisis prevention intervention." In her closing brief, Student referred to a "CPI-Hold (interim control position)." At hearing, Student did not offer evidence about the meaning of a "CPI-Hold." This Decision interprets Student's use of the terms "crisis prevention intervention" and "CPI-Hold" as a mechanical restraint or physical restraint as defined by the Education Code. (Ed. Code, § 49005.1, subd. (f)(1).)

A behavioral restraint includes a mechanical restraint or a physical restraint. (Ed. Code § 49005.1, subd. (a).) A mechanical restraint is a device or restraint used to restrict a student's freedom of movement. (*Id.* At subd. (d)(1).) A vehicle safety restraint used during the transport of a student in a moving vehicle does not constitute a mechanical restraint. (*Id.* At subd. (d)(2)(B)(ii).) A physical restraint means a personal restriction that immobilizes or reduces the ability of a pupil to move the pupil's torso, arms, legs, or head freely. (*Id.* At subd. (f)(1).) A physical restraint does not include a physical escort, which means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a pupil who is acting out to walk to a safe location. (Ed. Code, § 49005.1, subd. (f)(1).)

Emergency interventions must only be used on special education students to control unpredictable, spontaneous behavior that poses clear and present danger of

serious physical harm to the student or others, and which cannot be immediately prevented by a less restrictive response than the temporary application of a technique used to contain the behavior. (Ed. Code, § 56521.1, subd. (a).) Emergency interventions shall not be used as a substitute for a systematic behavior intervention plan designed to change, replace, modify, or eliminate the behavior. (Ed. Code, § 56521.1, subd. (b).) Emergency interventions must not be used for longer than necessary to contain the behavior. If the prolonged use of emergency interventions is needed, then school staff shall involve the school administrator. (Ed. Code § 56521.1, subd. (c).)

When school staff used emergency interventions on a disabled student, the parents must be notified within one school day, if appropriate, to prevent the emergency interventions from being used in lieu of “planned, systematic behavioral interventions.” (Ed. Code § 56521.1, subd. (e)). A behavioral emergency report shall immediately be completed and maintained in the file of the [disabled student].” (*Id.* at subd. (e)(1)-(5).) If a behavior report is written regarding a student with a positive behavioral intervention plan, the report must be forwarded to the IEP team to review and determine if the behavior plan requires modification. (*Id.* at subd. (h).)

Student failed to prove any teacher or staff at Snowline conducted a mechanical or physical restraint of Student during the 2022-2023 school year. None of Snowline’s witnesses, including Serobyen, Lockley, DeRenard, Barnes, Salazar, or Mobley, testified that Student was physically restrained. Serobyen did not physically restrain Student when Student was in her class at Vista Verde, nor was she aware of any physical restraint used on Student by any other teacher or staff member. Serobyen recounted an incident where Student’s classmate lunged at Student. A classroom aide stepped between Student and her classmate to deescalate the situation. This action did not constitute a

physical restraint as defined under the Education Code which required a behavioral emergency report to be prepared and sent to Parent or forwarded to Student's IEP Team. (Ed. Code, §§ 49005.1, subd. (a); 56521.1, subd. (e).)

Lockley testified she observed Student attempt to kick a classmate in October 2022 while walking towards the school car at dismissal. Student's aide stepped in front of Student to prevent further misconduct. This incident also did not constitute a physical restraint.

Special Education Principal Mobley described an incident at Joshuan Circle when Student protested getting on the school van. Mobley had been a school principal for approximately 28 years. At hearing, Mobley presented as a caring and dedicated administrator. He explained he saw Student sit down on the ground. At the time, Student was accompanied by her one-to-one aid. Mobley walked over to assist student's one-to-one aide. He asked Student if she would like to hold his hand and walk to the van. Student stood up, held Mobley's hand, and walked to the van without further incident. This did not constitute physical restraint.

At hearing, Cowley offered testimony about Student's conduct during transportation. Student was restrained on the bus using a harness to prevent her from leaving her seat during transportation. This was done to keep Student safe and prevent her from trying to unbuckle her seatbelt and leave her seat. A vehicle safety restraint in a moving vehicle does not constitute a mechanical restraint. (Ed. Code § 49005.1, subd. (d)(2)(B)(ii).)

DeRenard was not informed by staff of any physical restraint of Student. Accordingly, she did not prepare a behavioral emergency report for any physical restraint involving Student.

Barnes was not aware of any incident involving a physical restraint of Student. Barnes reviewed Student's educational records as part of her February 6, 2023 psychoeducational evaluation, as well as interviewed Caro-Rojas. She also interviewed Serobyan in October 2022 prior to the October 26, 2022 addendum IEP meeting. These interviews and record reviews did not report any physical restraint of Student.

At hearing, Parent described an incident where Student's one-to-one aide dragged Student from the school can up the driveway. Parent believed the driver reported this incident to Snowline, but Snowline did not take corrective action against the aide. Parent testified this event happened after the October 11, 2022 settlement agreement was signed, but before the October 26, 2022 addendum IEP team meeting. There were six school days between these events. Parent did not offer specific facts about when this incident happened or whether she reported it to Snowline. No witness, including Parent or any of the October 26, 2022 addendum IEP team members testified this incident was raised by Parent or discussed at the IEP team meeting. The California Department of Education also found no evidence that Student was restrained during the 2022-2023 school year. Finally, Parent's knowledge of the incident was based on hearsay evidence. While hearsay evidence is admissible in special education hearings, findings of fact may not be based solely on hearsay evidence. (Cal. Code Regs., tit. 5, § 3082, subd. (b).) Parent's conclusions were not corroborated by any other non-hearsay evidence.

In her closing brief, Student refers to an incident where Student told Parent she was physically restrained. Parent did not testify at hearing about any such incident. In her closing brief, Student refers to the incidents described by Serobyian, Lockley, DeRenard, Barnes, Salazar, or Mobley as constituting "CPI-Holds." None of these incidents immobilized or reduced the ability of Student to move her torso, arms, legs, or head freely, and therefore, did not constitute a physical restraint. (Ed. Code, § 49005.1(f)(1).)

Student did not meet her burden of proving by a preponderance of the evidence that Student was physically restrained. Student also did not prove Snowline failed to notify Parent of any physical restraint. Snowline prevailed on Issue 3 (c).

ISSUE 4: DID SNOWLINE'S DECEMBER 7, 2023 IEP OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT?

Snowline contends it offered Student an appropriate special education program and placement in the least restrictive environment in a December 7, 2023 IEP. Snowline further contends Student's placement in a mild-to-moderate special day class was the least restrictive environment in which Student could access her education. Student contends placement in a general education classroom with one-to-one aide support was the appropriate least restrictive environment for Student.

Snowline met its burden of proving its FAPE offer in the December 7, 2023 IEP was appropriate. The preponderance of the evidence proved Snowline's placement offer in a mild-to-moderate special day class with one-to-one aide support was designed to meet Student's unique needs and reasonably calculated to provide Student with educational benefit in the least restrictive environment.

An IEP is a written statement for each child with a disability that is developed, reviewed, and revised based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); 34 C.F.R. § 300.320; Ed. Code, § 56032.) Parents and school districts develop an IEP tailored to meet the unique needs of each child with a disability. (20 U.S.C. §§ 1401(14), 1414(d).) In developing the IEP, the IEP team must consider

- the strengths of the child,
 - the concerns of the parents for enhancing the child's education,
 - the results of the most recent evaluations of the child, and
 - the academic, developmental, and functional needs of the child.
- (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a); Ed. Code, § 56341.1, subds. (a), (d).)

In a school district-filed case, a hearing officer shall not base a decision solely on non-substantive, procedural errors unless the administrative law judge finds the non-substantive, procedural errors resulted in the loss of an educational opportunity to the student or interfered with the parent's opportunity to participate in the IEP formulation process. (Ed. Code, § 56505, subd. (j).)

NOTICE OF IEP TEAM MEETINGS AND PROCEDURAL SAFEGUARDS

State and federal law require school districts to provide the parent of a child eligible for special education with a copy of a notice of procedural safeguards upon initial referral, and thereafter at least once a year, as part of any assessment plan, and at other designated times. (20 U.S.C. § 1415(d)(1); 34 C.F.R. § 300.504(a); Ed. Code, § 56321, subd. (a).) The notice must include a full explanation of all procedural safeguards and be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent. (20 U.S.C.

§ 1415(d)(2); 34 C.F.R. §§ 300.503(c)(1), 300.504; Ed. Code, § 56321, subd (a).) At each IEP team meeting, the school district must inform the parent of state and federal procedural safeguards. (Ed. Code, § 56500.1, subd. (b).)

School districts must provide parents with notice of meetings that will be held to decide placement. (34 C.F.R. § 300.501(b)(1).) The IEP team meeting must be scheduled at mutually agreed upon time and place. (Ed. Code, § 56341.5, subd. (c).)

Snowline provided proper notice to Parent for the December 7, 2023 IEP team meeting. Student's annual IEP originally was due by November 28, 2023. Snowline made multiple attempts in early November 2023 to schedule the meeting with Parent, but Parent did not respond or was unavailable on the proposed dates. On November 20, 2023, Snowline notified Parent it scheduled the IEP team meeting for December 7, 2023. Parent attended the December 7, 2023 IEP team meeting. Snowline provided Parent a copy of her procedural rights prior to the IEP team meeting. Parent told the December 7, 2023 IEP team she did not have questions about her procedural rights. Snowline provided Parent notice and the procedural safeguards.

REQUIRED IEP TEAM MEMBERS

A school district must ensure the IEP team includes all legally required participants. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b).) All required IEP team members attended the December 7, 2023 IEP team meeting, including Parent, San Bernardino general education teacher Deborah Bower, school nurse Cythnia Rowland, special education teacher Holly Bishop, occupational therapist Cali Ho, speech pathologist Jamie Kihega, behavior supervisor Cowley, and director

DeRenard. Snowline's legal counsel, Danielle Gigli, also attended. Each member of the IEP team was familiar with Student because they either taught, observed, or provided services to Student at Joshua Circle.

PRESENT LEVELS OF PERFORMANCE AND ANNUAL GOALS

An IEP must include a student's present levels of performance. The present levels of academic achievement and functional performance must include how the student's disability affects the involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).)

An IEP must contain a statement of measurable annual goals for the child designed to enable the child to be involved in and make progress in the general education curriculum and meet each of the other educational needs. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) Annual goals should describe what a student with a disability can reasonably be expected to accomplish within a 12-month period. (Ed. Code, § 56344; *Letter to Butler* (Office of Special Education and Rehabilitative Services, Mar. 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The purpose of goals is to assist the IEP team in determining whether a student is making progress in all areas of need. (Ed. Code, § 56345, subd. (a)(3).)

The IEP must also describe how progress towards the goals will be measured and reported. (20 U.S.C. § 1414(d)(1)(A)(viii); 34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the special education services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).) An examination of an IEP's goals is central to the

determination of whether a student received a FAPE: "We look to the [IEP] goals and goal achieving methods at the time the plan was implemented to ask whether these methods were reasonably calculated to confer ... a meaningful benefit." (*Adams, supra*, 195 F.3d 1141, 1149.)

THE ACADEMIC GOALS

The December 7, 2023 IEP included appropriate annual goals in all areas of need. The IEP team agreed Student had made significant progress, but still had educational needs in reading, writing, math, behavior, and communication. The IEP team formulated nine new goals in phonological awareness, writing, reading, math, behavior, and communication.

Holly Bishop, a credentialed special education teacher, developed Student's academic goals. Bishop had seven-years-experience working with students with moderate-to-severe disabilities. Bishop was Student's special education teacher during the 2023-2024 school year and implemented Student's specialized academic instruction. Bishop reviewed Student's assessments, charted data regarding Student's progress towards her prior annual goals and collected Student's work samples.

Bishop reported Student's present levels of performance in academics. Student made progress towards understanding the sounds of letters and in handwriting, spelling, and grammar. She displayed weakness in recognizing kindergarten sight words, vowel sounds, and identifying rhyming words. Student could independently write her first and last name and copy sentences. Student's comprehension of text read to her had improved. In mathematics, Student was learning the concepts of basic addition and subtraction. She was learning to identify and understand the value of

different coins. Student was learning to tell time and identify the numbers on an analog clock. In academics, Student partially met her prior decoding goal and met her goal of learning the alphabet and copying sentences using a visual model. Student met her math goal of adding numbers using a number line. Based on Student's present needs and input from the IEP team, the IEP team proposed six academic goals.

The first academic goal was in phonological awareness. The goal aimed for Student to demonstrate proficiency in phonological awareness by identifying 10 rhyming words. Student's baseline reflected Student recognized a few basic rhyming words, but she required improvement in identifying and associating words. By November 28, 2024, Student was expected to match words to their corresponding word family. She was expected to accomplish this skill with 80 percent accuracy as measured by teacher-charted observations and data in five out of five trials over five consecutive weeks. The three short-term objectives for this goal provided Student would first correctly identify and match five rhyming word pairs within the same word family during structured activities. Next, she would independently identify and match three additional rhyming word pairs across different word families during interactive reading sessions. Finally, Student would generalize the skill of identifying rhyming words by successfully recognizing and matching two rhyming word pairs in unstructured settings, such as during free play or casual conversations. Student's special education teacher and certified staff were responsible for tracking Student's progress towards this goal.

The second academic goal was a phonemic awareness goal. Student had a basic grasp of vowel sounds but struggled with accurately writing words with correct vowels. This goal aimed for Student to fill in missing vowels to complete 10 words. By November 28, 2024, Student was expected to accomplish this skill with 80 percent accuracy as measured by teacher-charted observations and data in five out of five

trials over five consecutive weeks. This goal also incorporated a fine motor component by requiring Student to write missing letters. The IEP team reviewed Student's progress on her fine motor skills and although Student made progress on her goal of writing upper-and-lower case letters legibly and could hold a pencil properly, she still could not write all letters from memory. The IEP team determined the occupational therapist would work in tandem with Student's special education teacher on Student's goal of filling in missing vowels in words.

This goal was appropriately ambitious as it addressed fine motor skills and Student's phonemic awareness needs. The goal had three short-term objectives. First, Student would successfully write the missing vowels for five given words with one or more missing vowels during structured literacy activities. Next, Student would independently complete the missing vowels for an additional three words, demonstrating increased proficiency in recognizing and applying vowel sounds across different word contexts. Finally, Student would generalize the skill by accurately completing the vowels for two words in unstructured settings, such as during independent reading or reading tasks. The goal was measurable using chartered observations and data and provided short term objectives and three progress reports during the following 12 months. Both the classroom teacher and occupational therapist were responsible for helping Student reach this goal.

At hearing Bishop and Ho each testified in support of the appropriateness of the phonemic awareness and writing goal. Student could grasp a pencil, use scissors, and manipulate small objects with dexterity. As of December 2023, Student could independently write her first and last name and copy sentences accurately, but she could not write all upper-and-lower case letters from memory. The IEP team wanted Student to improve her phonemic awareness skills by including vowels in words and

writing the alphabet from memory. Ho opined Student would work on this goal with the help of the teacher and paraprofessionals, together with push-in occupational therapy services.

The third academic goal was in reading and aimed for Student to improve her reading skills by reading 20 words at kindergarten level. By November 28, 2024, Student was expected to attain this goal with 80 percent accuracy as measured by teacher-chartered observations and data in five of five trials over five consecutive weeks. Student's baseline reflected Student had foundational reading skills at a kindergarten level. She could decode and read basic words but required targeted support and intervention to improve her proficiency. The goal had three short term objectives and progress would be reported three times annually. Student's special education teacher and certified staff were responsible for tracking Student's progress towards this goal.

Goal four, a math goal, aimed for Student to count to 100 with 80 percent accuracy. Student could count to 25 with no errors and her accuracy from 25 to 100 was 20 percent in three of five trials. By November 28, 2024, Student was expected to meet this goal as measured by teacher-chartered observations and data in five out of five trials over five consecutive weeks. Student's special education teacher and certified staff were responsible for tracking Student's progress towards this goal.

Goal five, a math goal, sought for Student to identify different coins by name and quantity. Student could identify pennies and nickels by name with 60 percent accuracy in five of five trials. She could not identify the quantity of each coin. By November 28, 2024, Student was expected to attain this goal with 80 percent accuracy as measured by teacher-chartered observations and data in five out of five trials over five consecutive

weeks. The goal contained three short term objectives. Student's special education teacher and certified staff were responsible for tracking Student's progress towards this goal.

Goal six, a math goal, sought for Student to tell the correct time to the hour and half hour using an analog clock. Student could tell the time to the hour and half hour with 20 percent accuracy when asked the time. By November 28, 2024, Student was expected to correctly tell time with 80 percent accuracy as measured by teacher-chartered observations and data in five out of five trials over five consecutive weeks. The goal contained three short term objectives. Student's special education teacher and certified staff were responsible for tracking Student's progress towards this goal.

Bishop testified in support of the academic goals. At hearing, Bishop demonstrated a strong understanding of Student's academic strengths and weaknesses. The academic goals were based on careful data collection and classroom observations. Each goal was measurable, appropriately ambitious, and achievable within one year. Bishop's testimony supported the appropriateness of the academic goals considering Student's unique needs.

THE BEHAVIOR GOAL

Bishop and Cowley reported on Student's present levels in behavior. Student's behaviors had improved significantly. She used a token board to earn predetermined awards. Student followed a visual schedule, asked permission to take breaks, and demonstrated the skills of sharing, taking turns, and cooperating. She did not engage in elopement or physical aggression towards her peers. She showed empathy to her classmates. Student had difficulty keeping an appropriate amount of personal space with adults and classmates.

The IEP team determined Student required a behavior goal in maintaining appropriate personal space during interactions with peers and staff. Goal seven, a behavior goal, required Student to demonstrate awareness and control of personal space. By November 28, 2024, Student was expected to demonstrate awareness and control of personal space when interacting with peers and staff with 80 percent accuracy in five out of five trials over five consecutive weeks. The goal had three short-term objectives. Student's progress towards this goal would be measured by teacher - chartered observations and data. Student's special education teacher and certified staff were responsible for tracking Student's progress towards this goal.

Bishop testified in support of this goal. Student's behaviors had substantially improved. She followed the class routine and worked well with her peers. She displayed empathy towards her classmates, and often hugged her peers and staff. The IEP team determined Student would benefit from a behavior goal focused on understanding the social norms for keeping appropriate space from others.

Cowley also testified in support of the behavior goal. Cowley supervised Student's one-to-one aide, observed Student's behaviors in the classroom, monitored progress towards her behavior goals, and wrote reports. Cowley persuasively described Student's significant improvements in her behavior. Student was compliant, followed directions, and asked for breaks. Her behaviors of aggression, elopement, and noncompliance had dissipated. When Student became frustrated, she could take a sensory break, such as using a preferred item or sitting on bean bags. Student met her behavior goals and could follow a visual schedule with 65 percent accuracy and did not engage in elopement or aggressive behaviors. Cowley believed the behavior goal was appropriate and recommended to the IEP team that Student continue to receive behavior services. She explained although Student's maladaptive behaviors had decreased, she needed

continued services to cement her skills. She further opined it was likely Student's behaviors could temporarily regress upon her transfer to a new educational setting, and continued behavior intervention services were necessary to support Student during this transition.

THE COMMUNICATION GOALS

Licensed speech and language pathologist Jamie Kihega reported on Student's communication strengths and weaknesses. Kihega had over 21 years-experience as a speech-language pathologist. Kihega provided speech and language services to Student pursuant to her November 28, 2022 IEP during the 2022-2023 and 2023-2024 school years. Student's overall communication skills had improved. Student listened more carefully and expressed her ideas coherently. Her intelligibility had improved. She continued to work on using the "r" and "th" sounds. She could answer "wh" questions with 90 to 95 percent accuracy. Student met her language goal of identifying "wh" questions. She partially met her articulation goal and could self-correct using the "r" sound. However, Student struggled with using accurate pronouns in sentences.

After considering Student's present levels of performance, Kihega presented two proposed new communication goals to the IEP team. The first communication goal aimed for Student to produce the "th", consonant "r", and vowel "r" sounds at the beginning, middle, or end of words. Student's baseline reflected Student could produce the "r" sounds in the initial position of words with 45 percent accuracy and the "th" sound in isolation with 55 percent accuracy. By November 28, 2024, Student was expected to produce these sounds in nine of 10 attempts in two consecutive sessions.

The second communication goal required Student to produce third person subjective pronouns (he, she, they) and third person objective pronouns (him, her, them) in phrases and sentences. Student's baseline reflected Student used incorrect third person pronouns. By November 28, 2024, Student was expected to use third person subjective and objective pronouns with 80 percent accuracy in three data collections. The goal was measurable and required the speech-language pathologist to track Student's progress through data collection. Both communication goals identified school staff, including the speech-language pathologist, responsible for implementing the goals.

Kihega testified in support of the communication goals. Kihega's extensive experience as a speech-language pathologist and thorough knowledge of Student's unique needs through providing speech and language services to Student rendered her testimony persuasive. The communication goals were understandable, measurable, directly related to Student's present levels of performance, and appropriately ambitious.

Student offered no persuasive evidence challenging the appropriateness of the December 7, 2023 IEP's goals. Parent participated in the December 7, 2023 IEP team meeting. She did not express any concerns, ask questions to the other IEP team members, or express disagreement with the goals. During hearing, Parent did not challenge the appropriateness of the goals or recommend any additional or different goals.

Student did not offer evidence disputing the experience or testimony of the related service providers, including Bishop, Ho, Cowley or Kihega. Student's

attorneys did not call an expert witness in any field of related services, including a credentialed special education teacher, a licensed speech-language pathologist, a licensed occupational therapist, or a behaviorist.

Shin offered testimony in the areas of speech and language, specialized academic instruction, occupational therapy, and behavior. She was experienced in consulting with families and school districts in developing IEPs. However, she did not hold a special education teaching credential. She had not taught or provided related services to students with disabilities. She testified she previously delivered specialized academic instruction, even though she was not a credentialed special education teacher. Other than developing goals for her own child, who had a disability, and providing consulting services to families, she did not develop or implement goals and services in any area of special education or related services. She had studied principals of applied behavior analysis in a graduate program, but she was not a board-certified behavior analyst or a credentialed school psychologist. She also did not hold a general education teaching credential, nor was she a speech-language pathologist or occupational therapist. She lacked the qualifications to offer expert opinions on both Student's levels of performance and the appropriateness of goals. Therefore, her testimony was afforded little weight.

Snowline proved by a preponderance of the evidence that the goals in the December 7, 2023 IEP were appropriate. They were developed by qualified school staff who were knowledgeable about Student's unique needs. Each goal contained a baseline and identified the persons responsible for implementing the goal. The academic and behavior goals each contained three-short term objectives. The goals

addressed Student's identified deficits in academics, fine motor, communication, and behavior. The adequacy of the goals was supported by testimony from qualified educators. Snowline met its burden of proving the goals were appropriate.

PLACEMENT, SERVICES, SUPPORTS, AND ACCOMMODATIONS

An IEP must include a description of the placement, services, and accommodations offered to the student, including program modifications or supports. (*Burlington v. Department of Educ. Of Mass.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1196] (*Burlington*); 20 U.S.C. § 1414(d)(1)(A)(IV); 34 C.F.R. § 300.324(a)(2)(iv); Ed. Code, § 56345, subd. (a)(4).)

An IEP must include a statement of the special education and related services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

- to advance appropriately toward attaining the annual goals;
- to be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
- to be educated and participate with other children with disabilities and nondisabled children. (34 C.F.R. § 300.320(a)(4).)

The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) The IEP must contain any supplementary aides and supports and/or program modifications or supports that will be provided to the student to advance in attaining the goals, make progress on the general education curriculum, and participate in

education with disabled and non-disabled peers. (*Ibid.*) An IEP must also contain a statement of appropriate accommodations necessary to measure the student's academic achievement and functional performance on state and district-wide assessments. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(6); Ed. Code, § 56345, subd. (a)(6)(A).)

An IEP must document its rationale for placement in other than the student's school and classroom they would otherwise attend if not disabled. (34 C.F.R. § 300.116; 71 Fed. Reg. 46,588 (August 14, 2006); Cal. Code Regs., tit. 5, § 3042.) The IEP must indicate why the student's disability prevents their needs from being met in a less restrictive environment even with the use of supplementary aides and services. (*Ibid.*) The IDEA contemplates that some children with disabilities require a more restrictive placement "if education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (*D.R. ex rel. R.R. v. Redondo Beach Unified Sch. Dist.* (9th Cir. 2022) 56 F.4th 636, 646 (quoting 20 U.S.C. § 1412(a)(5) (emphasis in original)).) As recently acknowledged by the Ninth Circuit, "the IDEA specifically contemplates intermediary steps between a student being educated in a special education classroom, and a student being educated in a general education without any specialized assistance." (*Los Angeles Unified Sch. Dist. v. A.O. by and through Owens* (9th Cir. 2024) 92 F.4th 1159, 1176.)

The IEP team is required to make an individualized determination about how an IEP can be implemented under emergency conditions, in which instruction or services, or both, cannot be provided to the student either at home or in person for more than 10 school days. (Ed. Code, § 56345, subd. (a)(9)(A).) This determination must be included in the development of each initial IEP or the regularly scheduled revision of an IEP and must take public health orders into account. (Ed. Code, § 56345, subd. (a)(9)(B).)

Snowline proved the December 7, 2023 IEP's offer of placement, services, and accommodations was appropriate and offered Student a FAPE in the least restrictive environment. Snowline's FAPE offer included various accommodations and the following services:

- 1,585 minutes weekly specialized academic instruction in a special day class;
- 1,585 minutes weekly intensive individual services, a one-to-one aide, through a non-public agency;
- 480 minutes behavior intervention services, or supervision services, through a non-public agency;
- 30 minutes weekly individual occupational therapy services, for a total of 120 minutes per month;
- 30 minutes weekly individual speech and language services, for a total of 120 minutes per month;
- 30 minutes weekly group speech and language services, for a total of 120 minutes per month;
- daily transportation to and from school; and
- extended school year services between June 10, 2024, and July 4, 2024.

Snowline offered Student comprehensive program accommodations necessary to enable Student to advance appropriately toward IEP goal attainment and be involved and make progress in the general education curriculum, including:

- visual cues;
- repeated instructions;
- teacher modeling;

- token economy system;
- visual schedule;
- positive reinforcement;
- first and then chart;
- frequent movement or play breaks; and
- use of timers.

The special factors page of the IEP indicated Student's behavior impeded learning of self or others. Specifically, Student exhibited challenges in maintaining appropriate personal space during interactions with peers and staff. The IEP specified the positive behavior interventions, strategies and supports to address Student's behavior, including social stories or visual stories to illustrate the concept of personal space and using simple language and images to show appropriate distances. The special factors page noted a behavior goal was part of the IEP.

The December 7, 2023 IEP also offered other supports for Student and for school personnel on behalf of Student as follows:

- 15 minutes monthly consultation between the speech-language pathologist and special education teacher;
- five to 10 minutes monthly consultation between the occupational therapist and classroom personnel;
- five to 10 minutes weekly behavior and emergency training; and
- 15 minutes daily evidenced based practices, including prompting, modeling, visual supports, and sensory integration for Student.

The IEP described the time Student would spend in the general education environment with her typically developing peers as lunch, recess, passing periods, and school day activities.

The IEP team determined Student displayed a loss of previously taught academic and social skills and an inability to quickly regain those skills following lengthy interruptions in instruction. The IEP team offered extended school year services from June 10, 2024, through July 4, 2024. The extended school year offer included:

- 240 minutes daily specialized academic instruction;
- 1,200 minutes weekly intensive individual services by a one-to-one aide through a non-public agency;
- 240 minutes monthly behavior supervision services through a non-public agency;
- 30 minutes individual occupational therapy services two times monthly;
- individual speech and language 30 minutes, two times monthly, and
- daily roundtrip transportation.

The December 7, 2023 IEP's offer of special education, related services, accommodations, and supports was appropriate and reasonably calculated to enable Student to make progress appropriate considering her circumstances. The IEP described the specialized academic instruction and related services in speech and language, occupational therapy, behavior, and transportation, and set forth the projected start date, length, frequency, and duration of instruction, services, and supports. The IEP offered Student extended school year services to prevent regression and described how her IEP would be implemented in emergency conditions.

LEAST RESTRICTIVE ENVIRONMENT

The December 7, 2023 IEP team believed Student could make progress towards her IEP goals and in the general education curriculum in a program with less support than the moderate-to-severe special day class at Joshua Circle. The IEP team recommended that Student transfer to a mild-to-moderate special day class within Snowline's geographic boundaries. Parent did not consent to the December 7, 2023 IEP because she wanted to wait for the results of independent educational evaluations in psychoeducation and functional behavior.

Snowline's offer of placement in a mild-to-moderate special day class at Baldy Mesa Elementary School, within Snowline's geographic boundaries, was designed to meet Student's unique needs and reasonably calculated to enable Student to make progress appropriate in light of her circumstances in the least restrictive environment. The IEP team discussed the continuum of placement options when considering what the least restrictive environment was for Student. Specifically, the IEP team considered a general education setting with specialized academic instruction through pull-out support, a full day mild-to-moderate special day class, a full day moderate-to-severe special day class, and a full day severe-to-profound special day class. The IEP team discussed Student's present levels of performance and determined she could benefit from a mild-to-moderate special day class. The classroom at Baldy Mesa Elementary was a self-contained comprehensive program. Student would receive functional academic skills, behavioral skills, self-help, social skills, communication, and fine and gross motor skills across the school day and in instructional settings.

Student was the highest functioning student in her classroom at Joshua Circle. She had made progress academically, and her behaviors had improved significantly. Student was friendly and social. The IEP team believed Student would receive academic and non-academic benefits in a less restrictive setting.

At hearing, multiple witnesses opined a mild-to-moderate special day class was the least restrictive environment for Student. Special education teacher Bishop opined Student had the necessary preacademic and social skills to benefit from a mild to-moderate special day class. Ho also believed Student could make progress in a mild-to-moderate special day class. Ho worked with Student beginning in late fall 2022 through the time of hearing. He described Student as being a "excellent role model" for her peers. She was friendly, expressed her needs, and completed her work. Ho did not observe any negative behaviors. Although Student did not meet all her fine motor goals from the November 28, 2022 IEP, Ho opined Student made steady progress.

Deborah Bowers was a principal at San Bernardino since July 2023. She held clear administrative service and multiple-subject teaching credentials. Prior to working for San Bernardino, she worked as a school principal for nine years and as general education teacher for 14 years. Bowers attended and facilitated the December 7, 2023 IEP team meeting. At hearing, she explained the IEP team believed Student required the supports provided in a mild-to-moderate special day class. The IEP team did not believe a general education classroom was appropriate at the time because Student required a higher level of services and support. Student would have mainstreaming opportunities during assemblies, library, and campus activities.

Student argued the least restrictive environment for Student was a general education classroom with one-to-one aide support. Parent did not communicate at any of the IEP team meetings at issue, nor at hearing, that she believed Student should be in a general education setting with one-to-one aide support. Student relied solely on Shin's testimony to dispute the appropriateness of the December 7, 2023 IEP's placement offer.

Shin opined Student could have been placed in a general education classroom with a one-to-one aide as early as January 2023. Although Student was academically behind, Shin believed "70 percent of learning is incidental." Shin's testimony was not persuasive because she had never met Student. She had not observed her in the home or educational settings. She had not assessed Student. As a result, her testimony reflected a lack of knowledge about Student and her needs in academics, fine motor, communication, and behavior. Shin also did not tour the proposed mild-to-moderate special day class or speak with any of Student's teachers or service providers, or anyone from Snowline or San Bernardino. Her lack of knowledge about the proposed program further rendered her testimony unpersuasive. For these reasons, Shin's opinions on this issue were given little weight.

Snowline met its burden of proving the December 7, 2023 IEP offered Student a FAPE in the least restrictive environment. The December 7, 2023 IEP was comprehensive and contained all statutorily required information. The IEP contained:

- Student's present levels of academic achievement and functional performance;
- an analysis of how Student's disability affected her involvement and progress in the general education curriculum;

- a statement of nine measurable, annual goals designed to meet Student's unique needs and allow her to make educational progress;
- a statement of how Student's goal performance would be measured and reported to Parent; and
- a description of related services along with projected start dates and duration, frequency, and location of services, supports, and accommodations.

Snowline established placement in a mild-to-moderate special day class was the least restrictive environment. Snowline met its burden of proving the December 7, 2023 IEP complied with procedural and substantive requirements.

SNOWLINE TIMELY FILED ITS DUE PROCESS COMPLAINT

Parent did not consent to the December 7, 2023 IEP. Parent wanted to wait until independent educational evaluations in psychoeducation were completed before she agreed to the FAPE offer. DeRenard explained the independent educational evaluations had not yet been completed, and the IEP team could reconvene to consider the results of the independent educational evaluations.

A school district is required to implement those portions of any IEP to which the parent has consented "if the parent of the child consents in writing to the receipt of special education and related services for the child but does not consent to all of the components of the [IEP]". (Ed. Code, § 56346, subd. (e).) If a school district determines the proposed special education program to which the parent does not consent is necessary to provide a FAPE, it must initiate a due process hearing. (*Id.* at sub. (f).) Once a school district determines that a disputed component of an IEP is necessary,

and the parents will not agree to it, “the district cannot opt to hold additional IEP meetings or continue the IEP process in lieu of initiating a due process hearing. Rather, the school district must initiate a due process hearing expeditiously.” (*I.R. ex rel. E.N. v. Los Angeles Unified Sch. Dist.* (9th Cir. 2015) 805 F.3d 1164, 1168-1169.)

Although Parent believed Snowline should have waited to review the prospective results of independent educational evaluations prior to making its FAPE offer, Student cites no authority for this position. Further, Student’s position is at odds with the Education Code’s goal to ensure that the conflict between the school district and the parent is resolved promptly so that necessary components of the IEP are implemented as soon as possible. (*I.R., supra*, 805 F.3d at pp. 1168-1169.) If a school district believes a child is not receiving a FAPE, it must act with reasonable promptness to adjudicate the dispute. “The reason for this urgency is that it is the child who suffers in the meantime.” (*Id.*; see also *Doug c. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1046.)

Here, Snowline determined Student required a less restrictive environment than a moderate-to-severe special day class to receive a FAPE. Snowline, therefore, was required to act with reasonable promptness to resolve the parties’ dispute to ensure Student was provided a FAPE. Snowline filed its due process complaint on January 4, 2024, 33 days after the December 7, 2023 IEP team meeting. Snowline initiated its due process complaint with reasonable promptness.

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), (b), (c), (d), AND (e):

Snowline did not deny Student a FAPE in a September 9, 2022 IEP by

- failing to address Student's regression,
- failing to offer home and clinic based applied behavior analysis services,
- failing to offer Parent training in behavior and speech and language,
- failing to offer placement in the least restrictive environment, and predetermining Student's placement offer.

More specifically, Student waived its right to challenge the September 9, 2022 FAPE offer.

Snowline prevailed on Issue 1(a) through (e).

ISSUE 2(a), (b), (c), (d), AND (e):

Snowline did not deny Student a FAPE in the November 28, 2022 IEP, by

- failing to address Student's regression,
- failing to offer home and clinic based applied behavior analysis services,
- failing to offer Parent training in behavior and speech and language,
- failing to offer placement in the least restrictive environment, and
- predetermining Student's placement offer.

Snowline prevailed on Issue 2(a) through (e).

ISSUE 3 (a), (b), AND (c):

Snowline did not deny Student a FAPE during the 2022-2023 school year by failing to implement behavior intervention services provided in the September 9, 2022 and November 28, 2022 IEPs. Snowline did not deny Student a FAPE by improperly restraining Student by untrained staff and failing to notify Parent.

Snowline prevailed on Issue 3(a) through (c).

ISSUE 4:

Snowline's December 7, 2023 IEP offered Student a FAPE in the least restrictive environment such that Snowline may implement the December 7, 2023 IEP without parental consent.

Snowline prevailed on Issue 4.

ORDER

1. All of Student's claims for relief are denied.
2. Snowline's December 7, 2023 IEP offered Student a FAPE in the least restrictive environment. Snowline may implement the December 7, 2023 IEP without parental consent.

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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.

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings