

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CONEJO VALLEY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2024010896

DECISION

MARCH 27, 2024

On January 29, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Conejo Valley Unified School District, naming Parents on behalf of Student. Conejo Valley Unified School District is called Conejo Valley. Administrative Law Judge Alexa Hohensee heard this matter by videoconference on February 21, 22, 27, 28, and 29, 2024.

Attorney Melissa Hatch represented Conejo Valley. Dawn Thomas, Director of Special Education, Secondary, attended the hearing on Conejo Valley's behalf. Attorney Kelly Kaeser represented Student. Parents attended the hearing on Student's behalf.

At the parties' request, the matter was continued to March 18, 2024, for written closing briefs. The record was closed, and the matter was submitted on March 18, 2024.

ISSUE

The sole issue for hearing is stated below. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

Did Conejo Valley's October 31, 2023 IEP offer Student a FAPE in the least restrictive environment, such that Conejo Valley may implement it 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.) The main purposes of the Individuals with Disabilities Education Act, called 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).) Here, Conejo Valley filed the due process hearing request and bears the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 17 years old and in 12th grade at the time of hearing. Student resided with Parents in Conejo Valley's geographic boundaries at all relevant times. Student was eligible for special education under the categories of autism and intellectual disability.

ISSUE – DID THE OCTOBER 31, 2023 IEP OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT?

Conejo Valley contends it met all procedural requirements to develop an IEP for Student on October 31, 2023, and offered Student appropriate placement and services for a substantive FAPE. Specifically, Conejo Valley contends that Student's behaviors

interfere with his access to the curriculum to such an extent that he needs 24-hour intensive care, seven days per week, in a residential treatment center to make educational progress. Student contends that Conejo Valley's October 31, 2023 IEP is procedurally flawed and that his behaviors could be addressed in a less restrictive environment.

RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION

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.)

A child eligible for special education must be provided access to specialized instruction and related services individually designed to provide educational benefit. This is done through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 404 [137 S.Ct. 988, 1002] (*Endrew F.*).

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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, or 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).)

An IEP is a written statement developed by parents and school personnel using the IDEA's procedures. The IEP describes the child's present levels of performance, educational needs, and academic and functional goals related to those needs. It also provides a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to work towards the stated goals, make progress in the regular education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14) and (26), 1414(d)(1)(A); Ed. Code, §§ 56031, 56032, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.17, 300.34, 300.39; Cal. Code Regs., tit. 5, § 3001, subd. (p).)

There are two parts to the legal analysis of determining whether a school district's IEP offer complied with the IDEA. First, the school district must have complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the IEP must have been designed to meet the child's unique needs and reasonably calculated to enable the child to receive educational benefit. (*Ibid.*)

Unlike substantive violations, procedural flaws in an IEP do not automatically deny the child a FAPE and require an additional analysis. A procedural violation results in a denial of FAPE only if it impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits.

(20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subds. (f) & (j); see also *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484; *Rowley, supra*, 458 U.S. at p. 200 [102 S.Ct. 3034].)

STUDENT'S EDUCATIONAL BACKGROUND

Student was diagnosed with autism and eligible for special education due to significant cognitive, communication, socialization, and attention deficits. In April 2022, he was 15 years old and six feet tall. Student was non-verbal and at the pre-symbolic stage of cognitive development. This meant, for example, that he did not yet recognize that the picture of a cat meant a cat and could not identify numbers or letters. Student was generally disinterested in others, and only initiated interaction when he wanted something. He communicated by leading another person to an object or activity he wanted, or by handing over an object if he needed help using or opening it. Student was impulsive and in constant motion. His attention span was fleeting, and he often made loud high-pitched noises.

Student lived with Parents and siblings and enjoyed hiking and going places with his family. Parents kept Student close on community outings because Student had no safety awareness and would suddenly bolt. However, Student would stop and return when Parents called for him to do so. At home, Student learned household routines and helped remove bedding, picked up items from the floor, helped with laundry, rinsed his dishes and placed them on the counter, and came to the table for meals.

Parents home schooled Student from fifth grade through most of 10th grade. Once Student reached puberty, he was often agitated, and hit, slapped, or lunged at Parents when asked to do something he did not want to do. Student often hit or

slapped his own head, or hit his head or hand against something, if he was prevented from hitting or slapping someone else. Parents stopped Student from hurting himself or others by holding his hands, hugging him, or placing their hands on his head to protect him. Student also put inedible items in his mouth and swallowed small items like coins and batteries. Student began to have intermittent seizures as a teenager and was diagnosed with epilepsy.

Parents enrolled Student at his local high school in Conejo Valley in April 2022, near the end of his 10th grade year. Conejo Valley placed Student in Anne Alvarez's special education day class for students with moderate to severe disabilities in the Learning Essentials Academic Program, called LEAP. Alvarez had teaching credentials in regular education, mild-to-moderate special education, and moderate-to-severe special education. Alvarez had 44 years of experience as a teacher, with 15 years in the high school LEAP program. At hearing, she described Student as very active, making lots of noise, and aggressive when asked to do non-preferred tasks.

Student's school routinely maintained incident reports of injuries. Student had two incident reports filed at the end of the 2021-2022 school year, one for scratching another student's face, and one for hitting his own head and then hitting a peer.

Witnesses' descriptions of Student's aggressive behavior characterized it more as flailing from frustration than malicious. The incident reports through October 31, 2023, demonstrated that Student's aggressive behavior resulted in bruises and scratches with minor bleeding.

ASSESSMENTS BY CONEJO VALLEY

Conejo Valley assessed Student at the beginning of the 2022-2023 school year. Student was in 11th grade in Alvarez's class.

Student had well below average cognitive ability impacted by inattention and impulsivity. Academically, Student was working on early preschool skills, such as matching colors, identifying letters, and learning one-to-one correspondence. His receptive language skills were stronger than his expressive language, so he understood and could comply with some one-step directions although he was non-verbal. Student would physically lead an adult to something he wanted but did not initiate social interaction. He showed no interest in his peers or interactive play. Student's ability to demonstrate gross motor skills, or to participate in group physical activities, was impacted by his inability to follow multiple-step directions or modeled actions. Student exhibited fine motor skills such as making marks with crayons and cutting with modified scissors with hand-over-hand prompting. Student engaged in sensory seeking behaviors such as shaking his head, waving his hands in front of his face, and humming. He needed sensory supports in the classroom to self-regulate.

Conejo Valley's augmentative and alternative communication specialist, Raelynne Lorenz, assessed Student's ability to use a voice-generating device. She started Student on a trial of the Proloquo program on an iPad with four icons for "I want," "I need a break," "yes," and "no." Alvarez and the LEAP staff were trained on and familiar with the Proloquo program and could assist Student. Student could navigate and select Proloquo icons and appeared to try to use the iPad with prompting.

Karli Karamanlian, Conejo Valley's board-certified behavior analyst, or BCBA, assessed Student's functional behavior. She identified the behaviors that interfered with Student's learning, and then sought to find the antecedents to Student's behaviors, the function of Student's behaviors, and positive behaviors to replace the problem behaviors. Her assessment results are summarized below with the behavior intervention plan she developed as part of the assessment.

The IEPs Conejo Valley developed between the fall 2022 assessments and October 2023 are not at issue in this matter. However, they are important to place the October 31, 2023 IEP in context, and are summarized briefly in this Decision, along with incident reports on Student's behavior.

Conejo Valley used the term paraprofessionals for school district employees assigned to implement a child's behavior intervention plan throughout the day. It used the term aides for nonpublic agency personnel contracted to provide behavior intervention. Both will be called aides in this Decision.

INCIDENTS REPORTED AND NOVEMBER 17, 2022 IEP

Incident reports showed that at the beginning of the 2022-2023 school year, Student exhibited physical aggression. In early September 2022, Student slapped an aide's head from behind and scratched the face of another aide, then fell to the ground waving his arms and legs. About two weeks later, Student grabbed teacher Alvarez's hands, jumped out of his chair and fell to the ground, grabbed Alvarez's arms, pushed the speech-language pathologist, screamed, grabbed Alvarez's arms again, and refused

to comply with directions to sit. Later that month, Student was receiving help with toileting from one aide, and jumped up and ran at another aide who came to assist. Student complied with directions to lay on the bathroom bench, but then charged the second aide again and scratched her face. When the aide blocked her face, Student banged his hand on the wall and hit himself. On September 30, 2022, Student was agitated when returning to the classroom and lunged at the aide by the door. The aide held him back and Student pinched her arm and tried to reach another aide.

Six weeks later, on November 14, 2022, Student attempted to grab an aide's face. When blocked, Student grabbed her torso and swung a hand at her.

Conejo Valley convened an IEP team meeting on November 17, 2022, to review Student's assessments. Parents and school staff who worked with Student attended. Presentation of assessment results took up the time allotted, and the meeting was continued to December 7, 2022. The IEP developed on November 17, 2022, and December 7, 2022, will be called the November 17, 2022 IEP.

Student had not met any of the goals in the IEP he had when he enrolled in Conejo Valley. The November 17, 2022 IEP team developed new goals for Student to pass and catch a ball, to wipe clean two tables with four verbal prompts, to recognize common safety signs in the community, to identify numbers one through nine, to learn the letters of his name and place them in order, to point to his name when given two choices, to follow two-step directions, and to choose an appropriate response on his speech-generating device from a field of four choices.

To support Student at school, the IEP team proposed accommodations and modifications. Those included

- preferred seating in the classroom,
- prompting and verbal praise,
- allowing Student various means to respond,
- providing opportunities for self-regulation,
- a visual schedule and first/then cards for organization,
- assistance with toileting, and
- modified physical education.

The accommodations and modifications offered in the November 17, 2022 IEP were similar to supports already used by Alvarez in the LEAP classroom.

Karamanlian drafted a comprehensive behavior intervention plan adopted by the IEP team. She identified Student's problem behaviors as

- physical aggression,
- self-injurious behavior,
- mouthing,
- elopement, and
- self-stimulatory behavior such as
 - rocking in place,
 - repetitive vocal sounds,
 - pacing around the classroom, or
 - nonfunctional manipulation of items in front of his face.

The behavior intervention plan noted that antecedents were difficult to clearly identify, and listed predictors of problem behaviors as

- proximity to Student,
- priming him for transition to instruction,
- verbal prompts or redirection,
- presentation of non-preferred tasks,
- blocking access to preferred tasks or items, and
- contrived opportunities to use functional communication.

A common complaint from witnesses throughout the hearing was that they did not know the antecedents to Student's behavior. However, after the initial functional behavior assessment in fall 2022, Karamanlian no longer took data on antecedents.

Karamanlian noted the consequences of Student's behaviors were

- blocked hits,
- evacuation of the classroom,
- offers to take a break,
- removal of demands,
- referencing visual schedules, and
- modifying the task or expectation.

She hypothesized Student engaged in problem behavior for sensory feedback, to escape from demands or directions, and to access preferred activities. The preferred replacement behavior was for Student to use functional communication skills to express his wants and needs.

The behavior intervention plan identified interventions to reduce problem behaviors, such as:

- additional time to transition into classes,
- frequent breaks,
- removal of potentially harmful nonedible items,
- visual schedules,
- a designated chair,
- simplified directions,
- increased processing time, and
- modified expectations.

It identified interventions to increase and reinforce positive replacement behavior, such as:

- functional communication opportunities,
- increased processing time,
- consistent verbal praise for appropriate behavior,
- sensory reinforcement breaks,
- short and concise one-step verbal directions,
- reference to visuals to support transitions, and
- a timer to set clear break boundaries.

Strategies to address problem behavior that occurred included:

- immediately redirecting Student to a designated space to sit down,
- planned ignoring for minor behaviors,
- removal of harmful items,

- reminders to show a “calm body,” and
- verbal praise when problem behaviors were no longer observed.

The behavior intervention plan called for communication between school staff and Student’s family to discuss behavior support strategies and changes in behavior. However, Karamanlian consulted only with Alvarez and did not contact Parents. Parents were often called to take Student home after a behavior incident, but Alvarez did not discuss Student’s behavior with Parents during pick-ups because she was busy teaching. The only information Parents received about Student’s behavior was presented at IEP team meetings, such as the behavioral data collected by Karamanlian. After her initial functional behavior assessment, Karamanlian only gathered and reported information on the frequency and duration of targeted behaviors.

The November 17, 2022 IEP offered Student placement in a nonpublic school pending acceptance. Nonpublic schools offered smaller class sizes with more adult support. In the interim, the IEP offered a 60-day “diagnostic placement” in the LEAP program, with access to non-disabled peers during passing periods, nutrition, lunch, and extra-curricular activities. The IEP offered

- specialized academic instruction for six hours per day,
- intensive individual services in the form of an aide for six hours per day,
- individual speech and language services for 120 minutes per month,
- adapted physical education for one period per day, and
- occupational therapy consultation for 60 minutes per month.

Conejo Valley IEP team members told Parents they wanted to assess Student for residential treatment and would send Parents an assessment plan. Parents consented to the November 17, 2022 IEP.

INCIDENTS REPORTED AND JANUARY 19, 2023 IEP

On November 28, 2022, Student jumped up from his seat, hit himself, hit the floor with his hand, and made loud noises. Student complied with a request to move to the garden outside the classroom but slapped the aide three to four times when the aide would not let Student return to the classroom. Student stopped slapping the aide when told to stop.

On January 6, 2023, another student was in Student's favorite bean bag chair, and Student sat on him and hit him in the head and face. Student stopped when an aide grabbed Student's hands. On January 12, 2023, Student was sitting by the classroom door and grabbed an aide's arm when the aide passed. The aide broke away and Student grabbed her thigh and dug his fingers in. Student let go at the request of another aide but had to be blocked from grabbing the first aide again. On January 13, 2023, Student threw a rock at an aide.

Conejo Valley convened an IEP team meeting on January 19, 2023, to review Student's behaviors, which included a disciplinary review, called a manifestation determination review. Parents and school staff who worked with Student attended. The IEP team determined that Student's actions were the result, or a manifestation, of his disabilities and Student was not suspended or otherwise disciplined.

Conejo Valley sent applications for Student to a total of six nonpublic schools and other public-school programs and reported to the January 19, 2023 IEP team that Student had been declined by all but The Help Group. The Help Group had tentatively accepted Student and wanted to interview Parents and Student. The reasons Student was declined by other programs were not offered into evidence. However, the evidence on Conejo Valley's later applications to residential treatment centers demonstrated that applications could be declined for reasons that had nothing to do with Student's disability profile, such as Student's age or the lack of available openings due to temporary staff shortages.

The January 19, 2023 IEP again offered nonpublic school placement pending acceptance, with "interim placement" in the LEAP program. Conejo Valley reduced specialized academic instruction and aide support from 360 minutes per day to 180 minutes, cutting Student's school day in half, from 8:30 a.m. to 11:30 a.m. Alvarez and Karamanlian testified that Student's school day was shortened because Student's behaviors interfered with his access to the curriculum so much that he could not learn for a full school day. Conejo Valley did not offer additional behavior or other supports. Conejo Valley did not offer to conduct additional behavior assessments. Conejo Valley did not make any change to the behavior intervention plan except to add throwing as a problem behavior. Conejo Valley did not change Student's individual speech services or occupational therapy collaboration, but it reduced Student's daily adapted physical education to 30 minutes per week of consultation. Parents consented to the January 19, 2023 IEP.

INCIDENTS REPORTED AND FEBRUARY 14, 2023 IEP

On January 27, 2023, Student slapped an aide's face when a puzzle piece did not fit. On January 30, 2023, Student swatted at an aide's face when frustrated, and when the aide grabbed Student's hand, Student tried to bite the aide's arm. Student then sat down in the classroom bean bag chair at the aide's direction. On January 31, 2023, Student was in the garden and hit the ground with his hand and his forehead. Student was given sensory items and calmed down, but the classroom door was locked when he returned, and he cried and ran away. On February 2, 2023, Student was sitting next to an aide during a nutrition break and hit the aide on the back of the head with his hand. Another aide took Student to the garden to deescalate where Student sat on the ground, hit the ground, and screamed.

On February 3, 2023, Student hit the classroom whiteboard and started crying. Later that same morning, Student was grumbling and making loud noises. An aide took Student out to the garden where he hit a wall and table before he calmed down. Back in the classroom, Student raced at an aide and hit the aide in the face causing a scratch. Student then hit his own head against a counter, and when the aide tried to stop him, Student bit the aide's hand. Student then banged his head against a wall and hit the aide's head when the aide intervened before Student calmed down.

On February 14, 2023, Conejo Valley convened an IEP team meeting to review Student's progress. Parents, Student, Alvarez, Karamanlian, a school psychologist, and the adapted physical education teacher attended.

Previous reports on Student's progress had indicated that on most goals Student was either working on prerequisite skills, making some progress, making good progress, or had reached interim objectives. However, although Student's goals were written to be met by May 2023, the February 14, 2023 report simply stated that Student had not met any of his goals.

Alvarez reported Student was working mostly with his aide under her supervision and was successful and unsuccessful at various tasks. Conejo Valley IEP team members requested that Parents sign the assessment plan so that Student could be assessed for eligibility for placement in a residential treatment center. Parents wanted to explore other options. Parents reported they interviewed with The Help Group and hoped Student would be accepted at The Help Group's nonpublic school. Parents reported they were trying to obtain services from the Regional Center, a public agency that supported individuals with disabilities in their home and community. Parents told the IEP team they applied for their new medical insurance to fund a behaviorist to work with Student in the home. Parents also reported they were conferring with Student's new doctors about mood-stabilizing or anxiety medication.

Conejo Valley's offer of FAPE in the February 14, 2023 IEP continued to be placement at a nonpublic school pending acceptance, and "interim placement" in the LEAP program. Conejo Valley did not change Student's half-day schedule, or Student's services. Conejo Valley did not offer additional behavior or other supports. Parent consented to the IEP and signed the residential assessment plan.

APRIL 3, 2023 IEP

On April 3, 2023, Conejo Valley convened an IEP team meeting. Parents, school staff, and a representative from the Regional Center attended. Leo Clark, a residential placement specialist from Conejo Valley's special education local plan area, or SELPA, also attended. Student had not been the subject of any incident reports since the February 14, 2023 IEP team meeting.

Parents reported that Student had been accepted into an autism clinic funded by their insurer, and the Regional Center had approved occupational therapy, speech therapy, and in-home applied behavior analysis therapy, although the waitlist for a behaviorist was still six months to one year. They reported Student was taking new medication, and Student's in-home aggression had decreased by 90 percent. Parents requested that Student have a longer school day.

Alvarez reported Student's behaviors as less frequent but intense. The classroom had been evacuated twice due to Student's behaviors since the last IEP and Student was making minimal progress. Karamanlian reported Student's aggression had dropped to zero to three times per 60-minute interval but attributed that to staff placing minimal demands on him. Student's aide reported an improvement in Student's behavior, as the frequency and intensity of Student's behaviors had decreased.

A school psychologist, who did not testify, reported the results of the residential assessment she conducted. That psychologist did not see Student exhibit aggressive behaviors during her observations. She noted Parents' report of new medication, and

both Parents' and Alvarez's reports of decreased behaviors. Nonetheless, she found Student needed 24-hour therapeutic intervention to benefit from his educational services based on Student's history of aggressive behavior in the home.

SELPA representative Clark told the April 3, 2023 IEP team that Student had been declined by all six public school autism programs or nonpublic schools contacted. However, The Help Group was willing to re-interview Student after the report of decreased behavior on medication. Clark referred Parents to the nonpublic schools for any questions about their programs. Clark requested Parents sign releases of information so he could send applications for Student to prospective residential treatment centers now that Student qualified for residential placement.

Conejo Valley's offer of FAPE in the April 3, 2023 IEP continued to be nonpublic school placement pending acceptance. Student's specialized academic instruction and aide support were extended by 15 minutes, to 195 minutes per day, from 8:30 a.m. to 11:45 a.m. Conejo Valley made no other changes to Student's services. Conejo Valley made no changes to the behavior intervention plan. Parent consented to the April 3, 2023 IEP.

INCIDENTS REPORTED AND JUNE 13, 2023 IEP

On May 3, 2023, Student was irritable and grabbed at his aide's face several times, resulting in a scratch. On May 9, 2023, Student was frustrated with a puzzle, grabbed his aide's hands, and held the aide against the table. On May 17, 2023, Student's aide would not let go of Student's backpack on the way to lunch and Student hit him on the side of the head and dropped to the ground. Student then complied

with the aide's direction to follow him, tried to hit the aide again but was blocked, and then sat at the lunch table and ate his lunch. On June 8, 2023, Student had a substitute aide and scratched her by grabbing her neck.

On June 13, 2023, Conejo Valley convened an IEP team meeting to discuss a change of placement. That meeting was continued and completed on June 27, 2023. The IEP developed on June 13 and 27, 2023, will be called the June 13, 2023 IEP. The particular days of each report or discussion are not noted because any distinction is irrelevant as there were no changed circumstances between June 13 and June 27, 2023.

Student's teacher Alvarez reported Student made little to no progress on academic goals. The speech-language pathologist reported Student complied with more directions depending on his mood and demonstrated variable use of the voice-generating device. The occupational therapist reported Student could regulate himself better with some of the sensory items provided to him. Behavior statistics showed Student was exhibiting fewer target behaviors, although some were still intense. Karamanlian opined Student required two dedicated aides instead of one, and more support than Conejo Valley could provide in the LEAP program.

Conejo Valley IEP team members did not discuss an increase in Student's support at school. Instead, the IEP team discussed placing Student on home instruction with a home teacher for one hour per day. It ultimately decided that Student could be individually instructed at the school site with aide support for one hour per day.

Conejo Valley did not offer Student additional behavior supports in Alvarez's classroom. The June 13, 2023 offer of FAPE was, pending acceptance at a residential facility or nonpublic school, one hour of individual instruction at the school site,

accompanied by one hour of aide support with a nonpublic agency aide rather than a school district aide. Conejo Valley did not offer any additional services beyond 30 minutes per week for the BCBA to consult with Student's "home teacher" and nonpublic agency aide at the school site. Both the direct aide services and BCBA consultation were designated on the IEP as "intensive individualized services."

Clark reiterated The Help Group was willing to interview Parents and Student again now that Student was taking medication. Parents told the IEP team that they were no longer interested in The Help Group because the drive was 45 minutes to one hour each way. Conejo Valley had not offered transportation to the nonpublic school, and The Help Group told Parents Student would likely ride on a bus. Student had never ridden a bus and Parents were worried how Student would react. No discussion of transportation was contained in the June 13, 2023 IEP team meeting notes. The June 13, 2023 IEP did not offer Student transportation to the nonpublic school, an aide during transportation, or a plan to transition Student to a long bus ride.

Parents did not consent to the June 13, 2023 IEP, and Student remained in Alavarez's classroom. Soon afterwards, Conejo Valley contracted with a nonpublic agency to provide Student with a second aide that was with Student throughout the school day. Conejo Valley did not document the second aide in an IEP.

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INCIDENTS REPORTED AND SEPTEMBER 26, 2023 IEP

The 2023-2024 school year began on August 23, 2023. Student was attending 12th grade in Alvarez's class under the April 3, 2023 IEP for three hours and 15 minutes per day. Student had two dedicated aides at all times, one of which was a nonpublic agency aide.

On September 18, 2023, Student jumped from his seat in the classroom and started hitting one aide on the head, raced to the other aide and grabbed her hair, then sat on the ground and hit his hand on the ground so hard it bled. His teacher evacuated the classroom. Student followed the aides to the sensory room, but once there, hit his head and the ground with his hands. Later that same day, Student whined about a puzzle, grabbed his aide's neck from behind and headbutted him three times, then slapped him four times. Student subsequently tried multiple times to go after different aides. When an aide took him again to the sensory room, Student banged his head and hand on the floor.

Parents requested an IEP team meeting, and on September 26, 2023, Conejo Valley convened an IEP team meeting. Parents and their attorney attended. Conejo Valley IEP team members included Alvarez, Karamanlian, and Student's speech-language pathologist, occupational therapist, and adapted physical education teacher. The school psychologist who acted as case manager for students in residential placement, Crystal Curry, attended, along with Conejo Valley's attorney and SELPA residential specialist Clark. Parents wanted Student to have a longer school day and proposed an additional hour per day. Alvarez reported Student would not follow directions when agitated, and opined Student could not handle another hour per day at school.

The September 26, 2023 IEP offered Student placement in a residential treatment center. Pending placement, the IEP offered 60 minutes per day of specialized academic instruction at the school site, and 60 minutes per day of support from a nonpublic agency aide. Student's individual speech services were cut in half to 60 minutes per month at the school site. The IEP retained the same amount of occupational therapy and adapted physical education consultation with the "home teacher," but consultation with the BCBA was doubled to 60 minutes per week.

Parents did not consent to the September 26, 2023 IEP, and Student remained in Alvarez's classroom with the support of two aides.

INCIDENTS REPORTED AND OCTOBER 31, 2023 IEP

On October 24, 2023, Student was near the lockers looking agitated when he slapped and punched an aide, and after calming down then came at the aide again. An aide took Student to the sensory room where he calmed down. On October 27, 2023, students were preparing for a field trip at the lockers and Student slapped an aide in the face as he went past. On October 30, 2023, Student hit an aide three times on the face, then fell to the ground and banged his own head on the ground. On the morning of October 31, 2023, Student fell to the ground and banged his head against a sewer cover.

Throughout September and October 2023, SELPA residential specialist Clark sent application packets for Student to six prospective residential treatment centers. Four residential placements rejected Student's application. One rejected the application due to staff shortages, one rejected the application due to Student's age, and one rejected Student because it required applicants to be seizure free for six months. Only one

prospective residential placement stated Student needed a higher level of support than it could provide. One residential placement did not reject Student's application, but requested Clark have Parents complete an additional form. Student was accepted for admission to Devereux, a residential treatment center in Texas. Devereux was not certified by the California Department of Education but was willing to engage in a certification waiver process with Conejo Valley if Student enrolled.

Conejo Valley convened an IEP team meeting on October 31, 2023, to review Student's educational program. Parents and their attorney attended. Conejo Valley team members included Alvarez, Karamanlian, and Student's speech-language pathologist, occupational therapist, and adapted physical education teacher. Residential case manager Curry attended, with Conejo Valley's attorney, the alternative communication specialist, SELPA residential specialist Clark, and the school nurse. Two representatives from Devereux's residential treatment center in Texas also attended. No regular education teacher attended.

LEGAL ANALYSIS OF OCTOBER 31, 2023 IEP

The October 31, 2023 IEP is the only IEP at issue in this due process proceeding. That IEP is examined first for compliance with the procedures for developing an IEP (*Rowley, supra*, 458 U.S. at p. 176), and then to determine if the IEP developed addressed Student's unique needs and was reasonably calculated to enable Student to make progress appropriate to his circumstances in the least restrictive environment. (*Id.* at p. 201; *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031; *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 953 (*Mercer Island*); *Endrew F., supra*, 580 U.S. at p. 404.)

In the event of a procedural violation of the IDEA, a two-part analysis is required because a denial of FAPE may only be found if that procedural violation impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2).)

MANDATORY IEP TEAM MEMBERS

Each meeting to develop, review or revise the IEP of an individual with exceptional needs must be conducted by an IEP team. (Ed. Code, § 56341, subd. (a).) The IEP team must include, among others, not less than one regular education teacher if the pupil is, or may be, participating in the regular education environment. (20 U.S.C. §1414(d)(1)(B); Ed. Code, § 56341, subd. (b).) A regular education teacher, to the extent appropriate, must participate in the development, review, and revision of the student's IEP, including

- assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies for the pupil, and
- the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student. (20 U.S.C. § 1414(d)(3)(C); Ed. Code, § 56341, subd. (b)(2).)

A member of the IEP team is not required to attend an IEP team meeting if the parents and school district agree that the attendance of such a member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. (20 U.S.C. § 1414(d)(1)(C)(i).) An IEP team member may fulfill more than one role if he or she meets the criterion. (See *Z.R. v. Oak Park Unified School Dist.* (9th Cir. 2015) 622 Fed.Appx. 630, 630-631 (nonpub. opn.).)

On October 31, 2023, Student was participating in the regular education environment during passing periods, nutrition, and lunch in compliance with the April 3, 2023 IEP, which was the last consented to and implemented IEP. Accordingly, the IDEA mandated that a regular education teacher attend the October 31, 2023 IEP team meeting to participate in the development, review, and revision of Student's IEP unless Parents and Conejo Valley agreed otherwise.

Student's educational program did not include regular education classes or regular education curriculum, and Parents and Conejo Valley agreed a regular education teacher was not necessary at the meeting. Parents were accompanied by their attorney, and there was no evidence that Parents or their attorney objected at the meeting to excusal of the regular education teacher, or later to the IEP team meeting notes documenting the agreement to excuse the regular education teacher.

In addition, Alvarez held a regular education credential as well as special education credentials and was qualified to fill the role of both regular and special education teacher at the October 31, 2023 IEP team meeting. Student had been in Alvarez's class for over one year, and she directed Student's aides in support of Student's instruction and behavior intervention. Alvarez was available and capable of answering any questions Parents had regarding the regular education curriculum or Student's interactions with typically developing peers during passing periods, nutrition, and lunch.

Accordingly, Conejo Valley did not commit a procedural violation by failing to have a regular education teacher at the October 31, 2023 IEP team meeting.

PRESENT LEVELS OF PERFORMANCE

When developing an IEP, the IEP team must consider

- the strengths of the student,
- the concerns of the parents,
- the results of the most recent assessment, and
- the academic, developmental, and functional needs of the child. (Ed. Code § 56341.1, subd. (a).)

The evidence established that the October 31, 2023 IEP team had sufficient information to, and did, consider each of these.

The October 31, 2023 IEP contained current updates to Student's present levels of academic achievement and functional performance. This enabled the IEP team to identify Student's strengths, as well as his academic, developmental, and functional needs.

Academically, Student could pick out his name from a field of two 50 percent of the time but did not consistently recognize letters or words. He could point to a number in a field of two, but showed no interest in money, time, or measurement and did not understand one-to-one correspondence. In the area of communication, Student could follow some one-step directions with prompting, approximate a sign for more, and respond to a greeting with eye contact. However, he still showed no interest in interacting with others and did not appear to understand spoken labels for objects, colors, or shapes. Student demonstrated sufficient motor ability to do classroom

routines but was not independent and needed maximum assistance. Student could complete self-care routines such as cleaning up after himself or adjusting his clothing with prompts.

Behaviorally, Student sought out sensory feedback through movement, sound, and touch, and frequently sought his bean bag chair, a weighted pillow, and walking breaks. At the October 31, 2023 IEP team meeting, Karamanlian changed the way she reported Student's behavior data. She reported Student's frequency of behavior in the average number of times per day Student engaged in

- physical aggression,
- self-injurious behavior,
- mouthing,
- elopement, or
- self-stimulatory behaviors.

At previous IEP team meetings, Karamanlian had reported similar numbers of occurrences, but per 60-minute observation, rather than per day. Therefore, the October 31, 2023 behavior report, counting similar numbers of behaviors over Student's entire 195-minute school day rather than 60-minute intervals, demonstrated a significant decrease in all maladaptive behavior categories. Alvarez reported the behaviors were less frequent, but still very intense, and IEP team members confirmed that Student had two aides with him throughout the day.

Parents expressed their concerns for Student's education to the October 31, 2023 IEP team. Parents wanted more focus on Student's use of his voice-generating device, which they hoped would enable Student to express his wants and needs and reduce behaviors due to frustration. Their medical insurance had recently agreed to fund a

communication device and they wanted to coordinate use of a home device with use of a device at school. Parents also gave the IEP team an update on Student's medication, which had virtually eliminated Student's aggression in the home.

The updates on Student's academic, developmental, and functional performance, coupled with Parent's reports, provided the information mandated by IDEA and needed by the IEP team to develop an educational program for Student.

FAILURE TO CONSIDER BEHAVIORAL INTERVENTIONS

In the case of a pupil whose behavior impedes his or her learning or that of others, an IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (Ed. Code, § 56341.1, subd. (b)(1).)

Karamanlian's October 31, 2023 update showed a significant decrease in the behaviors targeted by Student's behavior intervention plan, but Student's behaviors continued to involve hitting, grabbing and self-injury to the extent that Conejo Valley assigned him two aides to keep Student and others safe. Despite this, Conejo Valley did not consider revision of Student's behavior intervention plan, or additional services or strategies to address Student's behavior in Alvarez's class, or to allow him to attend instruction at Conejo Valley for a longer school day.

Student's school day had been cut in half by the January 19, 2023 IEP, effectively reducing his access to behavior support by 50 percent. By April 3, 2023, Alvarez was placing minimal demands on Student to avoid behaviors, and Student's school day and behavior support were increased by only 15 minutes. By June 13, 2023, Conejo Valley offered Student only one hour per day on school premises due to his problem

behaviors. In September 2023, Conejo Valley assigned Student two aides throughout his shortened school day to prevent injuries to Student or others from Student's behaviors and offered placement in a residential facility.

On October 31, 2023, Student's behavior intervention plan had been unchanged over a period of 11 months and five IEP team meetings, and Student's behaviors continued to impede his learning or that of others. Since January 19, 2023, Student had been without behaviors support for three hours per day, and by fall 2023, needed two dedicated aides to keep himself and others safe. On these facts, Conejo Valley had an obligation to consider the use of more or other positive behavioral interventions, supports, and strategies to address Student's behavior.

Rather than reassess Student's functional behavior or modify the behavior intervention plan, Conejo Valley attempted to avoid or delegate responsibility to consider behavioral interventions by offering residential placement with unspecified and unexplained behavior intervention services, social work services, and residential treatment services. Conejo Valley's failure to clarify what behavioral supports were offered as part of the proposed residential placement is discussed later in this Decision in the analysis of services offered in the October 31, 2023 IEP.

Conejo Valley failed to review or modify Student's behavior intervention plan or add services and supports that might have enabled Student to make behavioral progress in his current setting. The behavior intervention plan called for Student to communicate his wants and needs, but Student's individual speech services were halved in the September 26, 2023 IEP, and no augmentative and alternative communication

services, even consultation with Alvarez and Student's aides, were offered. Conejo Valley had not exhausted the use of behavioral interventions that could be implemented in the current setting.

Additional interventions, such as applied behavior analysis, direct occupational therapy, or additional speech services were possibilities, as demonstrated by other agencies such as Parents' insurer and the Regional Center, which were stepping up to fund behavioral interventions. Although these agencies applied different standards than the IDEA and California special education law and were addressing behaviors in the home and community rather than the school setting, each recognized that Student's behaviors would not improve in those settings without the implementation of behavior interventions. It is difficult to comprehend how Conejo Valley expected Student's behaviors to improve in the school setting without access to behavior intervention services for half to most of the school day.

Conejo Valley improperly made no effort to gather additional behavior data for, or to propose behavior intervention plan modifications to, the October 31, 2023 IEP team. School staff members reported again and again that they could not identify the antecedents to Student's maladaptive behaviors even after the behavior intervention plan was in place, but Karamanlian was not tasked with gathering antecedent data. Student's behavior intervention plan still stated there was "sometimes no clearly identifiable antecedent" in November 2022. If a school district does not understand why a student engages in certain behaviors, it cannot offer service providers effective strategies to address them. Conejo Valley failed to identify the antecedents to Student's

behavior, and the behavior intervention plan in the October 31, 2023 IEP did not, and could not, offer effective strategies for Student's service providers at Conejo Valley, or the Devereux residential treatment center, to address them.

Karamanlian testified that it was not appropriate to modify Student's comprehensive behavior intervention plan on October 31, 2023, although she admitted the behavior plan strategies were not working at that time because Student's behaviors remained variable and unpredictable. Instead, she opined the plan should remain in place and Student's educational environment should be changed. This opinion was unpersuasive for several reasons.

Karamanlian was a board-certified behavior analyst with 10 years of experience working with children with autism. She assessed Student's behavioral needs and supervised implementation of his behavior intervention plan. However, there was overwhelming evidence that Student was underserved while Karamanlian was the primary person responsible for Student's behavioral interventions. Her opinions that Student's behavior needs were appropriately addressed seemed disingenuous and were illogical and unpersuasive.

Karamanlian's opinion that a child's educational environment should be changed if a behavior intervention plan is ineffective, rather than modifying the behavior plan, conflicts with the IDEA and its implementing regulations. A behavior intervention plan is designed to address behaviors that interfere with the child's learning and that of others in his school environment. (*Questions and Answers: Addressing the Needs of Children with Disabilities and the IDEA's Discipline Provisions* (Office of Special Education and Rehabilitative Services, July 19, 2022).) Particularly where the child is subject to discipline, as with Student's disciplinary review at the January 19, 2023 IEP, the IDEA

mandates that an existing behavior intervention plan be reviewed and modified as necessary to address the behavior. (34 C.F.R. § 300.530(f).) The IDEA's recognition that behavior intervention plans may need review and modification is inconsistent with Karamanlian's opinion that Student's behavior intervention plan did not need to be modified to address Student's ongoing problem behaviors.

In addition, Karamanlian's responses to questions regarding the behavior intervention plan were vague and did not provide clarification, which adversely affected her credibility regarding the behavior plan. Her responses seemed contrived to support the IEP offer of placement outside of Conejo Valley, rather than illustrative of how Student's behavior intervention plan was intended to teach Student to replace his problem behaviors with positive behaviors. For example, Karamanlian's statement that Student's behavior plan was drafted for the LEAP environment was logically inconsistent with her opinion that a new plan did not need to be developed for placement at Devereux. Karamanlian was not familiar with Devereux and the behavior plan she developed was not effective in Conejo Valley, so her opinion that the behavior intervention plan would be successful at Devereux without modification was neither credible nor persuasive.

The IEP team also failed to include as a behavioral support in the October 31, 2023 IEP that Student required two dedicated aides to keep himself and others safe. IEP team members were hopeful that Student would no longer need two dedicated aides for safety in an environment with fewer students and a higher adult-to-student ratio, but Conejo Valley's failure to include this important behavioral support in Student's IEP before he left for another school in another state was a procedural violation of its

responsibility to consider and offer positive behavioral interventions, supports, and other strategies to address the behaviors that impeded Student's learning and that of others.

Conejo Valley's failure to consider and offer necessary behavior supports in the October 31, 2023 IEP, including an appropriately modified behavior intervention plan, additional behavior supports, and two aides to maintain his safety and that of others so that he could access the curriculum, deprived him of educational benefit and was therefore a substantive denial of FAPE.

GOALS

An annual IEP must contain a statement of measurable annual goals related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the regular curriculum and meeting each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, U.S. Dept. of Education, Office of Special Education and Rehabilitative Services, March 25, 1988); *Notice of Interpretation*, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

The October 31, 2023 IEP team reviewed Student's progress on goals. Student met his adapted physical education goal of learning to catch and pass a ball. He made progress on his goal to identify the letters of his name. Student made progress on his social-emotional goal to attend to task and could sit at the table for up to eight minutes. Student could wipe the table for his vocational goal but needed multiple prompts. Student initially made progress on his goal to use his voice-generating device but had not made progress recently. Student did not meet or make progress on his goals to recognize community signs, identify numbers, or follow two-step directions. Karamanlian reported that Student's behaviors decreased in October 2023, although they could be intense. Student no longer threw items.

The IEP team identified Student's areas of educational need as

- reading,
- written language,
- math,
- communication,
- motor abilities,
- social-emotional functioning,
- behavioral functioning,
- prevocational functioning, and
- independent living.

The IEP team developed and adopted goals in each of these areas.

Student's vocational goal, Goal 1, was to wipe tables completely with four verbal prompts or models. This was a continuation of Student's past vocational goal, on which he had made little progress. Alvarez was hopeful Student could get a job picking up dishes and cleaning up tables at a restaurant that employed students with disabilities.

For academics, Goal 2 required Student to rearrange the letters of his name from a random order to the correct order without prompts. This goal was a precursor to learning to identify his name and write it and was also the continuation of a prior goal on which Student had made no significant progress.

Goal 3 was a social-emotional and behavioral goal that required Student to sit at a table and complete an adult-directed task for an average of 10 minutes. Attention to task was a significant area of need for Student to be successful in school and in the community.

Goal 4 was a recreation, or adapted physical education, goal for Student to kick a soccer ball to a partner with verbal, gestural, and modeled prompts. This goal taught Student a basic play skill, which would be a precursor to interactive play with his peers.

Goal 5 was also a recreation goal for Student to increase muscle strength and endurance by performing three wall push-ups three consecutive times. Student enjoyed physical activity, and this goal addressed learning to copy modeled actions as well as fitness.

Goal 6 was a communication goal to follow 15 one-part directions with prompts. Student was unable to follow two-part directions, and this goal was to expand and reinforce Student's familiar and understood one-part directions, which could later be combined into two-part directions.

Goal 7 worked on communication and pre-reading skills by having Student choose familiar objects, pictures, or items from a field of two when given a spoken word. Student needed to relate pictures to people, things, and places to understand symbols in reading and to communicate using alternative communication.

Goal 8 was an academic goal and worked on math skills that required Student to match two numbers from among the numbers one through nine. This goal addressed Student's need to recognize and find correct numbers for success in school and vocationally.

Goal 9 was a social-emotional and behavioral functioning goal for Student to follow the classroom morning routine, and routines such as nutrition and lunch, with an average of two prompts. Student needed to learn and follow simple routines with less prompts and without the occurrence of maladaptive behaviors to be successful at school, work, and in the community.

Goal 10 was also a social-emotional and behavioral functioning goal for Student to use his speech-generating device or other alternative communication method to request an item, a break, or to signal that he was done with a task. The ability for Student to communicate was critical to reduce his frustration and to relay his wants and needs.

The goals as written into the October 31, 2023 IEP were measurable, and included objective criteria, evaluation procedures, and schedules for determining on an annual basis whether the goals were achieved. Each goal indicated the setting in which Student was to perform the skill, how the skill would be measured, the length of time or number

of times the skill was to be performed, and the measurement tools. Each goal designated the appropriate teacher or service provider and special education staff to work on it with Student and track his progress.

The goals were designed to meet Student's individual needs resulting from his disabilities, and to allow Student to make progress in the regular curriculum. Conejo Valley witnesses testified convincingly that the goals targeted all of Student's areas of educational need and were reasonably calculated to be achievable within a 12-month period. Student did not put on any credible evidence that the IEP team failed to identify an area of need, or that the annual goals in the October 31, 2023 IEP were deficient in any way. Accordingly, these goals were reasonably designed for Student to make progress appropriate to his circumstances.

POST-SECONDARY TRANSITION PLAN

Beginning at age 16 or younger, the IEP must include a statement of needed transition services for the child. (34 C.F.R. § 300.320(b); Ed. Code, § 56043, subd. (h).) The transition plan must include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); 34 C.F.R. § 300.320(b)(1); Ed. Code, §§ 56043, subd. (g)(1), 56345, subd. (a)(8).) The plan must also contain the transition services needed to assist the pupil in reaching those goals. (34 C.F.R. § 300.320(b)(2); Ed. Code, § 56345, subd. (a)(8)(A).)

Transition services are a coordinated set of activities that are designed within an outcome-oriented process that is focused on improving the academic and functional achievement of the child to facilitate movement from school to post-school activities.

(20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).) This includes

- postsecondary education,
- vocational education,
- integrated employment,
- continuing and adult education,
- adult services,
- independent living, and
- community participation. (*Ibid.*)

The transition services must be based on the student's individual needs, taking into consideration the student's strengths, preferences, and interests. They must also include

- instruction,
- related services,
- community experiences,
- the development of employment and other post-school adult living objectives, and, if appropriate,
- acquisition of daily living skills and functional vocation evaluation.

(*Ibid.*)

The IEP team adopted the same post-secondary transition plan developed for the November 17, 2022 IEP, as Student needed additional time to develop the underlying skills necessary to participate in the identified post-secondary activities of attending adult education and participating in home activities. Although Student could not

himself verbalize plans for life after school, Alvarez was familiar with Student and with post-secondary opportunities for her students with severe disabilities. Alvarez completed both a career interest tool and a skills tool based on her knowledge of Student and Parent's report, taking into account Student's strengths, preferences, and interests. Alvarez reasonably developed a proposed plan for Student's transition to adult life that was adopted into the October 31, 2023 IEP.

Alvarez identified Goal 1 of wiping a table as an important transition skill Student could acquire before entering an adult education program in functional employment skills. Alvarez also identified Goal 2 for Student to learn the letters of his name, and Goal 9 to follow common routines with minimal prompts, as teaching him requisite transition skills for employment, and for participating in activities in the home and community. The IEP offered Student specialized academic instruction and related services, such as language and speech services and occupational therapy consultation, to support meeting each of those goals as identified in the transition plan. The instruction and related services offered in the October 31, 2023 IEP supported Student's development of employment skills and his post-school, adult-living objectives, as well as his acquisition of daily living skills.

At hearing, Student's counsel asked questions critical of Alvarez's assessment and completion of the transition plan, because Student did not verbalize the statements documented in the transition plan himself. Student was non-verbal, and Student's teacher fully explained her process at several IEP team meetings. Neither Parents nor any other IEP team members were confused about the development of the transition plan included in the October 31, 2023 IEP.

The transition plan in the October 31, 2023 IEP included an appropriate statement of needed transition services for Student and appropriate measurable post-secondary goals. The October 31, 2023 IEP also offered Student services to assist Student in reaching his transition goals and met the requirements of the IDEA.

SUPPLEMENTAL AIDS AND PROGRAM MODIFICATIONS

If an IEP team determines that a student needs a particular device or service, including an intervention, accommodation, or other program modification, to receive a FAPE, it must include a statement to that effect in the student's IEP. (34 C.F.R. § 300.320(a)(4)(i)-(ii); Ed. Code, § 56345, subds. (a)(4)(A) & (B); Ed. Code, § 56341.1, subd. (c).)

The October 31, 2023 IEP team developed accommodations for Student in the areas of

- class setting and schedules,
- teacher directions,
- student responses,
- self-regulation,
- organization,
- study skills,
- personal care, and
- equipment.

They included such accommodations as visual schedules, movement breaks, calming activities and sensory items, and assistance with toileting and diapering. All the accommodations related to Student's disability and enabled him to be involved and progress in the core curriculum.

The October 31, 2023 IEP modified Student's physical education class to include a functional skills curriculum. In addition, each of Student's classes included modified assignments and tests, increased assistance and support, and would be graded on effort. These modifications fundamentally lowered the standards of each course and placed Student on an alternative curriculum, which was appropriate in light of Student's disabilities and their impact on his academic, developmental, and functional performance.

PLACEMENT AND SERVICES OFFER WAS UNCLEAR

The IEP document created by the IEP team must include a statement of the special education and related services that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IEP must include a projected start date for services and modifications, and the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).)

The IDEA requires that school districts provide parents with formal, written, and specific offers of placement. (20 U.S.C. § 1414(d)(1)(A)(i); *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526.) This requirement is rigorously enforced because it

provides a clear record if disputes arise and helps parents decide whether to accept or reject the proposed program. (*Los Angeles Unified School District v. A.O.* (9th Cir. 2024) 92 F.4th 1159, 1169 (*A.O.*.)

Conejo Valley offered Student 360 minutes, or six hours, per day of specialized academic instruction to support Student in working on his academic and other goals. The evidence, particularly Alvarez's testimony, demonstrated that Student needed academic support throughout the day due to his cognitive processing deficits, delayed academic skills, and difficulty attending to instruction.

The October 31, 2023 IEP eliminated the intensive individualized services, or aide support, offered in Student's previous IEPs. Instead, the October 31, 2023 IEP offered 1,440 minutes, or 24 hours, daily of residential treatment services. The IEP did not explain the nature of residential treatment services, how they would be delivered, or if the services delivered varied over a 24-hour period or days of the week. The October 31, 2023 IEP was silent on whether residential services included a dedicated one-to-one aide, two dedicated one-to-one aides, or no dedicated aide support. It was unclear whether, if aide support was to be provided, that aide support would be provided all day and all night, or at limited times or circumstances. The elimination of aide services necessary to ensure Student's safety and that of others, and the offer of undefined and unexplained residential treatment services, did not appropriately address Student's academic and behavioral support needs. It also left Parents uncertain as to the services their child would receive and whether those services would benefit him.

The IEP team members who testified that the October 31, 2023 IEP offered Student a FAPE could not explain what was included in the offer of residential treatment services. This illustrates why the views of school personnel are not conclusive, and

administrative hearings conducted by an impartial decisionmaker may be necessary. (*Ojai Unified School Dist. V. Jackson* (9th Cir. 1993) 4 F.3d 1467, 1476.) In addition, Devereux's National Director of Marketing Services, who testified, was unfamiliar with Student or Student's educational program, and his description of the Devereux residential program in Texas was very general. He opined that Devereux had the ability to implement Student's October 31, 2023 IEP, but as that IEP did not specify the level of aide support Student needed, his opinion did not establish that Devereux could provide Student with a FAPE under the terms of the IEP as written.

The IEP team members who testified the October 31, 2023 IEP offered Student a FAPE were similarly unable to explain what was meant by the October 31, 2023 IEP's offer of social work services. Some witnesses guessed the term referred to educationally related mental health services, and Clark guessed that the term referred to residential parent support services. No explanation of the services was included in the October 31, 2023 IEP, making this portion of the offer of FAPE unclear.

To add to the lack of clarity, Conejo Valley changed its terminology for behavior support in the October 31, 2023 IEP. Previously, the April 3, 2023 IEP offered 180 minutes per day of "intensive individualized services," or aide support. The June 13, 2023 IEP offered 60 minutes of intensive individualized services per day, and 30 minutes per week of behavior intervention services by consultation, described on the second page as "BCBA consultation." The September 26, 2023 IEP offered 60 minutes per day of intensive individualized services, with 60 minutes per week of BCBA consultation written into the offer of FAPE in the meeting notes. The October 31, 2023 IEP offered 360 minutes per day of specialized academic instruction, but only 120 minutes per month of "behavior intervention services." Conejo Valley had not used this term before, and it was unclear if Conejo Valley was offering to dramatically reduce Student's daily

aide support, double the 60 minutes per month of BCBA consultation, or offer something else altogether. This confusion was only worsened by Conejo Valley's restatement of FAPE in the meeting notes to include 120 minutes per month of "Direct Behavior services," which are not clearly aide services or BCBA consultation.

Devereux's website states that it has 12 or fewer students in each classroom, but the website makes no reference to the number of adults in the classroom, or to one-to-one aide support. At hearing, Devereux's marketing director testified there was a ratio of one adult to two children in each classroom, which is significantly lower than the two adults to one child level of support Student was receiving in the LEAP program to keep himself and others safe. Devereux's marketing director testified Devereux could implement the services in the October 31, 2023 IEP, but that testimony is meaningless in light of Conejo Valley's failure to define exactly what behavior services were offered.

This was not a case where Parents knew and understood Conejo Valley's offer even though essential information was omitted from the October 31, 2023 IEP. (See, e.g., *Mercer Island, supra*, 592 F.3d at p. 953 [parents understood the amount of services offered despite absence in IEP].) Even Conejo Valley's IEP team members did not know what services were offered or how they would be delivered at Devereux. Karamanlian testified that behavior intervention services would teach Student functional communication skills, and when asked how that would be implemented at Devereux responded vaguely that Devereux had a highly therapeutic program. Alvarez thought Student needed a smaller classroom with more adults than the LEAP program provided, although she was unsure if Devereux provided either. Some Conejo Valley IEP team members speculated that behavior intervention services were part of the

residential treatment services offered, but there was no breakdown of the residential treatment services in the IEP, and none of those witness could describe the residential treatment services offered at hearing.

Parents did not consent to the October 31, 2023 IEP, and on December 13, 2023, Conejo Valley sent Parents a prior written notice letter. That letter indicated the October 31, 2023 IEP team relied in part on the Devereux presentation to make its offer of FAPE. The Devereux representatives might have been able to provide the team with a specific explanation of what 120 minutes per month of direct behavior services included, or a minute by minute breakdown of what was included in the 1,440 minutes per day of residential treatment services, but there was no convincing testimony they had done so and there was no evidence that they explained the FAPE offer after it was made.

The December 13, 2023 prior written notice letter also failed to explain what was included in the direct behavior services or the residential treatment services, and how, when, or by whom they would be provided. It stated that Devereux offered small class sizes, a low staff to student ratio, on-site BCBA, and highly trained direct support professionals, but that fell short of explaining whether Student would receive aide support inside or outside of the classroom, and if so, how much. The failure of the October 31, 2023 IEP, or the December 13, 2023 prior written notice letter, to explain behavior intervention and residential services made the October 31, 2023 offer of FAPE unclear.

Conejo Valley continued to offer speech and language services and occupational therapy in the October 31, 2023 IEP. The occupational therapy was labeled as 60 minutes monthly of consultation and collaboration. However, the speech and language services

were labeled as 120 minutes per month without indicating whether the services were direct or collaboration, the frequency or duration of delivery, or whether the services were individual or group. The incomplete specification of speech and language services made the October 31, 2023 offer of FAPE unclear.

The SELPA's residential specialist Clark testified that he tried to contact Parents before the October 31, 2023 IEP team meeting to explain Devereux's program, and Parents could have sought further clarification from him after the IEP team meeting. However, Parent's failure to clarify an ambiguous term after the IEP team meeting did not relieve Conejo Valley of its obligation to document a clear offer of FAPE. (See *A.O., supra*, 92 F.4th at p. 1171.) A school district cannot blame a parent for its failure to ensure meaningful procedural compliance with the IDEA. (*Ibid.*, citing *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1045.)

Conejo Valley's failure to make a clear offer of instruction and services in the October 31, 2023 IEP was a procedural violation that impeded Student's right to a FAPE and significantly impeded Parents' opportunity to participate in the decision-making process. (Ed. Code, § 56505, subd. (f)(2).) Because the October 31, 2023 IEP used ambiguous terms, did not document exactly what behavior supports Student would receive, and did not specify the frequency or method of delivery of some services, Parents could not be certain of the instruction and related services offered. That same ambiguity meant that Devereux, or any other school, could not be certain that it was implementing the IEP correctly, depriving Student of educational benefit and denying him a FAPE.

In addition, for a school district's offer of special education services to a disabled student to constitute a FAPE under the IDEA, a school district's offer of educational

services or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student educational benefit appropriate to his circumstances in the least restrictive environment. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314; 20 U. S.C. § 1401(9).) Here, the extensive ambiguity in Conejo Valley's October 31, 2023 offer of FAPE, which was not clarified by the December 13, 2023 prior written notice letter, literally precludes an analysis of exactly what services were offered, let alone a finding that the services offered were designed to meet Student's unique needs, comported with his IEP, or were reasonably calculated to enable Student to make educational progress appropriate in light of his circumstances.

In summary, Conejo Valley denied Student a FAPE by failing to make a clear offer of FAPE in the October 31, 2023 IEP, or to clarify the offer in the December 13, 2023 prior written notice letter.

MISCELLANEOUS PROCEDURAL AND SUBSTANTIVE VIOLATIONS

In his closing brief, Student contends Conejo Valley committed procedural and substantive violations in developing the October 31, 2023 IEP because

- a health plan was not attached to the IEP and Student required one,
- extended school year was not offered,
- Student's inability to access his education virtually was not accounted for when drafting the emergency services plan, and
- the offer of Devereux was predetermined.

Student contends that Conejo Valley was required, but failed, to include Student's health plan in the October 31, 2023 IEP. Continuing specialized physical health care services required for the student to benefit from special education shall be included in the student's IEP. (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(3)(A).) However, specialized physical health care services are services that require medically related training, such as catheterization, gastric tube feeding, and suctioning. (Ed. Code, § 49423.5, subd. (d).) Student's seizure plan required staff to turn Student on his side to monitor breathing in the event of a full seizure and call 911, and to merely ensure Student is safe and record the time and length of a partial seizure.

Conejo Valley's school nurse opined that Student's health plan regarding his epilepsy should have been attached to the October 31, 2023 IEP. Conejo Valley had Student's health plan on file in the school office, and the school nurse had trained all personnel who worked with Student or supervised him on the health care plan. Although the box on page one of the October 31, 2023 IEP indicating Student had a health plan was not checked, the health summary on page two stated Student was diagnosed with epilepsy and a seizure plan was on file in the school's health office. Federal regulations do not require a school district to include information under one component of a student's IEP that is already contained in another component of the IEP. (34 C.F.R. § 300.320(d)(2).) Therefore, Student's need for a health care plan was included in the October 31, 2023 IEP, and Conejo Valley's failure to attach the plan, rather than indicate it was on file with the school nurse, was not a procedural violation that denied Student a FAPE.

California special education regulations require that extended school year services be provided for each student with exceptional needs who requires special education and related services in excess of the regular academic year. (Cal. Code Regs.,

tit. 5, § 3043.) A student needs extended programming if their disability is likely to continue indefinitely or for a prolonged period of time, and interruption of their educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that they will attain the level of self-sufficiency and independence that would otherwise be expected in view of their disabling condition. (*Ibid.*)

Student contends Conejo Valley should have, but did not, offer Student extended school year services in the October 31, 2023 IEP. However, there was no evidence that Student was at risk of regression without reasonable recoupment capacity except hearsay documents offering extended school year services in the past. In addition, the October 31, 2023 IEP team meeting was held at the beginning of the 2023-2024 school year, and Conejo Valley could convene a meeting at any time before the end of the school year to make an extended school year services offer. The failure to offer extended school year services in the October 31, 2023 IEP was not a procedural violation that denied Student a FAPE.

Student contends the emergency conditions provisions of the October 31, 2023 IEP consisted of template language that was not individualized to Student. However, Conejo Valley completed that section of the IEP and there was no persuasive evidence that Student would not benefit from the virtual emergency services offered. Student enjoyed looking at the video screen on his iPad, and Student's voice-generating program had to be locked on the iPad's screen to prevent Student from looking at other programs on his iPad. The emergency conditions provisions of the October 31, 2023 IEP did not deny Student a FAPE.

Student also contends Conejo Valley predetermined the offer of placement at Devereux. Predetermination occurs when an educational agency has decided on its offer prior to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Board of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP team meeting with a take it or leave it offer. (*JG v. Douglas County School Dist.* (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.) The law requires the school district to engage in an open discussion of Student's educational program and show a willingness to discuss options proffered by parents. (*Anchorage School Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1054-1055.)

There was no persuasive evidence that Conejo Valley predetermined its offer of residential placement at Devereux. Conejo Valley applied for Student to attend various residential treatment centers, and convened an IEP team meeting as soon as Student was accepted by Devereux. Conejo Valley arranged for representatives from Devereux to be available to explain their program to Parents and answer Parents' questions, but there was no evidence that Conejo Valley would not have considered other residential treatment centers, or even a nonpublic school placement at The Help Group, if Student had been accepted elsewhere. Conejo Valley's offer of placement at Devereux in the October 31, 2023 IEP was not predetermined.

Lastly, Student contends Conejo Valley violated his privacy rights in educational records by sending records with personally identifiable information to Devereux. The alleged violation of Student's privacy rights is not at issue in this district-filed case and is not decided here.

PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

Conejo Valley had the burden of proving that the October 31, 2023 IEP addressed Student's unique needs and was reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances, in the least restrictive environment. (*Endrew F., supra*, 580 U.S. at p. 1002.)

To provide the least restrictive environment, school districts must first ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers; and second, that special classes or separate schooling occur only if the nature or severity of the child's 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); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).)

If a child cannot be satisfactorily educated in a regular education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Educ.* (5th Cir. 1989) 874 F.2d 1036, 1050.) Mainstreaming is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

The continuum of program options includes, but is not limited to:

- Regular education;
- Resource specialist programs;
- Designated instruction and services;
- Special classes;

- Nonpublic, nonsectarian schools;
- State special schools;
- Specially designed instruction in settings other than classrooms;
- Itinerant instruction in settings other than classrooms; and
- Instruction using telecommunication instruction in the home or instructions in hospitals or institutions.

(Ed. Code, § 56361.) Some residential placements are considered to be more restrictive than others. Generally, the further a residential placement is located from a student's home and community, the more restrictive it is considered. (*Todd D. v. Andrews* (11th Cir. 1991) 933 F.2d 1576, 1582.) This is in keeping with another IDEA mandate that a disabled child be placed as close as possible to the child's home. (34 C.F.R. § 300.116.)

After Student's needs were identified, annual goals written, and services offered, the October 31, 2023 IEP team discussed Student's placement. The two representatives from Devereux described Devereux's program, how a behaviorist supported the program, and how Devereux staff collaborated with school districts and families. They told the IEP team Student's goals were appropriate for their program, and Student fit the profile of students in their program. Conejo Valley representatives reviewed the district's transportation policies for students placed in residential treatment centers and their families, and opportunities for parents to be involved in their child's treatment. The SELPA's representative Clark told Parents Student could start the following week if they consented to the October 31, 2023 IEP, which they did not.

There was no dispute that Student could not be educated in a regular education classroom. Accordingly, the question is whether the October 31, 2023 IEP mainstreamed Student to the maximum extent appropriate in light of the continuum

of program options. This Decision finds that a residential treatment center was not the least restrictive environment placement in which Student could be satisfactorily educated.

THE FLAWED RESIDENTIAL ASSESSMENT

The residential assessment conducted in April 2023 was seriously flawed. Parents reported to the assessor Student had started medication a month earlier, and it had dramatically reduced his aggression in the home and improved his overall functioning. The assessor observed Student for one and a half hours in both the LEAP classroom and during adapted physical education and saw no displays of aggression. Alvarez reported Student worked well with his aide, although she worried about the safety of other students in her classroom when Student became upset and aggressive. The assessor noted Student's history of aggressive behaviors were the result of his disability, and Student did not willfully disregard the rights of others or threaten and bully others.

However, despite overwhelming evidence that Student's circumstances had changed, including that Student was doing well in the home, the assessor concluded Student demonstrated a need for therapeutic intervention beyond school hours due to aggressive behaviors in the home.

This reasoning was inaccurate at the time of the assessment, and particularly so on October 31, 2023. Parents had seen long-term and dramatic improvements in Student's in-home behavior since March 2023. Parents reported to IEP teams on April 3, June 13, September 26, and October 31, 2023, that Student was rarely aggressive or engaged in self-injury in the home. Conejo Valley's rationale for placing Student in a

full-time comprehensive therapeutic setting beyond school hours did not exist on October 31, 2023. Student's in-home behavior over the previous eight months did not demonstrate a need for therapeutic intervention beyond school hours.

CONSISTENCY ACROSS SETTINGS

At hearing, some Conejo Valley staff opined that a residential treatment center would be beneficial by providing Student with consistent behavioral interventions and language acquisition opportunities inside and outside of school hours. However, Conejo Valley made no showing that this same consistency could not be accomplished in a less restrictive setting.

For instance, Conejo Valley could have offered Parents training to implement the strategies in Student's behavior intervention plan in the home. The IDEA expressly contemplates parent training as a related service that may be required to assist a child with a disability to benefit from special education. (34 C.F.R. § 300.34(a).) Concepts, techniques, and tools that may be offered in a child's IEP include

- parent counseling and training to assist parents in understanding the special needs of their child,
- providing parents with information about child development, and
- helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP. (34 C.F.R. § 300.34(c)((8)(i)-(iii).)

Instead of training Parents on implementing the strategies in Student's behavior support plan in the home for consistency, Karamanlian collaborated only with Alvarez and the aides and did not contact Parents. Alvarez was too busy instructing her class to discuss Student's behavior when Parent picked up Student at 11:45 a.m. daily. Conejo Valley never attempted to assist Parents in understanding Student's behavioral needs or to train Parents to acquire the necessary skills to allow them to implement the behavior intervention plan in the home and the community for consistency. On these facts, Conejo Valley cannot now be heard to justify removing Student from his home to a highly restrictive setting in another state because Student was not receiving consistent behavior interventions across settings, at school and at home.

The same applies to communication strategies. Conejo Valley did not offer Parents training on the use of Student's voice-generating device and did not offer to allow Student to take his iPad with the Proloquo program home until October 31, 2023, when Parents informed the IEP team that their insurer was recommending another voice-generating device for home use. Conejo Valley did not offer Parents consultation or collaboration with the alternative communication specialist in the October 31, 2023 IEP, or any IEP. The alternative communication specialist's testimony that Alvarez or Parents could have called her any time did not absolve Conejo Valley of its obligation to offer voice-generating device training if consistent training across settings was necessary to Student's educational progress. A residential treatment center was not the least restrictive placement in which consistent communication strategies and opportunities at school and at home could be implemented.

NONPUBLIC SCHOOLS

Conejo Valley noted over a series of IEPs that Student had not been accepted by several public-school autism programs and nonpublic schools. At the June 13, 2023 IEP team meeting, Parents stated they were not interested in interviewing with The Help Group a second time due to the length of the drive. However, Parents' refusal to cooperate in placing Student in a nonpublic school would warrant Conejo Valley filing for a due process hearing on the appropriateness of its offer of a nonpublic school placement, not instead offering a more restrictive residential placement.

Conejo Valley did not seek to establish at hearing why Student was not accepted by the public and nonpublic schools to which Conejo Valley applied, or the types of programs the nonpublic schools offered. As with Student's residential placement applications, his nonpublic school applications could have been declined due to staff shortages, Student's age, or because there was no space available at the time. Evidence of nonacceptance to half a dozen public programs and nonpublic schools for unexplained reasons fell far short of establishing that Student required a more restrictive residential placement to address his behavioral needs.

There was substantial evidence that Student's needs could be met in the less restrictive setting of a nonpublic school. First, Conejo Valley made precisely that placement offer in the November 17, 2022, January 19, 2023, February 14, 2023, April 3, 2023, and June 13, 2023 IEPs. The only significant change between the June 13, 2023 IEP team meeting and the October 31, 2023 IEP team meeting was that Student's behaviors had significantly decreased, warranting the same or a less restrictive

placement on the continuum, not a more restrictive one. Karamanlian opined at hearing that Student's behavioral needs could be met in a nonpublic school program. Administrator Thomas noted that The Help Group believed it could meet Student's needs, although she shared Parents' concern about the long bus ride.

Opinions that Student needed a residential placement in October 2023 by witnesses who relied on the residential assessment or past reports of Student's in-home aggression were unpersuasive due to the residential assessment's flaws and Student's lack of in-home aggression after March 2023. Most witnesses limited their opinions to the perceived greater benefits of a residential placement without explaining why a nonpublic school would not meet Student's needs. Some witnesses, such as residential school psychologist Curry and the adapted physical education teacher, refreshingly focused their opinions on their areas of expertise, and opined that applied behavior analysis or recreational therapy would address Student's behavior and physical education needs, regardless of setting. The weight of the evidence established that Student's needs could be met in a less restrictive environment than a residential treatment center.

Lastly, taking a broad view, Student was a young man with autism who slapped and hit his aides at school several times a day, causing bruises and scratches. His aggression and other maladaptive behaviors decreased over an eight-month period from March through October 2023, even without modification of Student's behavior intervention plan and despite a complete lack of behavior intervention services for half of the available school day. Common sense dictates that this was not a child with

conduct so severe that he needed placement in a residential treatment center and could not make progress in a day school setting with a robust program of special education and behavior intervention services. The interventions listed in Student's behavior intervention plan could be implemented in a variety of less restrictive placements.

This Decision does not minimize the very real consequences of Student's behavior, or discount Conejo Valley's contention that it cannot meet Student's needs in the LEAP program. Student was a big young man, and his aides should not be hit and slapped on a regular basis. Nonetheless, this Decision is limited to determining whether the October 31, 2023 IEP offered Student a FAPE in the least restrictive environment in which Student's behaviors could be addressed. This Decision finds that it did not.

In summary, Conejo Valley failed to establish by a preponderance of the evidence that the October 31, 2023 IEP made an appropriate offer of special education placement and related services in the least restrictive environment for Student.

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.

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ISSUE:

Conejo Valley's October 31, 2023 IEP did not offer Student a FAPE in the least restrictive environment. Conejo Valley may not implement the October 31, 2023 IEP without parental consent.

Student prevailed on the sole issue.

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.

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings