

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

VENTURE ACADEMY,

v.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2024020488

DECISION

JUNE 17, 2024

On February 14, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Venture Academy, naming Student. On February 26, 2024, OAH continued the matter. Administrative Law Judge Kara Hatfield heard this matter by videoconference on April 10, 11, and 12, 2024.

Attorney Marcella Gutierrez represented Venture Academy. Silvia De Alba, Director, attended all hearing days on Venture Academy's behalf. Neither of Student's parents appeared on any day of hearing. The record documents the repeated and daily efforts of the Administrative Law Judge to include and obtain the participation of Parents in the due process hearing.

At Venture Academy's request, OAH continued the matter to May 20, 2024, for written closing briefs. The record was closed, and the matter was submitted on May 20, 2024.

ISSUES

The Issues have been reordered from the April 15, 2024 Order Confirming Issues at Due Process Hearing.

1. Does the February 27, 2023 individualized education program, called IEP, as amended on November 29, 2023, offer Student a free appropriate public education, called FAPE, such that Venture Academy may implement it without Parents' consent?
2. May Venture Academy assess Student pursuant to the November 1, 2023 assessment plan without Parents' 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, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).) All citations to the Code of Federal Regulations are the 2006 version.

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] (*Schaffer*); and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Venture Academy had the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 12 years old and in sixth grade at the time of hearing. Parents selected Venture Academy as a public charter school and Student was enrolled with Venture Academy at all relevant times. Student's eligibility categories changed over time. At the time of hearing, she was eligible for special education under the primary category of specific learning disability and the secondary category of other health impairment.

ISSUE 1: DOES THE FEBRUARY 27, 2023 IEP, AS AMENDED ON NOVEMBER 29, 2023, OFFER STUDENT A FAPE SUCH THAT VENTURE ACADEMY MAY IMPLEMENT IT WITHOUT PARENTS' CONSENT

Venture Academy asserts it complied with all procedural and substantive requirements in developing the February 27, 2023 IEP, as amended on November 29, 2023, and that the IEP offered Student a FAPE. Accordingly, Venture Academy requests an order permitting it to implement the IEP without Parents' consent.

Parents on behalf of Student did not respond to Venture Academy's complaint, appear at hearing, or file a closing brief.

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.) All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted.

In general, a child eligible for special education must be provided access to specialized instruction and related services that are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Educ. 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, 402 [137 S.Ct. 988, 1000] (*Endrew F.*).

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

There are two parts to the legal analysis of a local educational agency's compliance with the IDEA. First, the tribunal must determine whether the local educational agency has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit appropriate in light of the child's circumstances. (*Ibid.; Endrew F., supra*, 580 U.S. at p. 402.)

The IDEA requires that local educational agencies establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of FAPE by such agencies. (20 U.S.C. § 1415(a).) A copy of the procedural safeguards must be given by a local educational agency to a parent of a child with a disability at least once a year. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a); Ed. Code, § 56301, subd. (d)(2).)

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PROCEDURAL SAFEGUARDS

A procedural safeguards notice must include a full explanation of all procedural safeguards and be written in language understandable to the general public. It must be provided in the native language of the parent or other mode of communication used by the parent. (20 U.S.C. § 1415(d)(2); 34 C.F.R. §§ 300.503(c)(1), 300.504.) Parents must be informed about procedural safeguards at an IEP team meeting. (Ed. Code, § 56500.1, subd. (b).)

The IDEA states, "The term 'native language', when used with respect to an individual who is limited English proficient, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child." (20 U.S.C. § 1401(20).) The IDEA defines the term "limited English proficient" by referencing section 9101 of the Elementary and Secondary Education Act of 1965, which provides a definition that specifies it refers to "an individual who is aged 3 through 21." (20 U.S.C. § 1401(18); 20 U.S.C. § 7801(25)(A).) The IDEA's definition of "limited English proficient" therefore does not define the term with respect to a parent who is over age 21, and therefore the IDEA does not define what a "native language" is for a parent who is over age 21. But the guidance from the remaining definition of "limited English proficient" in the Elementary and Secondary Education Act, and by incorporation the IDEA, is illustrative. "Limited English proficient" describes someone who, among other possible circumstances, was not born in the United States or whose native language is a language other than English, and whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability

to meet the State's proficient level of achievement on State assessments, the ability to successfully achieve in classrooms where the language of instruction is English, or the opportunity to participate fully in society. (20 U.S.C. § 7801(25)(D).)

With regard to the "or other mode of communication" requirement for proper notice to a parent of all the procedural safeguards under the IDEA, 34 Code of Federal Regulations part 300.29(b) explains that for an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual, such as sign language, Braille, or oral communication. It does not pertain to an alternative written or spoken language.

The IDEA's procedural safeguards are intended to protect the informed involvement of parents in the development of an education for their child. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S. Ct. 1994].) "[T]he informed involvement of parents" is central to the IEP process. (*Ibid.*) Protection of parental participation is "[a]mong the most important procedural safeguards" in the IDEA. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) "Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA." (*Id.* at p. 892.)

PARENTAL PARTICIPATION AND IEP TEAM MEETING ATTENDEES

Procedurally, the parents of a child with a disability must have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(b) &

(c); Ed. Code, §§ 56304, 56341.) Each public agency must take steps to ensure that one or both of the parents are present at each IEP team meeting or offered the opportunity to participate. This includes notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. (34 C.F.R. § 300.322(a).) The meeting notice must indicate the purpose, time, location of the meeting, and who will be in attendance. (34 C.F.R. § 300.322(b)(1)(i).) It must also inform the parents of the provisions in 34 Code of Federal Regulations part 300.321(a)(6) and (c) relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child. (34 C.F.R. § 300.322(b)(1)(ii).)

Unless excused in writing by the parent, the IEP team is required to include:

- one or both of the student's parents or their representative;
- a regular education teacher if a student is, or may be, participating in the regular education environment;
- a special education teacher;
- a representative of the local educational agency who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about available resources;
- someone who can interpret the instructional implications of assessment results; and

- at the discretion of the parent or local educational agency, other individuals who have knowledge or special expertise regarding the child. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].)

Finally, whenever appropriate, the child with the disability should be present. (20 U.S.C. § 1414(d)(1)(B)(vii); 34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b)(7).)

To fulfill the goal of parental participation in the IEP process, the local educational agency is required to conduct a meaningful IEP meeting. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1485, [superseded by statute on other grounds, as stated in *R.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 939].) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way] (*Fuhrmann*).)

IEP DEVELOPMENT AND OTHER PROCEDURAL REQUIREMENTS

When confronted with competing IDEA procedural requirements, the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of FAPE. (*Doug C. v.*

Hawaii Dept. of Educ. (9th Cir. 2013) 720 F.3d 1038, 1046.) In reviewing an agency's actions in such a scenario, the agency will have reasonable latitude in making that determination. (*Ibid.*)

California Education Code section 56345 provides a nearly step-by-step approach to developing an IEP of instruction and services for a student who requires special education. An IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. It must have measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320; Ed. Code, § 56345, subd. (a)(1) & (2).) An IEP must include a description of how progress towards the goals developed will be measured and reported. (Ed Code, § 56345, subd. (a)(3).)

An IEP must include a statement of the special education, related services, supplementary aids and services that will be provided to the student, program modifications, and supports for school personnel that will be provided to enable the student to advance appropriately toward attaining the annual goals, be involved in and make progress in the general education curriculum and participate in extracurricular and nonacademic activities, and be educated and participate with other individuals with exceptional needs and nondisabled students. (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 an explanation of any extent to which the student will not participate with nondisabled students in the regular class and extracurricular and nonacademic activities. (Ed. Code, § 56345, subd. (a)(5).) The IEP must include a statement of individual appropriate accommodations that are necessary to measure academic achievement and functional performance of the student on state and agencywide assessments. (Ed. Code, § 56345, subd. (a)(6).) The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) Only the information set forth in title 20 United States Code section 1414(d)(1)(A)(i) must be included, and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code § 56345, subds. (h) and (i).)

An IEP team must make an individualized determination about how an IEP would be provided under emergency conditions, in which instruction or services, or both, cannot be provided to the student either at the school or in person for more than 10 school days. (Ed. Code, § 56345, subd. (a)(9)(A).)

In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluations of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a).)

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The educational benefit to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs include the child's

- academic,
- social,
- health, e
- motional,
- communicative,
- physical, and
- vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106), reversed in part on other grounds by *Schaffer, supra*, 546 U.S. at p. 56-58.).)

The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (United States Department of Education Office of Special Education and Rehabilitative Services (OSERS) March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The IEP team need not draft IEP goals in a manner that the parents

find optimal, as long as the goals are objectively measurable. (*Bridges ex rel. F.B. v. Spartanburg County School Dist. Two* (D.S.C., Sept. 2, 2011, No. 7:10-CV-01873-JMC) 2011 WL 3882850 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].)

The IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D.Cal., May 2, 2017, No. CV16-04356-BRO (MRWx)) 2017 WL 2864945; see also 20 U.S.C. § 1414(d)(1)(A)(i)(II) & (III); Ed. Code, § 56345, subd. (a)(2) & (3).) IEP goals and goal achieving methods at the time the IEP was implemented are examined to decide whether the methods were reasonably calculated to confer a meaningful benefit. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*).)

PLACEMENT AND LEAST RESTRICTIVE ENVIRONMENT

School districts are required to provide each special education student with a program in the least restrictive environment. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers; and that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a); Ed. Code, § 56031.)

The continuum of program options includes, but is “not necessarily” limited to, in increasing order of restrictiveness:

- 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, and instruction in the home, in hospitals, or other institutions. (Ed. Code, § 56361.)

In determining the educational placement of a child with a disability, a local educational agency must ensure that:

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

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

To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit has balanced the following factors:

1. the educational benefits of placement full-time in a regular class;
2. the non-academic benefits of such placement;
3. the effect the student has on the teacher and children in the regular class; and
4. the costs of mainstreaming the student. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)]; see also *D.R. v. Redondo Beach Unified School Dist.*, 56 F.4th 636, 643 (9th Cir. 2022).)

However, the Ninth Circuit has also found that a general education placement is not the least restrictive environment for every special-needs child. In *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830 (*Poolaw*), the Ninth Circuit considered the *Rachel H.* factors and determined that a general education classroom was not the least restrictive environment for the child in question. The Court acknowledged that there was a tension within the IDEA between the requirement that a local educational agency provide children with a FAPE to meet their unique needs and the preference for mainstreaming. The Court stated:

In some cases, such as where the child's handicap is particularly severe, it will be impossible to provide any meaningful education to the student in a mainstream environment. In these situations, continued mainstreaming would be inappropriate and educators may recommend placing the child in a special education environment. This allows educators to comply with the Act's main requirement – that the child receive a free appropriate public education. Thus, "the Act's mandate for a free appropriate public education qualifies and limits its mandate for education in the regular classroom." (*Poolaw, supra*, 67 F.3d at p. 834, citing *Daniel R.R., supra*, 874 F.2d at p. 1044.)

If a local educational agency determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050.)

No one factor is determinative in placement, and parental preference cannot be either the sole or predominant factor in placement decisions. (See, e.g., *Letter to Burton* (OSERS March 20, 1991); *Letter to Anonymous* (United States Department of Education Office of Special Education Programs (OSEP) April 20, 1994); *Letter to Bina* (OSERS November 5, 1991).)

An IEP must state whether extended school year services are offered. (Ed. Code, § 56345, subd. (b)(3).) California Code of Regulations, title 5, section 3043, provides that extended school year services shall be provided for each individual with exceptional needs who requires special education and related services in excess of the regular academic year. Students to whom extended programming must be offered under section 3043:

... shall have disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition.

CLEAR WRITTEN OFFER AND OTHER REQUIREMENTS

The Ninth Circuit has observed that the formal requirements of an IEP are not merely technical, and therefore should be enforced rigorously. A local educational agency has an obligation to make a formal, written offer in the IEP that clearly identifies the proposed program. The requirement of a coherent, formal, written offer creates a clear record that helps eliminate factual disputes about when placements were offered,

what placements were offered, and what additional assistance was offered to supplement a placement. It also assists parents in presenting complaints with respect to any matter relating to the educational placement of the child. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526 (*Union*); *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d. 431, 459-460.)

If a local educational agency determines that a proposed special education program component to which a parent does not consent is necessary to provide a FAPE, the local educational agency must expeditiously initiate a due process hearing. (Ed. Code, § 56346, subd. (f); *I.R. ex rel. E.N. v. L.A. Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1165 (*I.R.*).

In a case filed by a local educational agency conducted pursuant to Education Code section 56505, a hearing officer shall not base a decision solely on nonsubstantive procedural errors unless the ALJ finds the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the student or interfered with the opportunity of the student's parent to participate in the formulation process of the IEP. (Ed. Code, § 56505, subd. (j); see also 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. § 300.513(a).)

In resolving the question of whether a local educational agency has offered a FAPE, the focus is on the adequacy of the local educational agency's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a local educational agency's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, the local educational agency's offer must be designed to meet

the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with educational benefit appropriate in light of the student's circumstances, in the least restrictive environment. (*Ibid.*; *Endrew F.*, *supra*, 580 U.S. at p. 402 [137 S.Ct. at p. 1000].)

Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams*, *supra*, 195 F.3d at p. 1149, citing *Fuhrmann*, *supra*, 993 F.2d at p. 1041.)

An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp. 2d 127, 139 [IDEA did not provide for an "education ... designed according to the parent's desires."].) A local educational agency is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) A local educational agency has the right to select the program offered, as long as the program is able to meet the student's needs, and the local educational agency is ultimately responsible for ensuring a FAPE is offered. (*Letter to Richards* (OSEP January 7, 2010).) The Ninth Circuit has held that while the local educational agency must allow for meaningful parental participation, it has no obligation to grant the parent a veto over any individual IEP provision. (*Ms. S. ex rel G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.)

STUDENT'S EARLY EDUCATION

The IEP at issue in this case initially was dated February 27, 2023. When Parents did not consent to Venture Academy's original proposal before the end of the 2022-2023 school year, additional IEP team meetings were held starting in the 2023-2024 school

year. Venture Academy changed the date field on the document to the date of the first meeting in that school year, September 29, 2023. In this Decision, the document is referred to as the February 27, 2023 IEP. The November 29, 2023 amendment to the February 27, 2023 IEP resulted from many IEP team meetings in the 2022-2023 and 2023-2024 school years.

Student's educational needs evolved since she entered special education and related services in kindergarten in early 2018. To evaluate whether Venture Academy offered Student a FAPE in the November 29, 2023 amendment to the February 27, 2023 IEP, it is necessary to consider Student's circumstances and the events that contributed to the development as well as final offer of special education and related services in the November 29, 2023 amendment to the February 27, 2023 IEP. The facts set forth here inform the conclusion that Venture Academy offered Student a program of special education and related services that was reasonably calculated to afford Student educational benefit appropriate in light of her circumstances as of November 29, 2023.

Student attended pre-kindergarten in the local public school district in which she resided. Parents then enrolled Student in Venture Academy, a public charter school affiliated with or overseen by the San Joaquin County Office of Education, for kindergarten in the 2017-2018 school year. Venture Academy held on-campus, in-person instruction four days per week, Monday through Thursday. It also had a homeschool component, one day per week on Friday. Parents were responsible for assisting their children with assignments the teachers provided the students, to be completed on homeschool Fridays, in addition to any unfinished schoolwork or homework. This elementary program operated by Venture Academy was called Ventureland. In the elementary school, kindergarten through fifth grade, students had one teacher for all their classes.

INITIAL ELIGIBILITY ASSESSMENT

In December 2017, Parent requested Venture Academy assess Student for eligibility for special education and related services. Parents and Student were native Spanish speakers, and Student was classified as an English language learner. At that time, Student's overall skills in English scored on the California English Language Development Test as "Beginning," and on the English Language Proficiency Assessment for California as "Level 1," the lowest. Venture Academy provided Parents information about assessing Student for eligibility for special education and related services on a form assessment plan, in both English and Spanish versions of the form. Parents signed consent on and returned the English-language version of the assessment plan form.

Venture Academy assessed Student and convened an IEP team meeting to review the results. In part based on a psychoeducational assessment conducted by school psychologist Eva Guevara and a speech-language assessment conducted by speech-language pathologist Marisa Godi, the IEP team determined Student qualified for special education and related services under the eligibility categories of speech and language impairment as primary, and specific learning disability as secondary. Student's history of low birth weight and some health conditions were documented, including attention deficit hyperactivity disorder, seizure disorder, developmental delay, and a blood disorder. Student's initial IEP was developed in March 2018, and her special education and related services consisted of speech therapy and specialized academic instruction.

The evidentiary record did not contain information about the next annual IEP developed in 2019.

In early 2020, Venture Academy held an IEP team meeting for Student's annual IEP. During the continuation IEP team meeting on April 8, 2020, at which a Spanish language interpreter translated for Mother, Mother requested to receive all IEP paperwork in English only and to remove all Spanish translation from all IEP documents. On April 10, 2020, Venture Academy's Director De Alba, who attended the IEP team meeting, emailed Parents and confirmed Mother's request. De Alba wrote the email in both English and Spanish to assure Parents understood the action Venture Academy intended to take in response to Mother's request. Venture Academy would "honor [Parents'] request" and agreed to provide written materials in English only, but have an interpreter present at IEP team meetings for verbal communication and would change back to providing paperwork in English and Spanish if Parents requested that in the future. The record did not contain other information about the annual IEP developed in March and April 2020.

During school campus closures beginning in March 2020 due to the COVID-19 pandemic, Student participated in distance learning for the remainder of the 2019-2020 school year and the beginning of the 2020-2021 school year, when Student was in third grade. Venture Academy invited students to return to campus for in-person instruction in stages, with students who had IEPs being offered to attend on campus first. Parents declined to send Student to campus and Student continued to attend school through distance education for the duration of her third-grade year. Student usually did not have her camera on, but occasionally used the chat feature of the online classroom platform and participated. Her general education and special education teachers noted while she participated in distance education, Student showed learning loss and some regression. She was not doing her work from home.

FIRST THREE-YEAR-REVIEW REASSESSMENT

Student was due for a three-year-review assessment in March 2021, and Venture Academy electronically transmitted and mailed to Parents an assessment plan dated January 26, 2021, in both Spanish and English. Parents did not sign the assessment plan in the electronic platform within one week and the computer system canceled that option. School psychologist Guevara contacted Mother on February 16, 2021, and communicated with her in Spanish regarding the need for Parents to consent to the reassessment. Mother told Guevara she initially was not going to consent, but had decided she would. Mother stated she planned to bring the paper copy of the assessment plan to school.

Also on February 16, 2021, Mother and Father came to school and hand delivered a type-written letter from Parents dated February 16, 2021, written in English. It stated Parents requested "an IEP evaluation" because they believed "our daughter needs more Special Education Services." It also stated, "In order to prepare for my son's IEP meeting, we are requesting copies of the reports and evaluations prior to the meeting," as well as, "Please provide us with a copy of our daughter's complete file. Please include all ENGLISH and NUMBERED, ISFPs, IEPs[], 504 Plans, and any other school record" [Capitalization in original.] Among other requests, Parents stated, "Finally, I am requesting a Spanish speaking interpreter for the IEP meeting." The letter was signed by both Mother and Father.

Director De Alba received and reviewed the letter. De Alba's background was as a public high school Spanish teacher, and later she earned her Master of Science degree in school counseling and received her pupil personnel services credential and administrative credential. She was bilingual and biliterate in English and Spanish. For approximately

four years before becoming a teacher, De Alba had been a classified employee in California's Central Valley working in migrant education, as a counselor assistant overseeing a caseload of students in a migrant program. She worked closely with Spanish-speaking families to provide them support understanding the high school graduation requirements and to apply to colleges and universities. Her own family background informed her sensitivity about communications with families being in a language accessible to them.

De Alba met with Parents on February 16, 2021, while they were at school and delivered the letter. Previously, De Alba had tried to have basic conversations with Mother in English, but Mother did not understand a lot, responded in Spanish, and actually asked De Alba to talk to her in Spanish. On February 16, 2021, De Alba knew Parents only spoke Spanish and she was concerned about the letter written in English, with errors calling Student their son. De Alba thought the letter appeared to be from some kind of template. It asked for Student's documents in English and De Alba believed Parents would not understand the documents unless they were written in Spanish.

On February 16, 2021, De Alba spoke with Parents in Spanish about the letter and Mother said she wanted all paperwork in English only. De Alba asked Mother to help her understand why Mother wanted things in English only. Mother was angry and sternly said De Alba did not need to understand, only to respect her rights and that she was asking for everything in English. De Alba asked Father if he was sure that was what he wanted and Father responded that he was there to support his wife and if that is what his wife wanted, then he needed De Alba to do that.

De Alba asked Mother if she wanted the IEP team meetings to be held only in English, too. Mother answered she wanted paperwork in English only but the meetings to be interpreted into Spanish.

On February 17, 2021, Mother brought to school the reassessment plan, which contained her signature on the English language version, but she had not checked any box related to granting or withholding consent. Guevara met with Mother and explained to her, in Spanish, what her options were regarding granting or withholding consent. Mother ultimately checked the box on the English language version granting consent to the proposed assessments.

The results of the 2021 three-year-review assessment are summarized here because the IEP teams that repeatedly met between February 27, 2023, and November 29, 2023, considered them as they were “the results of the most recent evaluations of the child” when the disputed IEP was developed. (20 U.S.C. § 1414(d)(3)(A)(iii); 34 C.F.R. § 300.324(a)(iii).) In March and early April 2021, speech-language pathologist Marisa Godi assessed Student’s language and speech communication development, along with bilingual speech-language pathologist Juana Mier, who administered some instruments in Spanish. Mother reported that within the home, Student acted like a kindergartener, despite being in the middle of third grade. She did not seem to understand instructions well and brought incorrect items to Mother. Student was anxious and cried when she could not complete schoolwork by herself, and appeared frustrated when she could not get her work done.

Godi documented that during the speech and language assessment, Student participated in all assessment tasks. She asked for test items to be repeated as needed. She participated in reciprocal communication with both evaluators and asked and

answered questions throughout the assessment. Student's attention to task was inconsistent depending on the task and she fatigued quickly during the assessment process.

Student's speech mechanism was not an area of suspected disability, and her articulation and fluency were evaluated and determined to be within normal limits for her age and gender and were not suspected areas of need.

Student's most recent overall score on the English Language Proficiency Assessment for California was "Level 2," showing improvement from three years earlier, but below the top end of Level 4.

Godi and Mier assessed Student's receptive and expressive language in both English and Spanish. Student showed a preference for conversing in English and answered far more test items in English than Spanish. Nonetheless, test results showed Student had a receptive and expressive language disorder, not just a language difference. The assessments identified normative weaknesses in following directions, language processing skills, nonliteral language concepts, and inferencing. These weaknesses were based on several standard scores in the below average range, despite Student having some standard scores in the average range. Godi believed at least one score in the below average range was lower than Student's actual ability because Student struggled to follow the directions within that test.

Godi and Mier reported Student met eligibility criteria for special education and related services in speech and language due to scoring at least 1.5 standard deviations below the mean, or below the seventh percentile, on two or more standardized tests in the language area of semantics. Semantics is about word meaning and word relationships.

Student did not show significant deficits in either morphology/syntax, which is about grammar usage and sentence structure, or in pragmatics, concerning social/functional use of language.

Godi and Mier recommended the IEP team consider the need for continued direct speech and language intervention. They also recommended strategies and accommodations such as frequent check-ins to check for understanding, supports like visual supports, graphic organizers, and learning maps, flexible seating, pre-teaching key vocabulary, and highlighting target vocabulary.

Also in March and early April 2021, school psychologist Guevara conducted a psychoeducational assessment, evaluating Student's intellectual development, motor development, social-emotional/behavior functioning, and reporting Student's academic achievement as tested by the special education teacher.

Mother reported Student could not do things for herself, such as changing her clothes. Parent was concerned about Student's hyperactivity and distracted behavior. Mother believed Student needed help in all her classes because she could not solve problems on her own.

Student's second-grade general education teacher from the 2019-2020 school year reported she had never observed Student having problems with focus or hyperactivity while in class. Student did not do reading assignments at home, but when done instead with the special education teacher, Student's reading scores increased significantly. Student asked for help when she needed it.

Student's third-grade general education teacher, who had Student in her classroom for distance learning during school closures for the COVID-19 pandemic, reported Student struggled with distractions and work completion. Student was reading at a second-grade level according to one computer-based diagnostic tool, and she was enrolled in a program to support her with decoding and fluency. Student was supposed to use the program 15 to 20 minutes each day, but Student worked on the software only one time per week, for an average of 19 minutes. Student was writing at a second-grade, approaching third-grade, level for sentences. Her sentences were well thought out with capital letters at the beginning and punctuation at the end. But Student did not turn in writing assignments that required one to three paragraphs, so her teacher could not evaluate whether Student wrote essays at grade level.

Student's fluency with math facts included knowing all the addition facts and about half of the subtraction facts. Based on some of her completed work, Student seemed to understand the new concepts of multiplication and division. According to one computer-based diagnostic tool, Student was performing math at the second-grade level. Word problems and multi-step problems were a struggle for Student, possibly due to the reading comprehension involved.

Student struggled to stay on task, only rarely asked for help when she needed it, and struggled with online classroom and homework assignments. Student came to class with a positive attitude every day, but distance learning interfered with her ability or willingness to learn or participate in class.

Student's standard score on one standardized test of nonverbal intelligence was 96, where average scores ranged from 90 to 109. On a different standardized test of cognitive ability, for which Guevara used only a specific subtest to evaluate Student's

attention, Student's standard score for the attention composite was 103, where average scores ranged from 90 to 109. This score was the result of only two out of three subtests for attention, because one subtest, for expressive attention, was deemed "spoiled." Guevara reported the score did not accurately reflect Student's ability due to test behavior observed during its administration regarding self-correcting and providing a response for all items presented rather than only correcting her errors. On the two valid attention subtests, Student's scaled score was at the bottom end of the average range for number detection, and at the bottom end of the above average range for receptive attention. These scores suggested she did not have significant difficulties with attention.

Regarding phonological processing skills related to reading, Student did not have difficulties with phonics. But she scored at the bottom of the low range concerning efficiency in retrieving phonological information from long-term or permanent storage. This suggested Student had difficulties when quickly recalling visual information from her long-term memory, which could influence the degree to which phonological information was useful to her in decoding printed words. Student therefore exhibited a deficit in phonological processing.

Regarding language processing and comprehension skills, Student's auditory memory was in the average range in both English and Spanish, but her English-language listening comprehension standard score was 80, in the below average range for the particular instrument. Her Spanish-language listening cohesion standard score, related to the ability to understand spoken language, was 78, which was in the low range for the particular instrument. Her ability to listen to and understand spoken language by

understanding words and relating them to each other, in both English and Spanish, could also relate to reading and writing skills. Student demonstrated a deficit in verbal comprehension, which Guevara and Mier reported could be attributed to her language processing skills.

The assessment of Student's social and emotional behavior included a rating scale completed by Mother, but did not include a rating scale from a teacher because it would not have followed standardization practice, which required the teacher to observe the student in a typical school setting for a period of time and that was not available due to the distance learning Student was participating in at the time. Mother's responses received an "extreme caution" warning regarding their validity due to the responses being very negative and a "caution" warning regarding their consistency. Mother rated Student as having clinically significant behavior in

- hyperactivity,
- somatization,
- attention problems,
- atypicality,
- withdrawal,
- leadership,
- functional communication, and
- activities of daily living.

Mother rated Student as having at-risk behavior regarding adaptability and social skills. Mother rated Student's behavior as average in aggression, conduct problems, anxiety, and depression.

The assessment of Student's executive functioning, meaning planning and implementation of complex tasks, included a rating scale completed by Mother. The assessment did not include a rating scale from a teacher because it would not have followed standardization practice, which required the teacher to observe the student in a typical school setting for a period of time and that was not available due to the distance learning Student was participating in at the time. Mother's responses were "too negative" and the test publisher indicated they should be interpreted with caution. Mother rated Student as having executive functioning skills in the very low range overall, and low scores in inhibitory control, initiation, planning, and working memory, and only slightly higher scores in attention, flexibility, organization, and self-monitoring, with her highest score being in emotional regulation, which was an 83, in the below average range.

Student's academic achievement as of January 2021 was measured by a standardized instrument administered by Student's special education teacher. Student's academic skills battery was in the average range. Her reading standard score was 104, and her math standard score was 90, both in the average range which went down to as low as 85 for the instrument used. However, her written language standard score was 82, in the below average range. Student's oral language, oral fluency, and expression, both oral and written, were all in the below average range for the specific standardized instrument, although the special education teacher, or Guevara, reported the score descriptions as "low" for oral language and oral fluency, and as below average for expression.

The psychoeducational assessment report stated that based on the results of the standardized academic achievement testing, Student demonstrated deficits related to her oral language, which included associational fluency, listening comprehension, and

oral expression. The psychoeducational assessment report also stated Student had difficulty completing tasks within a set period of time, which was reflected in her scores regarding writing fluency, math fluency, and decoding fluency, reflected together in a composite score called Academic Fluency, on which Student scored in the below average range.

Guevara opined Student was eligible for special education and related services under the category of specific learning disability due to a severe discrepancy between her intellectual ability and her achievement in oral expression, due to a disorder in a basic psychological process, which Guevara stated as "Cognitive Abilities (expression and association: rapid automatic naming)." Guevara, Godi, and Mier opined Student's learning problems were not primarily the result

- of visual, hearing or motor disabilities;
- of an intellectual disability;
- of emotional disturbance;
- of social maladjustment;
- of environmental, cultural, or economic disadvantage;
- of limited school experience; or
- of poor school attendance.

They did not believe the discrepancy could be corrected through modifications of the general education program or other categorical programs. They also opined Student's educational performance was not primarily impacted due to lack of instruction in reading or math, or limited English proficiency, and that her performance most likely could not be addressed through additional services in conjunction with interventions within the general program.

Guevara also opined Student was eligible for special education and related services under the category of other health impairment, because Parent reported Student was diagnosed with attention deficit hyperactivity disorder, had anemia, and had a history of seizures. Student's third-grade teacher also reported concerns with attention and focus during distance learning.

The February 2021 IEP team wrote goals for Student in

- vocabulary,
- spelling,
- reading fluency,
- listening comprehension,
- work completion,
- language processing for compare-and-contrast,
- language comprehension for inferencing, and
- language comprehension for figurative language.

The February 2021 IEP offered Student some time in the general education classroom, and special education consisting of specialized academic instruction for 660 minutes weekly "broken into sections and ... provided by push-in or pull-out, or after school depending on the schedule" but without any specific allocation of time the weekly service would be provided inside and/or outside the general education classroom. Special education or related services provided inside the general education classroom is known as push-in service, and when it is provided in a separate classroom it is known as pull-out service. The February 2021 IEP offered the related service of small-group speech and language for four sessions of 45 minutes each, for a total of 180 minutes weekly, outside the general education classroom setting.

FEBRUARY 28, 2022 IEP

Student's February 28, 2022 IEP was the last IEP consented to by Parents, and was being implemented by Venture Academy at the time of hearing in April 2024.

At the annual IEP team meeting on February 28, 2022, the IEP team members updated Student's present levels of performance in various areas based on her achievement on curriculum assessments, classroom or therapy room performance, and observations.

Mother told Venture Academy staff Student loved school and wanted to learn, but learning was difficult for Student and she needed help with her homework. Student told Mother she needed help, and Mother was aware Student did not learn at the same pace or process information at the same pace as her siblings. Mother described Student as very forgetful and said Student did not remember simple daily routines like drinking water unless reminded.

Student's fourth-grade general education teacher reported Student paid attention in class, was a good listener, and followed directions although she sometimes missed part of the directions. Student sometimes took a little longer to do assignments. She participated in group and whole-class discussions. She liked to volunteer to read and answered when called upon even if it meant figuring out the answer after being called upon. Student interacted appropriately with peers and adults. Student's fourth-grade vocabulary test scores were very high, including three perfect scores and one at 87 percent. Student's teacher reported Student was making significant progress in the general education class.

Student's special education teacher and case manager Cynthia Racacho-Perez reported Student read third-grade-level passages aloud and correctly answered comprehension questions.

At the February 28, 2022 IEP team meeting, Mother inquired if Student had been reclassified from an English learner to English proficient. Student's latest reported English language proficiency test did not have her at a proficient level, although Student was close. Student's most recent score on an English language proficiency assessment from February 2, 2022 would not be known until June 2022.

Speech-language pathologists Godi and Michelle Brassesco reported on Student's progress in speech therapy. In February 2021, Student's annual goal in language processing for compare-and-contrast was to be given a graphic organizer and/or visual to reference, and state two similarities and two differences for target items using pictures as stimuli with 95 percent accuracy across three consecutive speech therapy sessions, as measured by data collection and clinician-devised tasks. As of February 2022, Student did not meet this goal. With the graphic organizer and/or visual to reference, Student stated two similarities with 80 percent accuracy and two differences with 75 to 80 percent accuracy. Student required visual cues and word prompts more frequently when stating differences.

In February 2021, Student's annual goal for inferencing was for Student to make inferences and draw conclusions based on implied information from texts and pictures with 95 percent accuracy across three consecutive speech therapy sessions, as measured by clinician-devised tasks, data collection, and observations. As of February 2022, Student did not meet this goal, although Venture Academy reported that Student did. Her accuracy was 85 percent, not 95 percent. She maintained 75 percent accuracy when

inferring from two sentences read aloud, and easily identified clues heard in the sentences. She did not exhibit the same level of accuracy with inferring from short stories with more than two sentences.

In February 2021, Student's annual goal for figurative language was for Student to use context clues when explaining nonliteral, or figurative, language used within a short passage read aloud to her with 95 percent accuracy across three consecutive speech therapy sessions, as measured by clinician-devised tasks, data collection, and observations. As of February 2022, Student did not meet this goal. Venture Academy reported Student understood the figurative language used in context within structured tasks with 80 percent accuracy when provided multiple cues such as multiple-choice options when needed, because she sometimes had difficulty finding words to express her thoughts.

In February 2021, Student's annual goal in expressive language was for Student to express how she felt or request what she needed using descriptive vocabulary with 95 percent accuracy across three consecutive sessions as measured by data collection, observation, and clinician-devised tasks. As of February 2022, Venture Academy reported Student met this goal, although it also reported Student initiated by asking questions without prompting when she needed help and clarification within the speech therapy room setting with 90 percent accuracy, and within the general education classroom, Student asked for help 80 to 85 percent of the time but sometimes sat quietly instead of initiating by asking for help or clarification. In February 2022, this goal was described and reported as being a "self-advocacy goal" rather than being about expressive language.

In February 2021, Student's annual goal for spelling was for Student to be given a list of 10 nonsense words with the "k" sound to spell and to spell the words with the appropriate letters to make the "k" sound with 85 percent accuracy in three out of four consecutive trials as measured by teacher-charted records and Student's work samples. Venture Academy reported that as of February 24, 2022, Student met this goal.

In February 2021, Student's annual goal for vocabulary was for Student to be given text to read or a list of grade-level vocabulary words and to highlight words she did not understand and write the definition, draw a picture, and/or label the part of speech the word was – such as noun, verb, adjective, etc. – to help her understand the meaning and recall the meaning of the word with 85 percent accuracy in three out of four trials as measured by teacher data collection. In February 2022, Student met this goal.

In February 2021, Student's annual goal for reading fluency was for Student to be provided an appropriate-level text to read with fluency, self-correction, and use of context clues, and to analyze the text by comparing and contrasting the organizational patterns with 85 percent accuracy two of three times as measured by teacher observation. In February 2022, Student met this goal.

In February 2021, Student's annual goal for listening comprehension goal was for Student to be given instruction on an assignment or other instructions and repeat directions back to staff to clarify understanding with 85 percent accuracy in four out of five trials as measured by teacher data collection. As of February 2022, Student met this goal. Venture Academy also reported that if Student did not understand the directions, she asked for clarification from staff, and that action showed Student's ability to advocate for herself in the special education classroom.

In February 2021, Student's annual goal in completion was for Student to be given a daily assignment sheet/planner and to fill it out daily, have the teacher stamp the work completed, and have a parent initial the remainder of the assignments completed at home daily with 85 percent accuracy for the school year in all four days per week Student had instruction with Venture Academy teachers, not the one day per week of homeschool, as measured by the data sheet. Venture Academy reported in February 2022 that Student did not meet this goal, because a parent did not sign the planner daily for each teacher, and Mother reported she did not sign anything Student told Mother she did not understand how to do. Student did write assignments in her planner and completed 85 percent of her assignments.

The IEP team determined that for Student to receive educational benefit, she required goals in receptive and expressive language skills, spelling, reading fluency, and written expression. The IEP team developed and Venture Academy offered Student seven goals to be achieved by February 27, 2023.

The speech-language pathologists originally proposed the percentage accuracy required for Student to meet the speech goals – which were for stating similarities, stating differences, making inferences and drawing conclusions, and figurative language – would be 85 percent, but Mother requested all new speech goals require 95 percent accuracy. The February 28, 2022 IEP team meeting notes documented Godi and Brassesco did not agree that was appropriate for Student but “in the interest of collaboration with” Mother, the IEP team agreed to increase the speech goals to 95 percent accuracy as Mother requested. However, all the speech goals above remained expressed in the February 28, 2022 IEP as requiring 85 percent accuracy to be met.

Next, the IEP team discussed the instructional and related services Student needed to achieve the new goals. The IEP team proposed to maintain the same percentage of time Student was spending in the general education and special education environments. Venture Academy IEP team members recommended that pull-out services be minimized because of the potential harmful effects of missing class and receiving less exposure to general education curriculum when in the special education resource classroom or speech therapy room.

Venture Academy recommended Student continue to receive the same total amount of specialized academic instruction as she had under the 2021 IEP, 660 minutes weekly, but specifically allocated by time in each of the two settings rather than the nonspecific way it had been allowed in the 2021 IEP. Venture Academy proposed Student receive specialized academic instruction in the general education classroom for 240 minutes weekly, at 60 minutes per day while Student was on the Ventureland campus. Venture Academy proposed pull-out specialized academic instruction in a group for 420 minutes weekly, or 1.75 hours per day while Student was on the Ventureland campus. Student would not receive specialized academic instruction on Fridays, when she was homeschooled by Parent.

Under the 2021 IEP, all 180 minutes of Student's speech therapy each week had been delivered outside the general education setting. For the 2022 IEP, Venture Academy proposed Student continue to receive 180 minutes weekly of speech therapy, but now split between push-in and pull-out settings. Venture Academy offered two 45-minute sessions pushed-in to the general education classroom, and two small-group 45-minute sessions in the speech therapy room.

The February 28, 2022 IEP placed Student outside the general education setting for 56 percent of her school day. Mother initially opposed this percentage, requesting more time outside general education, but after discussion she ultimately agreed to the percentage Venture Academy proposed and the weekly service minutes and settings stated above.

The IEP team discussed accommodations, modifications, assistive technology, and testing accommodations. For program accommodations, Venture Academy offered:

- preferred seating;
- clarification/simplified directions;
- check for understanding;
- technology to support reading like Bookshare or Librivox;
- able to use visuals or other manipulatives/tools to assist with understanding;
- able to test in the learning center, which was the special education resource classroom;
- prompting to stay on task;
- positive reinforcement when work is completed;
- frontload vocabulary;
- peer helper;
- access to counselors;
- extra time to complete assignments up to three days to obtain full credit
- graphic organizer;
- able to make test corrections to earn at least 70 percent; and
- text-to-speech for reading passages.

The 2022 IEP checked the box indicating that the IEP team discussed and determined program modifications were not needed in general education classes or other education-related settings, but then also listed three items labeled as “program modifications” for Student. In the general education setting, Student was to be provided a vocabulary list with definitions when working on vocabulary or new content. In the school setting, Student was to be allowed take-home or open-book tests when testing. And in the school setting, Student was to be allowed shortened assignments to focus on mastery of key concepts weekly or daily depending on the assignments given.

The 2022 IEP checked the box indicating the IEP team discussed and determined supports for school personnel, or for Student, or on behalf of Student were not needed. No supports were listed in the IEP below that check box.

The 2022 IEP stated Student required assistive technology devices and/or services, and stated technology devices were provided as needed for translation and general usage purposes for school. Nothing more specific was included.

The 2022 IEP identified specific accommodations for various statewide testing in which Student was expected to participate, and explicitly offered no supports for testing on the English Language Proficiency Assessments of California for English learners.

Mother agreed to all the accommodations, modifications, assistive technology, and testing accommodations Venture Academy proposed.

The 2022 IEP stated Student needed primary language supports during integrated English Language Development across content areas, but none of the 12 boxes under that statement were checked despite the form instructions “if yes,

please select” from the 12 options listed. The IEP stated Student received Designated English Language Development in general education, and not in special education. The IEP further noted Student participated well with her fourth-grade general education teacher, class was taught in English, and Student had been able to communicate with her teacher and peers.

The 2022 IEP stated Student’s behavior did not impede her own learning or that of others.

A Spanish language interpreter interpreted the February 2022 IEP team meeting. At the conclusion of the IEP team meeting, case manager/special education teacher Racacho-Perez raised the point that Mother had previously requested all IEP paperwork in English only. Mother confirmed she wanted Venture Academy to send her all IEP paperwork in English only.

The February 28, 2022 IEP stated Student’s eligibility categories were primary as specific learning disability, and secondary as other health impairment. Student’s disabilities adversely affected her involvement and progress in the general education curriculum because of her deficits in oral expression, receptive and expressive language, and areas of attention. The IEP did not explain when or how Student’s eligibilities had changed to remove speech or language impairment.

Mother signed consent to implement all parts of the IEP on February 28, 2022. She also initialed boxes indicating she received a copy of the IEP.

2022-2023 SCHOOL YEAR

In the 2022-2023 school year, Student was in fifth grade with general education teacher Deborah Pulskamp and special education teacher Racacho-Perez. Student was on campus for in-person instruction four days per week, with Friday as a homeschool day. Students had the option to come to campus on Fridays to get extra time with their teachers for review and assistance in completing any unfinished schoolwork. There was no group instruction from the teachers on Fridays.

FEBRUARY 27, 2023 IEP

Student's next annual IEP was developed over a series of IEP team meetings on February 27, April 12, April 24, September 27, November 1, and November 29, 2023. Collectively it is the February 27, 2023 IEP.

Parent had notice of the February 27, April 12, April 24, September 27, November 1, and November 29, 2023 IEP team meetings sufficiently in advance to make arrangements to attend. Venture Academy ensured that Parents understood the proceedings by providing a Spanish language interpreter at each of the meetings. Parents also repeatedly received a notice of procedural rights and safeguards, and Venture Academy offered to explain them at each of the meetings.

FEBRUARY 27, 2023 IEP TEAM MEETING

The IEP team met on February 27, 2023, for Student's annual IEP. All necessary IEP team members attended, including

- Mother and her sister,
- special education teacher/case manager Racacho-Perez,

- general education teacher Pulskamp,
- school psychologist Guevara, and
- speech-language pathologist Godi.

Director De Alba was Venture Academy's representative. De Alba was qualified to supervise the provision of specially designed instruction and was knowledgeable about the general education curriculum and Venture Academy's resources. A Spanish language interpreter interpreted the entire meeting from English into Spanish for Mother, and interpreted Mother's contributions from Spanish to English for non-bilingual IEP team members. Venture Academy provided Mother notice and explanation of her rights. The IEP team meeting lasted one hour and 40 minutes.

Mother shared Student enjoyed school and did her best to learn, and Student was more talkative and had become very friendly. School staff reported Student's general performance and progress. Student generally met all seven goals of the 2022 IEP, at the levels at which Venture Academy had proposed them to be achieved.

Specifically, the 2022 editing goal was for Student to confer with staff and/or peers on a writing assignment using an editing sheet and to edit the assignment by staying on topic, responding to questions and suggestions from peers by revising and editing, with 85 percent accuracy as measured by Student's work samples and teacher-charted records on four out of five trials. This goal related to a fourth-grade standard of the general education curriculum regarding writing by demonstrating command of language standards for first through fourth grades using planning, revising, and editing. In February 2023, Student met this goal with the 85 percent accuracy target of the goal. Student used an editing sheet to re-read and edit her own

work. She worked with staff to go over any additional areas that needed attention. When staff went through her work with her, she usually found her errors and made corrections. Her participation was described as 100 percent.

The 2022 fluency goal was for Student to read grade-level text orally with 133 correct words per minute, with expression on successive readings with 96 percent accuracy in two out of three trials as measured by Student's work samples and teacher-charted records. This goal related to a fourth-grade standard of the general education curriculum regarding oral reading fluency with accuracy, appropriate rate, and expression on successive readings, to support comprehension. In February 2023, Student met this oral reading fluency goal of reading aloud 133 correct words per minute. The annual review progress report did not indicate how or whether Student achieved the aspect of the goal related to reading with expression on successive readings.

The 2022 spelling goal was for Student to be given a list of 40 high-frequency grade-level spelling words broken down into smaller groups, such as 10 or 15 at a time, and to correctly spell the target words with 85 percent accuracy in three consecutive opportunities as measured by teacher-charted records and Student's work samples. This goal related to a fourth-grade standard of the general education curriculum. In February 2023, Student met the 2022 spelling goal and her recent spelling test scores ranged between 92 and 100 percent.

The 2022 goal for stating similarities was for Student to be given a graphic organizer or visual to reference, and state two similarities for target items using pictures as stimuli with 85 percent accuracy across three consecutive sessions with one prompt or cue, as measured by therapist-charted data. This goal related to a fifth-grade

standard of the general education curriculum regarding using word origins to determine the meaning of unknown words. In February 2023, Student stated two similarities for target items using pictures as stimuli across three consecutive sessions with one prompt with 91 percent accuracy, and without prompts with 90 percent accuracy.

The 2022 goal for stating differences was for Student to be given a graphic organizer or visual to reference, and state two differences for target items using pictures as stimuli with 85 percent accuracy across three consecutive sessions with one prompt or cue, as measured by therapist-charted data. This goal related to a fourth-grade standard of the general education curriculum regarding comparing and contrasting information on the same topic after reading several passages or articles, and a fifth-grade standard of the general education curriculum regarding comparing and contrasting two or more characters, settings, or events in a story or drama, drawing on specific details in the text such as how characters interact. In February 2023, Student stated two differences for target items using pictures as stimuli across three consecutive sessions with one prompt with 85 percent accuracy, and without prompts or cues with 74 percent accuracy.

The 2022 inferences and conclusions goal was for Student to be given a graphic organizer for assistance and to make inferences and draw conclusions based on implied information from grade-level short stories read aloud with 85 percent accuracy across three consecutive sessions with one prompt or cue, as measured by therapist-charted data. This goal related to a fifth-grade standard of the general education curriculum regarding drawing inferences, conclusions, or generalizations about text and supporting them with textual evidence and prior knowledge. In February 2023, Student made

inferences and drew conclusions based on implied information from grade-level short stories read aloud with 91 percent accuracy across three consecutive sessions with one prompt, and without a prompt with 90 percent accuracy.

The 2022 figurative language goal was for Student to use context clues when given structured tasks with visuals to recognize the meaning of the figurative language, described as reading between the lines, and state literally what the language meant within a short passage at grade level read aloud to her, with 85 percent accuracy across three consecutive sessions with one prompt or cue, as measured by therapist-charted data. This goal related to a fifth-grade standard of the general education curriculum regarding understanding and explaining the figurative and metaphorical use of words in context. In February 2023, Student used context clues to recognize the meaning of figurative language within a short passage at grade level read aloud to her with 95 to 100 percent accuracy across three consecutive sessions with one prompt, and without a prompt or cue with 85 to 90 percent accuracy.

Mother was concerned about Student's low scores on the 2021 reassessment two years earlier. Venture Academy directed Mother back to any concerns she had in the present. Mother stated Student easily forgot information, and that worried Mother. Mother reported Student could not complete her homework at home on her own. Pulskamp stated all home assignments she gave Student were at the level Student demonstrated, at school, she could do on her own. Pulskamp's biggest concern was the number of days Student had been absent and Student was not making up her assignments. Mother stated Student had been experiencing headaches and was missing

school due to doctor appointments. Mother brought doctor excuse notes for January 2023 but not for February, and Student had missed more days in February than in January.

Pulskamp reported Student was working below grade level, but that was not unusual as half the students in Pulskamp's class were working below grade level after distance learning. Pulskamp implemented differentiated instruction in her class, attempting to teach differently to different students rather than using a one-size-fits-all approach. Pulskamp described Student as doing the same or better than half her classmates. Student's current marks included "needs improvement" in English language arts, "satisfactory" in math, and "needs improvement" in science due to missing assignments.

Student still needed help, but was making progress and doing better in February 2023 than she had at the beginning of the school year. Student could often answer questions when called upon. She liked to read aloud in class. She asked her peer partner for help when needed. She did not often ask Pulskamp for help, but Pulskamp checked in with Student regularly.

Student could complete assignments on her own, but required coaching and reminders when getting started. Pulskamp wanted Student to develop independence and be responsible for completing as much work as she could on her own. Student had an agenda she could look at to remind her what she needed to do, and the front page of her homework packet explained what she needed to do. In the special education classroom, Student performed the same or better than peers her same age. Racacho-Perez reported Student did well on her academic goals.

The February 27, 2023 IEP team considered

- Student's strengths,
- Parents' concerns for enhancing Student's education,
- the most recent assessments,
- Student's grades and progress on goals, and
- Student's academic, developmental, behavioral, and functional needs, and English proficiency.

Racacho-Perez proposed two new goals for academics. In written expression, Student wrote and spoke in clear sentences, but used an improper form or tense of a word in 50 percent of her work, such as "make" instead of "making." The 2023 proposed goal for written expression, also described in the IEP team meeting notes as a "grammar goal," was for Student, by February 27, 2024, to be given a paragraph or sentences containing incorrectly used modifiers, endings to words, pronouns, and troublesome verbs – such as lie or lay, sit or set, and rise or raise – and to identify and/or correct the errors with 85 percent accuracy in two of three trials as measured by Student's work samples and teacher records. This goal related to a fifth-grade standard of the general education curriculum regarding identifying and correctly using verbs that are often misused, modifiers, and pronouns. This goal was to be worked on by the special education and the general education teachers.

Racacho-Perez noted Student missed assignments when she was ill and struggled to make up missing work. Student forgot to turn in her homeschool packets. She completed 12 percent of her schoolwork in January and February 2023. The IEP team developed a work completion goal for Student, by February 27, 2024, to

write assignments in her planner and turn in 75 percent of designated assignments for three consecutive weeks as recorded on the homework management system. This goal was to be worked on by the special education and general education teachers.

Godi proposed two new speech and language goals. In expressive language, Student answered specific questions that contributed to the discussion with 60 percent accuracy when given two verbal prompts and one visual prompt. Student required prompts from peers and staff to contribute to class discussions or elaborate on the remarks of others. The new expressive language goal was for Student, by February 26, 2024, to participate in grade-level collaborative discussions, whether one-on-one, in groups, or teacher-led, on familiar text or topics and answer specific questions that contributed to the discussion and elaborate on the remarks of others given no more than one verbal and visual prompt with 90 percent accuracy in three consecutive trials measured by Student's work samples, teacher-charted records, and data collection. This goal related to a fifth-grade standard of the general education curriculum regarding posing and responding to specific questions by making comments that contribute to the discussion and elaborate on the remarks of others. This goal was to be worked on by the speech-language pathologist or assistant, and the special education and general education teachers.

Student was also prompt-dependent before first attempting tasks, and only started tasks independently 30 percent of the time. The goal for executive functioning was for Student, by February 26, 2024, to transition to and begin the next designated activity without prompts from another person 85 percent of the given opportunities

across three opportunities, as measured by data collection and staff observation. This goal was to be worked on by the speech-language pathologist or assistant, and the special education and general education teachers.

Every proposed goal included three short-term objectives with target dates for incremental progress toward the ultimate, annual goal.

Mother approved the proposed goals, but wanted Student to achieve 95 percent accuracy on each. This topic was not concluded at the February 27, 2023 IEP team meeting, and Student's goals were again discussed at the April 12, 2023 IEP team meeting.

The IEP team reviewed Student's accommodations, modifications, and statewide testing accommodations. Mother was concerned about Student's absences due to illness and the IEP team gave Student additional time to complete assignments for full credit.

The IEP team discussed Student's proposed placement and services. Speech - language pathologist Godi recommended the same level of speech therapy at 180 minutes per week, but a change to the delivery model to all services being pushed into the general education classroom, rather than half of the sessions in the speech room.

Mother objected to "changing the amount of push in minutes." School psychologist Guevara told the IEP team Student was meeting her speech goals and the IEP team needed to consider ways to help make Student more independent. Guevara opined to the IEP team that the same number of minutes delivered in the general education setting gave Student more time in the general education setting, a less

restrictive environment. Mother wanted to continue separate pull-out services, and no agreement was reached. The IEP team meeting recessed to be continued at another meeting.

APRIL 12, 2023 IEP TEAM MEETING

The IEP team met again on April 12, 2023, with all the same people in attendance plus a representative from the special education local plan area, called SELPA, who had attended the prior year's IEP team meeting on February 28, 2022. The meeting was one and a half hours.

General education teacher Pulskamp gave an update on Student's academics, and Student showed more than one year of growth in reading. Since the last IEP team meeting, Student was doing and turning in more of her homework and her attendance improved. In class, she followed along with the teacher and continued to make academic progress.

Mother reported that at home, Mother fed Student because she needed to be spoon fed to ensure she ate enough food. Mother stated a doctor said Student was underweight and recommended Pediasure. School staff reported Student fed herself at school and there were no concerns with food or nutrition at school.

Mother stated the IEP team lied to her at the prior meeting, saying the amount of service minutes were not changed yet the amount of minutes were changed. The other IEP team members responded that the amount of service minutes was not changed, but there was a proposal to provide the services inside the general education classroom to better service Student's present levels of need.

Mother clarified she had not given permission for push-in services, and believed she had only provided consent for Student to be observed in general education classes. This was not accurate, as Mother signed consent on the February 28, 2022 IEP, which explicitly allocated both speech and specialized academic instruction minutes to be delivered in a specific weekly amount inside the general education classroom, and a different specific weekly amount outside the general education classroom. The SELPA representative explained the push-in services were an opportunity for Student to practice the skills she had developed in the resource classroom and speech therapy room in a more natural setting, and gave Student access to more general education instruction without the constant interruption of being pulled out of class.

Mother repeated she felt lied to and she wanted Student to receive all her service minutes in the special education setting.

The IEP team returned to the unfinished discussion of proposed goals from the February 27, 2023 IEP team meeting. Mother requested 95 percent accuracy for the expressive language goal, and Godi stated her professional recommendation was for the goal to target 90 percent accuracy. Godi did not support the 95 percent accuracy Mother requested in February, and after discussion, Mother agreed to the 90 percent accuracy target. After similar discussions on the executive functioning and written expression goals, Mother agreed and a target of 85 percent accuracy for those goals was adopted.

Mother requested 95 percent of assignments as the target for the work completion goal. On April 12, 2023, Racacho-Perez emphasized that in her professional opinion, a goal to submit 95 percent of assignments was not appropriate for Student at that time, and Mother eventually agreed.

Mother requested three additional goals to help Student express her ideas, be more organized, and be independent with problem solving. The IEP team explained the expressive language goal and the written expression goals were designed to support Student expressing ideas. Mother agreed.

General education teacher Pulskamp reported Student was organized at school, adding Student found her materials, found her way through class routines, and had a very organized desk. Special education teacher Racacho-Perez also reported that Student did not have a problem with organization. The IEP team explained that the executive functioning goal to be more independent would also help Student with organization, but agreed to develop a new goal for organization.

Regarding Mother's request to help Student be more independent in problem solving, speech-language pathologist Godi stated Student had access to school counselors to address social problems at school, and Student could request to meet with a school counselor anytime. Godi described Student as a happy child who had not shared a need to see a school counselor. Mother agreed Student did not need to work with a school counselor as she did not have social situations that required school counselor support. Special education teacher Racacho-Perez added Student already had goals to assist her in being more independent and did not need another goal for problem solving. The IEP team discussed and agreed to add an accommodation to support Student practicing skills to become more independent. Mother approved the proposed accommodation.

The IEP team added a new goal for following directions, an area in which Student often needed prompting. In early 2023, Student followed two-step verbal instructions with one verbal or visual prompt from staff with 50 percent accuracy in the general

education setting. She followed two-step verbal instructions within the small-group, structured speech therapy setting with 80 percent accuracy without prompting. The 2023 goal for following directions was for Student to independently follow two-step verbal directions without prompting with 80 percent accuracy across three consecutive sessions, as measured by data collections and clinician-devised tasks. This goal was to be worked on by the speech-language pathologist or assistant, and the special education and general education teachers. Mother approved this goal.

At the April 12, 2023 IEP team meeting, Mother again raised her concern about having any services provided inside the general education setting. The other IEP team members again stated the reason to have push-in services was to support Student practicing the skills she learned in speech and resource in a natural environment. There was not enough time for a continued discussion of Mother's opposition to push-in services, and the IEP team agreed to reconvene on April 24, 2023.

APRIL 24, 2023 IEP TEAM MEETING

On April 24, 2023, the IEP team met again for one and a half hours. Everyone who attended the February 27 and April 12, 2023 IEP team meetings attended again, except Mother's sister.

Mother again stated her concern regarding the service delivery method and she did not agree with push-in services. Mother stated she signed consent to the February 2022 IEP because she thought the delivery service model had not changed. However, as described above, the February 2022 IEP document was explicit in breaking down the service types and minutes into push-in and pull-out categories.

Venture Academy asked Mother why she did not agree with more push-in services. Mother explained her concern was that Student was less distracted in smaller groups, and Student made more progress when she was pulled out of the general education classroom to work in a smaller setting. Venture Academy staff reiterated the reasons they recommended Student receive services pushed into the general education classroom.

Director De Alba shared that Venture Academy was also being mindful of the legal requirement that Student be educated in the least restrictive environment, and summarized that any placement outside the general education classroom must be justified by a student's individual disability-related needs. Student had to have meaningful access to same-age peers without disabilities, when appropriate. Venture Academy believed Student was being satisfactorily educated by receiving some of her special education and related services inside the general education setting, as well as some pull-out services.

At the April 24, 2023 IEP team meeting, Venture Academy made the same offer of speech therapy Mother had approved in the prior year's IEP, with one-half of the services using a push-in model and one-half using a pull-out model, which was the same combination of services with which Student had met her speech goals from the February 2022 IEP.

Venture Academy offered specialized academic instruction 420 minutes a week for pull-out services in a small group setting, and 240 minutes a week for push-in services, totaling 660 minutes weekly. This was the same amount and setting offered in the February 2022 IEP. Mother did not agree with this offer because she wanted all the minutes provided outside the general education setting.

Student's last three-year-review assessment had been completed in February 2021, and the next one was due in February 2024. The SELPA representative suggested the IEP team consider advancing the reassessment to get more information about Student's present levels of performance, but Mother did not agree to an early reassessment.

Venture Academy IEP team members raised the option of participating in a mediation with OAH to resolve IEP disagreements. Mother refused. Director De Alba responded that Venture Academy would send Parents a prior written notice outlining the offer of special education and related services and would request a mediation.

De Alba told Mother the prior written notice would be sent in both English and Spanish. Mother responded that she had always requested documents to be in English only. Director De Alba asked Mother to update her request in writing. The time allotted for the IEP team meeting lapsed and the meeting ended.

Later that week, on April 28, 2023, school psychologist Guevara emailed Parents asking the language in which Parents wanted to receive IEP documents. Guevara wrote the email in Spanish. She told Parents she had emailed them English and Spanish versions of the IEP document the day after the April 24, 2023 IEP team meeting, and she was preparing to send paper versions on Monday. Guevara asked Parents to respond to the email if they wanted to receive documents only in English, reminding them Venture Academy stated at the IEP team meeting they had to send them things in both languages until they indicated any preference in writing. Guevara's message asked other questions and invited multiple methods of communicating to address those, related to Mother's focus on Student receiving all 660 minutes of specialized academic instruction outside the general education setting. Mother responded the

same day, in Spanish, that she wanted the documents in English only. She did not respond to the opportunity to communicate regarding her disagreement with parts of the IEP.

SEPTEMBER 27, 2023 IEP TEAM MEETING

Student started sixth grade in the 2023-2024 school year. The sixth-grade program, called Keystone, was different than Ventureland. Keystone was a self-contained sixth-grade academy that operated for the first time in the 2023-2024 school year. Keystone had on-campus, in-person instruction Monday through Thursday with Friday as a homeschool day. Students had the option to come to campus and work on their Friday assignments at school but without formal instruction from teachers. Keystone differed from Ventureland in that students no longer remained in the same classroom with the same teacher all day, but moved among classrooms and had four different teachers for six different courses. Keystone was intended to prepare students for middle school by having more transitions than in elementary school, but fewer than the upper grades of middle school required.

School started in early August 2023. Student had four general education teachers. Staci Rocha was Student's special education teacher and case manager. Student previously received speech therapy from both Godi and Brassesco, but starting in sixth grade, Brassesco was Student's only speech therapist.

Venture Academy held an IEP team meeting for Student on September 27, 2023, seven weeks into the new school year. Mother and her sister, special education teacher/case manager Rocha, general education teacher Debra Goosens, school psychologist Guevara, speech-language pathologists Brassesco and Godi, director

De Alba, and a Spanish language interpreter attended the IEP team meeting. Venture Academy provided Mother notice and explanation of her rights before the meeting, which was a continuation of the annual IEP team meeting that began on February 27, 2023.

Mother repeated her concern with any push-in services. She also wanted a Keystone program exception to provide Student 240 minutes of specialized academic instruction with a teacher on Fridays, one-on-one. Mother thought Student was struggling in all her classes except physical education.

Rocha reviewed the differences Student was adapting to at Keystone compared to Ventureland, including the fact that Student had four general education teachers plus a special education teacher who were new to her. Student was learning from instruction in the general education classroom, and received reteaching in the special education classroom. Rocha was concerned because Student had an F in math.

General education teacher Goosens reported in science and social studies, Student had made up missing assignments and had a B in science. In social studies, she was still missing quizzes that were the Friday homework. Goosens emphasized Student could use Fridays to complete make-up work and learn what she needed with the one-to-one assistance of her teachers to work on skills in each subject. In math, Student's classwork earned her an A, but missing homework and assessments lowered her grade to an F. Goosens stressed Student needed to hear the lessons and do the homework, so the special education teacher pushed in to immediately help her when needed. Student's teachers recognized Student had difficulty completing homework.

Mother responded that those were the reasons student needed “more,” and Mother wanted all Student’s services to be pull-out. Venture Academy staff was concerned about Student’s lack of homework completion or even attempts, particularly the homework assigned for Fridays to be supported by Parents during homeschool day. In particular, Student was not completing work in the IXL program during homeschool time. IXL was a web-based tool for practicing various academic skills that Venture Academy used as a component of the homeschooling requirement. Mother insisted Student could not do it, but Goosens explained the program was differentiated to Student’s level of abilities and Student could complete IXL work on her own.

Director De Alba reiterated Venture Academy was a charter school with an independent study component that needed to be completed at home, and although students could come to campus on Fridays for additional support, the expectation was that work would be done at home. The IEP team wanted to work together to help Parents help Student at home because while at school, Student could and did do her classwork. Student’s grades were impacted because she was not doing work at home. Mother repeated that she wanted pull-out classes on Fridays to help Student complete her work.

Mother claimed she was not being included as part of the team in the decisions being made for Student. De Alba explained Venture Academy was listening to Mother’s concerns but did not agree about what was educationally appropriate for Student. The IEP team then agreed to schedule another IEP team meeting in one month to continue the discussion, and the meeting was adjourned.

NOVEMBER 1, 2023 IEP TEAM MEETING

The IEP team met again on November 1, 2023, for one hour. All people who attended the September 27, 2023 IEP team meeting attended, except only one of the two speech-language pathologists, Brassesco, attended. Special education teacher Rocha asked Mother if there were any concerns since the last meeting, and Mother reported Student struggled with her schoolwork at home. Mother requested all push-in minutes be “taken away” and all specialized academic instruction service minutes be provided on a pull-out basis. Mother requested an evaluation because the testing done in 2021 was now old. Rocha stated an assessment plan would be sent to Mother because the three-year-review reassessment was due on February 28, 2024. Mother asked for “neurocognitive” testing, and Guevara clarified that a psychoeducational evaluation would be done and that included most of the same components.

Rocha noted that since the September 27, 2023 IEP team meeting, Student missed a lot of core instruction due to absences. Mother stated Student had been sick, and Goosens and Rocha cautioned Student’s learning was impacted by the absences. Instead of focusing on teaching new concepts, Student’s teachers were focused on getting Student caught up on missing assignments. Student had not come to campus on the Fridays when the speech-language pathologist and Student’s teachers had been prepared for her to come in.

The IEP team reviewed Student’s progress on IXL. Brassesco, Rocha, and Goosens all shared Student could log onto IXL and complete the work independently, but in the past month, Student had only logged on for one hour. IXL focused on building up foundational skills and Student’s lack of IXL progress was primarily noted in math.

Rocha and Brassesco reported Student was not attempting to complete her work at home and had not been turning in her work. Rocha and Brassesco had created an organizational system to help Student track her work, which Mother had seen, but Student was not following through at home.

The IEP team reviewed Student's accommodations from the last year's February 2022 IEP. Although Student's IEP included the accommodation of technology to support reading, Student chose not to use the accommodation because she could read herself. Student stayed on task and submitted appropriate assignments at school, and no longer needed prompts. Brassesco stated Student followed directions in the general education classroom during the push-in services.

Student's February 2022 IEP included the accommodation of having a peer helper, but Brassesco reported that as of November 2023, Student was the one helping her peers instead of the other way around. While Student's IEP gave her three extra days to complete assignments for full credit, Rocha indicated Student needed and was given even more time, particularly due to absences. And although Student's IEP had the accommodation of text-to-speech, Student did not use it.

Rocha and Brassesco reported Student consistently demonstrated grade-level ability when working in the general education classroom during push-in services.

Rocha reviewed the program modifications of providing Student a vocabulary list with definitions, allowing take-home or open-book tests, and shortening assignments to focus on mastery of key concepts. Mother opposed open-book tests, but Rocha

explained Student was using notes and books to learn how to use tools to find answers, as well as to learn the importance of taking good notes. Brassesco recommended continuing that accommodation, as Student had not yet learned how to study effectively. Goosens shared the rest of Student's classmates had access to notes and books during tests and quizzes, and this was not a support only for Student.

After more discussion of Mother's desire for Student to have no special education services in the general education classroom and all minutes Venture Academy was offering delivered outside general education, Mother then stated she did not want an evaluation done at that time. Mother again stated she felt her perspective about the push-in services was not being taken into consideration. Brassesco responded the school previously asked Mother to consent to an early comprehensive reassessment and Mother declined, stating she wanted to wait until that evaluation was due. The three-year-review assessment was due on February 28, 2024. Rocha stated Venture Academy would send Parents an assessment plan and would proceed with the evaluation when Parents consented. More detail is provided about what happened with the assessment plan and assessment process in the discussion of Issue 2, below.

Venture Academy reviewed all the topics discussed at the November 1, 2023 IEP team meeting. Mother stated she wanted the next IEP team meeting to be sooner than in 30 days, and reiterated she wanted all services to be delivered as pull-out services. She also asked for the prior case manager, Racacho-Perez, to attend the next IEP team meeting. Venture Academy declined because Student had a new case manager.

PARENTS CONSENTED TO FEBRUARY 27, 2023 IEP, THEN RESCINDED CONSENT

On November 7, 2023, Mother gave Venture Academy a signed copy of the IEP from the original February 27, 2023 IEP team meeting, indicating consent to all parts of the IEP except push-in services. Rocha and Brassesco considered and discussed with each other whether Student would still receive a FAPE if they did not provide the minutes of specialized academic instruction and speech therapy inside the general education classroom and only provided the minutes of their services that had been allocated for delivery outside of the general education setting. Both Rocha and Brassesco believed that during the passage of time between the end of February and the start of November 2023, Student had increased academic skills and she could be adequately served, meaning she would receive sufficient support, with only the remaining time allotted to pull-out services. Rocha and Brassesco thought this would continue until Student's reassessments were completed and a new three-year-review IEP team meeting was held in February 2024. Venture Academy changed the services and goals to reflect a start date of November 8, 2023, for the new goals and removal of the push-in services. Venture Academy implemented services for Student with 105 minutes per day pull-out specialized academic instruction, and 45 minutes pull-out speech therapy every other day.

Approximately five school days later, on November 16, 2023, Mother rescinded consent to the February 27, 2023 IEP. Venture Academy reverted to providing Student the same frequency, duration, and location of services as under the February 2022 IEP, with grade-level support.

NOVEMBER 29, 2023 IEP TEAM MEETING

The IEP team met again on November 29, 2023. Mother and her sister, Father, special education teacher/case manager Rocha, general education teacher Goosens, school psychologist Guevara, speech-language pathologist Brassesco, director De Alba, and a Spanish language interpreter attended the IEP team meeting. The IEP team meeting lasted one hour and five minutes.

Mother, Brassesco, Rocha, and Goosens shared updates about Student's strengths. All agreed Student followed directions in all settings, was a hard worker, was on task, listened very well, and was creative and curious to learn.

Mother stated her concern continued to be that she wanted all "original service minutes" to be provided as pull-out, and did not want any push-in services. Rocha responded Student no longer needed the intense amount of service minutes in the resource classroom. Student was earning As in language arts and science, and her poor grades in social studies and math were improving as she completed missed assignments. Student's low grade in math was due in part to not completing the IXL work that was required to be done at home, although Student managed IXL at school independently without difficulty.

Mother wanted Student to attend school on Fridays for support as she did in fifth grade. Rocha told Mother Student could come on Fridays to get homeschool support with the general education teachers.

Mother told the other members of the IEP team that she was working with a social worker for Student to be referred to a neurologist for a possible tumor in Student's head. The IEP team agreed it needed additional information to address this new concern, and Rocha reminded Parents about the assessment plan Venture Academy sent Parents for the three-year-review reassessment due in February 2024.

The IEP team reviewed Student's progress and growth outline from the current school year. In the first quarter, Student received resource support as agreed in the February 2022 IEP, and all services were provided as a combination of pull-out and push-in. In the second quarter, Student was working toward more independence. She was working independently without one-to-one support, made academic progress, and practiced self-advocacy skills. Student asked Rocha for a plan to stop doing special education in the resource classroom and to move back to the general education classroom. She asked if she had done something wrong to need a high level of support and be outside the regular classroom so much. Student told Goosens and Rocha her goal for the second semester of the school year was to be on the honor roll. The school staff working with Student believed it was possible for her to achieve that.

As a result of progress in the current school year, Venture Academy proposed reducing Student's specialized academic instruction to only pull-out in the resource classroom to 45 minutes daily, and pull-out speech therapy to six times per month for 30 minutes each session.

Mother rejected the proposal, in part because she did not see progress at home. Rocha responded that what Mother observed at home was not a lack of learning, but a lack of Student trying to complete schoolwork at home.

After additional discussion of Venture Academy's revised offer and Mother's opposition, the IEP team again discussed the timing regarding Parents' consent to the assessment plan. Mother stated it was too early to change Student's service minutes without the assessment results. The IEP team agreed they would rather have the updated assessment results and encouraged Parents to sign the assessment plan Venture Academy sent them. Mother stated it was too early for the assessment plan. Venture Academy disagreed, stating the eligibility evaluation was due in February 2024. Venture Academy requested Parents sign the assessment plan so staff could get started, and reminded Parents Venture Academy could not proceed with the assessments without a parent's consent. Mother again refused, stating it was too soon to assess Student. Brassesco reminded Parents and the IEP team that Mother had requested an assessment at the November 1, 2023 IEP team meeting and the IEP team agreed, then Mother changed her mind. Venture Academy believed it was time to start the assessment, and Mother stated she did not agree and wanted to wait.

Mother continued to argue with other IEP team members about the services minutes Student was offered and when Student's reassessment should be completed. Mother demanded to have an IEP team meeting every three days until Venture Academy changed the offer to "all the 600 service minutes" as pull-out, as Mother requested. Venture Academy informed Parents the IEP team would meet again within a month, for one hour.

De Alba and Mother later coordinated to have the IEP team reconvene on the date students returned from winter break, January 8, 2024.

JANUARY 8, 2024 IEP TEAM MEETING

The IEP team met again on January 8, 2024. Mother and her sister, special education teacher/case manager Rocha, general education teacher Goosens, school psychologist Guevara, speech-language pathologist Brassesco, the same SELPA representative, director De Alba, and a Spanish language interpreter attended the IEP team meeting. The IEP team meeting lasted one hour. Initially Mother claimed not to know about the IEP team meeting and Venture Academy offered to reschedule the meeting, if Mother did not feel prepared to proceed with the meeting. Mother agreed to have the meeting by telephone, when on other occasions she had participated by videoconference at her request.

Venture Academy emailed Parents their notice of rights before the IEP team meeting. The IEP team again reviewed Student's areas of strength. Mother's continued concern was that Student needed to have all the service minutes she had in the past and have them all delivered only outside the general education setting. Venture Academy staff thought Student had outgrown the need for so many service minutes due to her academic growth, and that was why the new offer of specialized academic instruction and speech therapy was made at the November 29, 2023 IEP team meeting. Mother agreed an assessment should be done but thought it was too soon to conduct an assessment. Venture Academy had provided Parents an assessment plan for a re-evaluation several times and ways but as of January 8, 2024, Parents had not signed consent to the assessments, which were due at the end of February 2024.

Venture Academy asked Mother if she had any questions about the summary Venture Academy provided. Mother responded she disagreed with the number of service minutes and the model of service delivery Venture Academy proposed.

The IEP team reviewed Student's academics. Her first semester grade point average was 3.1, which put her on the honor roll. She showed growth across all academics and demonstrated independence. She worked with her teachers and completed most of her assignments.

In social and behavioral skills, Goosens reported Student made friends with peers and interacted appropriately with them. Goosens had no social or behavioral concerns about Student. Rocha reported Student made a lot of social growth in the resource classroom. She helped peers, gave presentations in front of the whole class, was happier, and was confident. Student sought help from Rocha and her general education teachers about her homework.

Brassescio did not have any social or behavioral concerns about Student and called her an ideal student. Student asked her teachers and the speech-language pathologist for help, whereas before she did not, and Brassescio thought Student was now advocating for herself. One example was a time when Student sought help from Brassescio, but Brassescio was not there, so Student reached out to another speech-language pathologist. That person reminded Student she knew what needed to be done because she had a similar issue before. Student then went back and did the work independently.

De Alba explained Venture Academy understood Student needed support and Venture Academy did not propose to exit Student from special education and related services, but proposed to reduce her service minutes because Student did not have the same needs as before. Mother disagreed. Venture Academy restated what it offered on

November 29, 2023: 45 minutes of specialized academic instruction four days a week, for a total of 180 minutes of weekly pull-out service, and 30 minutes of speech therapy six times per month, for a total of 180 minutes per month of pull-out service.

The IEP document dated September 27, 2023, stated the 45 minutes daily pull-out specialized academic instruction offered would be a sixth-grade group for study skills, and would include a short one-on-one meeting between Student and the special education teacher to review missing assignments and work on how to approach those assignments and successfully turn them in.

Venture Academy staff stated an assessment needed to be conducted, which was why Venture Academy had provided Parents an assessment plan, and Venture Academy wanted to start the assessment because the eligibility evaluation was due in February 2024. Venture Academy asked Mother if she had any questions about the assessment plan it sent. Mother argued against reducing Student's specialized academic instruction and speech therapy. Venture Academy emphasized that Parents did not have to agree to the FAPE offer at that time, but the assessment plan needed to be signed and based on the assessment results, Venture Academy could modify its offer of FAPE to increase or decrease service minutes.

Mother declined Venture Academy's offer of special education and related services. The SELPA representative stated Venture Academy had the right to assess Student and if Parents disagreed, Venture Academy had the right to seek authorization to assess from a court. Director De Alba asked Mother if she would sign consent on the assessment plan to start the evaluation process. Mother stated she wanted the service minutes to be what Student received under the prior evaluation, and that she would not sign consent to assess Student until Student received "all 660 minutes" via a pull-out

model. De Alba stated the assessment plan needed to be signed for Venture Academy to conduct Student's reassessment, and since Parents did not agree, Venture Academy would use legal procedures to affect its right to assess Student. Mother stated Venture Academy "better not assess [Student] without [Mother's] consent."

Venture Academy again raised the topic of Mother's earlier request for a neuropsychological evaluation and asked her why she requested this type of evaluation. Mother responded it was explained in the letter she had sent. Venture Academy inquired about that because Venture Academy had not received any letter that addressed neuropsychological testing. The SELPA representative asked Mother to verbally explain it to the IEP team because she had not been at the IEP team meeting when Mother initially requested neuropsychological testing. Mother stated the representative would have to ask Venture Academy for a copy of the letter. Venture Academy asked Mother approximately when she sent the letter, and Mother stated she dropped it off to a school secretary about two months earlier. Brassesco shared the only communication Venture Academy received from Parents was about Mother revoking her consent to the February 2023 IEP.

JANUARY 18, 2024 PRIOR WRITTEN NOTICE AND FINAL IEP OFFER

On January 18, 2024, De Alba emailed Parents, in both English and Spanish. The email attached documents that Venture Academy also mailed to Parents by regular and certified U.S. mail. De Alba's email acknowledged Parents had requested and continued to request all documents sent to Parents be written in English only and that interpretation into Spanish only be provided during IEP team meetings, and stated Venture Academy

was making every effort to ensure Parents understood and participated in the IEP process. For that reason, Venture Academy sent Parents a January 18, 2024 prior written notice in English and also Spanish confirming the offer in the February 27, 2023 IEP, as amended on November 29, 2023.

Venture Academy included notice of procedural safeguards in English and Spanish, and an assessment plan dated November 1, 2023, in English. In English only, Venture Academy attached the IEP dated September 27, 2023, which included the IEP team meeting notes from September 27, November 1, and November 29, 2023, and January 8, 2024.

The IEP team meeting notes from the IEP team meetings held on February 27 and April 12 and 24, 2023, had already been provided to Parents and were included in the version of the IEP Mother signed, then rescinded, consent to in November 2023.

The January 18, 2024 prior written notice summarized Student's progress as reviewed at the February 27, 2023 IEP team meeting and the new goal areas proposed and the special education and related services Venture Academy offered in February 2023. The prior written notice summarized Parents' November 2023 partial consent then revocation of all consent to the February 2023 IEP. The prior written notice summarized Student's further progress as of the November 29, 2023 IEP team meeting and Venture Academy's revised offer of special education and related services, explaining Student's growth had reduced her need for the same level of services she received in the past. The prior written notice reiterated Parents' objections to the offer that had been repeatedly documented in the IEP team meeting notes, specifically that Parents wanted Student to receive 660 minutes per week of specialized academic instruction outside the general education setting.

The prior written notice summarized the further progress Student demonstrated as of January 8, 2024, with a 3.1 grade point average for the first semester, making the honor roll, and Venture Academy's perspective that Student had shown growth and independence in all academic areas, no behavior issues at school, and no social – emotional concerns at school. Venture Academy repeated that staff thought Student was ready for a reduction in services and that the special education and related services offered on November 29, 2023, were appropriate.

The prior written notice stated Venture Academy considered Parents' request for 660 minutes per week of pull-out specialized academic instruction and declined to offer that because it was not appropriate or the least restrictive environment for Student. Venture Academy again pointed to Student's academics being at a level where she can benefit from significant time in general education, and her status as an honor roll student was a further sign of her academic success. Venture Academy explained the need to balance between general education and special education time and Student's readiness for more "mainstreaming," meaning time included in the general education setting. Venture Academy described Student as catching up to her peers, ready to be a more independent learner, showing increased academic self-confidence and a greater ability to self-advocate or ask for help. Venture Academy stated due to Student's abilities, she would benefit more from having fewer special education services and spending more time with typical peers.

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The prior written notice stated Student had access to accommodations in general education to help her participate in academic tasks. The prior written notice identified the information it relied on in reaching its decision to make the offer contained in the IEP document dated September 27, 2023, stated Venture Academy considered "all options," and considered its obligations under state and federal law in arriving at its decision.

Through this case, Venture Academy seeks authorization to implement the February 27, 2023 IEP, as amended on November 29, 2023, and attached to the January 18, 2024 prior written notice. That IEP attached to the prior written notice, dated September 27, 2023, included statements of Student's present levels of performance in various skills categories, both in the early pages of the document and as a baseline for each proposed goal. The same proposed goals that were described above and approved by Mother at the February 27 and April 12, 2023 IEP team meetings were included in the final offered IEP. These were goals to address:

- expressive language;
- executive functioning;
- following directions;
- written expression; and
- work completion.

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The 2023 IEP offered accommodations to start November 29, 2023, and end February 26, 2024, and be available in the general education classroom, special education classroom, and at home. Venture Academy offered the following as program accommodations:

- preferred seating;
- clarification/simplified directions;
- check for understanding by teacher asking Student what their instructions were;
- technology to support reading and listening skills like Bookshare or Librivox;
- able to use visuals or other manipulatives/tools to assist with understanding;
- able to test in the learning center, which was the special education resource classroom;
- prompting to stay on task;
- positive reinforcement when work is completed;
- frontload vocabulary;
- peer helper;
- access to counselors;
- extra time to complete assignments up to three days to obtain full credit;
- graphic organizer;
- able to make test corrections to earn at least 70 percent;
- assist Student with problem solving;
- vocabulary lists with definitions ahead of time;

- open note/book tests;
- shorten assignments for conceptual mastery; and
- text-to-speech for reading passages.

The 2023 IEP checked the box indicating the IEP team discussed and determined program modifications were not needed in general education classes or other education-related settings, and, unlike the 2022 IEP, did not list anything as program modifications. The same items that were on the 2022 IEP as modifications were now included above as accommodations, not modifications.

The 2023 IEP checked the box indicating the IEP team discussed and determined supports for school personnel, or for Student, or on behalf of Student were needed and offered consultation between the speech-language pathologist and staff, to support personnel, for 30 minutes monthly, at the school campus, and by email and phone, starting November 29, 2023, and ending February 26, 2024. The 2023 IEP also offered consultation between the special education teacher and the general education staff or other IEP team members and professionals, to support personnel, for 30 minutes weekly, by phone, email, or in person, starting November 29, 2023, and ending February 26, 2024.

The 2023 IEP stated Student did not require assistive technology devices and/or services.

The 2023 IEP stated Student did not need primary language supports during integrated English Language Development across content areas, with the explanation that Student was “currently level 3 with no need for support.” The IEP stated Student was an English learner currently participating in Structured English Immersion.

The 2023 IEP stated Student's behavior did not impede her own learning or that of others.

The 2023 IEP identified specific accommodations for various statewide testing in which Student was expected to participate, and explicitly offered no supports for testing on the English Language Proficiency Assessments of California for English learners.

Under the February 2022 IEP, Student received two 45-minute sessions of speech therapy in the general education classroom and two 45-minute sessions of speech therapy in the speech therapy room, for a total of 180 minutes each week, or approximately 720 minutes a month. In the February 27, 2023 IEP, as amended November 29, 2023, Venture Academy proposed to reduce Student's speech therapy from a combined 720 minutes a month to 180 minutes a month, all delivered outside the general education setting.

The February 27, 2023 IEP, as amended November 29, 2023, offered Student 180 minutes weekly group specialized academic instruction as "direct small group pull-out setting." Student's total program setting was 12 percent outside the regular class, extracurricular, and non-academic activities, and 88 percent inside the regular class, extracurricular, and non-academic activities. The IEP explained Student would not participate in the regular class and/or extracurricular and/or non-academic activities when she was pulled out for speech therapy and specialized academic support services because of Student's assessed and documented need for speech therapy and academic support.

The February 27, 2023 IEP, as amended November 29, 2023, did not offer Student services during the extended school year, stating that Student did not exhibit regression beyond typical recoupment at that time, and extended school year services were not warranted at that time based on Student's progress and present levels of performance that were discussed and considered by the IEP team.

The February 27, 2023 IEP, as amended November 29, 2023, included an Emergency Circumstances Program. The evidence established the identified means of delivering specialized academic instruction and related services, as well as Student's supplementary aids and services, in emergency circumstances were appropriate.

ADDITIONAL EVIDENCE FROM HEARING

Director De Alba testified she had been involved in Student's education since the 2021-2022 school year. She recalled Student in second grade but became more involved in her educational program when she was in third grade. De Alba testified that since she became involved with Student, every general education teacher who taught Student had come to De Alba and said they thought Student was getting more time in the resource support program than she needed, and that Student needed more time in general education where students had access to the grade-level content. Those teachers thought of the resource support program as providing support and tutoring to help students with IEPs access the grade-level curriculum. They thought Student did not need the level of support she was receiving. There was no data showing it was causing damage, but all Student's teachers since second grade asked De Alba why Student had so much time in the resource support classroom and thought she needed more time in the general education classroom.

Fifth-grade general education teacher Pulskamp recommended reducing Student's time in the resource program. Special education teacher Racacho-Perez recommended reducing Student's time in the resource program. Either Godi or Brassesco recommended reducing Student's time in special education and related services. De Alba brought this up with the SELPA consultant, who cautioned that students were still under the impact of the pandemic, and Student's attendance was not as regular as Venture Academy wanted it to be. She recommended Venture Academy do more observations, gather more data, and make sure that when Venture Academy proposed an assessment plan for the re-evaluation, to express that Venture Academy needed that data to be able to say without a doubt Student was ready for less resource and more general education.

De Alba asserted Venture Academy did not propose to reduce Student's specialized academic instruction earlier than it did because everyone was struggling from the effects of the pandemic, Student was quiet and shy, her attendance was not regular, she was not doing her work at home, and while the staff on campus could see Student was progressing academically, her attendance impacted that progress. Therefore, Venture Academy decided to wait until Student's reassessment was completed to have complete confidence Student was ready to have specialized academic instruction reduced.

In September 2023, Student's new sixth-grade general education teachers all independently spoke to De Alba asking if Student really needed the level of special education support she was receiving. Student's new sixth-grade special education teacher/case manager and Brassesco also raised this concern to De Alba. De Alba told them to take data, observe Student, and let them know Student's re-evaluation was coming and after that they could confidently say whether any change was appropriate.

De Alba testified that in November 2023, everyone saw Student's academic growth, which was the most impactful, but also, they saw Student was growing emotionally, socially, and behaviorally. She made friends. De Alba saw Student in the hallway making eye contact, making jokes, and laughing. She was more mature as a sixth grader, and De Alba saw in the social arena what the teachers had been reporting to her regarding academics. De Alba described Student as flourishing. And De Alba believed Student needed more time in the general education classroom without interruption to access the available core curriculum.

De Alba testified Student told her teacher she did not want to be pulled out and wanted to stay in the general education classroom. Student told Rocha that when Rocha was pushing into the general education classroom, Student did not want Rocha to come ask Student if she needed help and said if she needed Rocha's help, she would ask for it. Student wanted to be like her other peers and not interact with another adult unless she needed help. Student said she did not need push-in support, and she did not want to be pulled out, but wanted to stay in the general education classroom to continue to have interactions in the general education classroom and access the grade-level curriculum that was presented there.

By November 2023, Student was "a different student" than at the end of fifth grade. All the teachers saw it and shared with De Alba about Student's progress, exhibiting to De Alba work Student had done independently, showing an essay they thought Student did well, and having De Alba look at assignments Student submitted. One time, De Alba spoke to Student inside the general education classroom and Student shared with her a project she was doing, looking directly in De Alba's eyes. Student was talking with her friends and interacting with the learning environment positively and successfully in November of sixth grade.

Although Student's reassessment had not been conducted by November 29, 2023, De Alba thought it was appropriate to propose removing the push-in services and reducing the pull-out services because the educational professionals had produced evidence regarding the quality of Student's work. Further, during De Alba's classroom visits she observed Student was ready for less pull-out and no push-in support. At the November 2023 IEP team meetings, no educational staff indicated Student required more special education support to make progress on her IEP goals, and only Mother thought Student needed more.

De Alba described the discussion the IEP team had regarding Mother's request for Student to have the same amount of special education and related services minutes she always had. De Alba emphasized that Venture Academy staff described how the school had to be conscientious, responsible, ethical, and comply with the law and that in their opinions as professional educators, that level of support was no longer the least restrictive environment in which Student could be satisfactorily educated. The information Venture Academy had as of November 29, 2023, indicated Student no longer required as much resource support to access the general education curriculum. When Student was in general education she was doing well and told her teachers she did not want their help unless she asked for it, indicating push-in support was not required.

While De Alba would have preferred to have the results of the re-evaluation to "prove beyond all doubt" that Venture Academy was correct regarding its offer of placement and services, as of the time of the due process hearing De Alba was confident – even without the assessment results – that what Venture Academy offered on November 29, 2023, was the least restrictive environment for Student and afforded her a FAPE. De Alba acknowledged that if a school is going to reduce a student's

services, assessments are always the best practice. But even without assessment results as of November 29, 2023, De Alba thought what Venture Academy offered was education in the least restrictive environment based on the information available at that time.

Speech-language pathologist Godi testified in support of the speech therapy-related goals she proposed at the February 27, 2023 IEP team meeting. She believed the expressive language and executive functioning/task initiation goals were appropriate. Mother requested the goal that became labeled as following directions at a later meeting and Godi agreed the goal was appropriate in view of the general education classroom teacher's input that Student followed two-step verbal directions only 50 percent of the time, despite Godi's experience with Student in the speech room being around 80 percent.

Godi thought the proposed goals addressed Student's speech and language needs at that time, to further develop her expressive language skills and also concentrate on some executive functioning to start tasks and transition to tasks, which involved expressive and receptive language functions.

Godi opined the accommodations offered in spring 2023 were appropriate for Student at that time, although they might not have been necessary by the time of the hearing because of the progress Student made in the year since the February 2023 IEP team meeting. Godi remarked that a year made a "huge difference" and cited Student working so well in general education, being a peer helper to others, and assisting others in groups. Godi thought Student was thriving in her educational performance.

Speech-language pathologist Brassesco worked with Student providing speech therapy starting in Student's fourth-grade year. She split duties with Godi during fourth and fifth grades, and took over as Student's only speech therapy provider in sixth grade. Brassesco considered Student's needs when she was in fourth grade compared to her needs by November 2023, during sixth grade. When Brassesco first met her, it was difficult for Student to express or describe similarities and differences, or to infer meaning with figurative language such as idioms and sarcasm. Brassesco stated students who spoke English as a second language struggled most often with things they did not have in their primary language. But in sixth grade, Student responded to creative writing prompts beautifully, using adjectives and complex sentences. Brassesco thought Student showed "wonderful progress." Student had always worked on reading for context cues and at the time of hearing she was working on that in the classroom at grade level.

Brassesco recalled that during fifth grade, Student did not participate verbally as much as she did in sixth grade. In sixth grade, even as early as by the time of the September 27, 2023 IEP team meeting, Student asked and answered questions by raising her hand, and participated in the classroom with her typical peers. Student had gained a lot of confidence and self-esteem, and even led small groups within her grade level. Brassesco observed Student during small group work in science, with three or four students in a group, when students were expected to do pair-and-share work and collaborate. Student asked and answered questions related to the subject and got her peers to collaborate with her.

In fifth grade, Student hesitated, and was not sure what was really happening from being pulled out and then sent back to class so much. The push-in providers stayed a while after returning her to the general education classroom and helped her

get caught up to where everyone else was. Student struggled in class to independently complete her work and was very prompt-dependent. Brassesco attributed that to being pulled out of general education so much, and therefore having a hard time doing anything without being directed to do something. By the middle of August 2023 in sixth grade, Student often worked independently without assistance, such as by taking notes or following directions. Brassesco noticed that was “huge progress” from when Brassesco provided push-in service in fifth grade, when Student did not do work on her own and needed redirection and prompts to continue.

In sixth grade, Student sometimes could not do the general education worksheets and assignments because she was pulled out and missed the instruction she needed to do the work. But if Student was in the classroom during the relevant instruction, she finished the work, often the same day in class even if it was not due until the next day. Student repeatedly asked Brassesco why she had to go out of the general education classroom or asked if she could stay in the classroom instead of being pulled out.

With respect to the IXL computer-based math homework, Brassesco testified Student did not do it. In the past when Brassesco asked Student why she did not do it, Student only smiled but did not respond, or said, “I don’t know.” Recently when asked, Student responded, “I didn’t want to,” or only, “I didn’t.” Brassesco set up Student with IXL and was sure Student knew the skills required. Brassesco sometimes even did some of the IXL work with Student and left two or three problems for her to complete at home. But Student returned to school not having done them. Brassesco was confident Student could independently do the IXL work, even if Student was successful at avoiding even attempting to do the work at home by telling Mother that she did not know how.

Brassesco reviewed some of Student's writing samples submitted as evidence at hearing and was very proud of Student. Brassesco described it as being at grade level, with some being written very well in comparison to the work on the same assignment by Student's peers. Brassesco conferred with general education teacher Goosens about some of the writings Brassesco found inside Student's backpack and Goosens explained Student had done two creative writing assignments entirely on her own. Brassesco called one of them "at grade level, very much above a child with a speech and language delay."

Brassesco recommended Student's speech therapy be reduced to six times per month for 30 minutes each session due to Student's progress on her goals, having met or exceeded them. Brassesco believed the least restrictive environment for Student was more time in the general education classroom. Brassesco estimated that Student was functioning at grade level and as of the time of hearing in April 2024, did not think continued language and speech goals were appropriate for Student. However, she wanted to conduct formal assessments as part of a re-evaluation to measure Student's present levels of performance to see if Student continued to be eligible for special education and related services, and in what areas.

When Brassesco proposed reducing Student's speech therapy to a total of 180 minutes per month instead of 180 minutes each week, Mother opposed it wanting "all 600 minutes per week of resource" as pull-out service. Brassesco did not think that would have been appropriate at the time because the progress Student made and the fact that Student was functioning at grade level, meant Venture Academy needed to reduce services to provide Student her education in the least restrictive environment. Brassesco opined as of the time of the hearing, there were no specific language and communication skills that needed to be honed in on for Student, and the 180 minutes

of speech therapy Venture Academy offered was appropriate to meet the goals the IEP team had previously drafted and to afford Student education in the least restrictive environment for her.

Rocha provided Student specialized academic instruction during sixth grade both outside and inside the general education setting. Student struggled to adapt to sixth grade at the start of the school year but according to Rocha "improved greatly, more than [Rocha's] other students." Rocha attributed Student's progress to many things Venture Academy tried with Student's schedule, shifting pull-out times to different course periods to provide Student more access to general education academic instructional time by doing some pull-out specialized academic instruction during physical education class. Rocha also changed push-in times to be during classes that Rocha's other students with IEPs attended so Rocha could make a small group with those students. Over time, Student did not need as much support and Rocha backed away from the group. Student's confidence increased and she took more ownership in her education.

Rocha observed that in the general education classroom, Student maintained pace with her peers not from the first day of the sixth-grade school year, but the longer she was in the general education classroom doing the routine with the general education students, the more Student adapted, and she did well. Of the work Student completed in her general education classes, her scores were As and Bs. But if an assignment was not graded on whether it was correct or incorrect, but instead on whether it was completed or not completed, which was the homework, Student did not attempt to do it. Friday was a homeschool day and Parents were expected to oversee Student's work, but Student did none of the Friday work. That was lowering her grades

because she was not getting credit. Rocha talked to Parents but that did not change Student's failure to turn in the homework. So, Rocha used pull-out resource time to complete Student's homework.

At the November 29, 2023 IEP team meeting, Rocha recommended reducing the amount of specialized academic instruction and taking away all push-in specialized academic instruction. Rocha observed Student was always on task, doing her work, and moving forward with her peers. Rocha thought there was no data that Student still required special education support inside the general education classroom. Student no longer looked to Rocha or her assistant to ask for help, so Rocha recommended stopping the push-in services. Rocha had a group of students who were meeting outside general education for 45 minutes each day Monday through Thursday to catch up on work, and who were themselves transitioning back to full-time general education. Rocha thought Student would fit in well in that group and that the group was appropriate to support Student. Rocha recommended stopping all push-in special education, and instead of providing 105 minutes per day, four days a week, of pull-out specialized academic instruction, she proposed providing 45 minutes per day, four days a week, of pull-out specialized academic instruction, for a total of 180 minutes weekly. Rocha thought that would show the IEP team whether Student was dependent on the resource support program for her success, or not.

Rocha opined Student would make academic progress with specialized academic instruction for 45 minutes a day, four days a week. Rocha thought Student was well caught up. Whereas Student had needed a peer helper in the past, at the time of the due process hearing she was the peer helping others. Student made the honor roll in the first semester by working with Rocha to figure out what assignments were missing

and completing the work. Student completed 90 percent of the assignments herself, and came to Rocha for help about the other 10 percent. This demonstrated to Rocha Student was ready for less specialized academic instruction, more general education class time, and supported Rocha's recommendation to reduce Student's special education supports.

Finally, general education teacher Goosens testified to progress Student made in sixth grade. Goosens supported reducing Student's special education services. In the first semester of the 2023-2024 school year, Goosens was Student's teacher for social studies and science classes. In the second semester, she taught Student those subjects and also English language arts. At the start of the school year, Student lacked confidence and was not sure what time she was supposed to be where. She did not know the other students well and was shy. Student did not know how to ask questions or advocate for herself.

Goosens's testimony addressed work samples from February and March 2024, after the date on which Venture Academy proposed to reduce Student's special education and related services. But Goosens praised Student's work as being at and above grade level. During creative writing assignments, Student wrote a lot in the time afforded, more than many students. Goosens agreed it had been appropriate on November 29, 2023, to propose reducing the amount of time Student spent in specialized academic instruction and out of the general education setting. Goosens thought the amount of special education and related services Student had been receiving was bad, and that Student was being "pulled out too much and missing too much." Goosens believed it benefitted Student to be in general education most of the day so she could get the full context of the lessons and compete the work as best she could, because Student could do the work.

All Venture Academy witnesses were well-qualified, credible, and offered persuasive testimony that was not contradicted by any other evidence.

FEBRUARY 27, 2023 IEP, AS AN IEP DOCUMENT DATED
SEPTEMBER 27, 2023, AS AMENDED NOVEMBER 29, 2023,
COMPLIED WITH PROCEDURAL AND SUBSTANTIVE
REQUIREMENTS

At every IEP team meeting at issue, and in the January 2024 prior written notice, Venture Academy repeatedly sent Parents a copy of the notice of parents' procedural safeguards and rights. Venture Academy had reviewed and explained them at an IEP team meeting in which Mother participated. The notice included a full explanation of all procedural safeguards and was written in language understandable to the general public. Venture Academy provided the notice in Parents' native language of Spanish as well as their requested language of English. Mother was also informed about procedural safeguards at each IEP team meeting, and Father at the one meeting he attended, with a Spanish language interpreter present at each meeting to ensure Parents' understanding of their procedural rights and their participation in the development of Student's educational program.

Venture Academy invited Parents to attend many IEP team meetings. While none of the evidence submitted at the due process hearing included a single written IEP team meeting notice, Mother attended all seven IEP team meetings at which the February 27, 2023 IEP, also dated September 29, 2023, was developed. Father attended one of those meetings. Only on January 8, 2024, did Mother indicate she was unaware of the meeting, but she agreed to participate even though Venture Academy offered to

reschedule. The exact content of Venture Academy's IEP team meeting notices is unknown, but even if they were in any respect deficient, that hypothetical procedural violation did not interfere with Parents' opportunity to participate in the formulation process of the IEP, as evidenced by Mother's repeated comments, questions, discussions, and disagreements with Venture Academy at seven IEP team meetings related to the February 27, 2023 IEP at issue. (Ed. Code, § 56505, subd. (j).) Further, any hypothetical procedural violation concerning IEP team meeting notices did not result in the loss of an educational opportunity to Student. (*Ibid.*)

Between February 2023 and November 29, 2023, Mother participated in six IEP team meetings, and Father attended one with her. Mother expressed disagreement with the IEP team and requested revisions in the IEPs. At the April 12, 2023 IEP team meeting, Mother's request for an organizational goal led to a new goal being added to the IEP. Mother's persistent objections to speech therapy being provided inside the general education classroom reversed Venture Academy's early proposal to provide all speech therapy as service inside the general education setting. Parents were informed of Student's problems, attended the IEP team meetings, expressed disagreement with the IEP team's conclusions, and requested revisions in Student's IEP. Mother was not always satisfied with the outcome of those IEP team meetings, but she meaningfully participated in the development of Student's February 27, 2023 IEP, as amended on November 29, 2023.

At the February 27, 2023 annual IEP team meeting, Venture Academy reviewed Student's present levels of academic achievement and functional performance and considered how Student's disabilities affected her involvement and progress in the general education curriculum.

The IEP team determined Student's areas of unique need and proposed goals designed to meet her needs that resulted from her disabilities to enable her to be involved in and make progress in the general education curriculum and meet her other educational needs that resulted from her disabilities. The goals the IEP team developed were measurable and were based upon Student's present levels of academic achievement and functional performance. Student had a reasonable chance of attaining each goal within a year. The IEP included appropriate objective criteria evaluation procedures and schedules for determining whether the annual goals were being achieved and stated how Student's progress toward the goals would be measured.

The goals Venture Academy offered in February were reviewed, and added to the IEP at Mother's request, in April 2023. The final form of the five new goals of the 2023 IEP addressed Student's areas of need. They were sufficiently ambitious, appropriate goals given Student's levels of performance in spring 2023.

At later meetings, the IEP team reviewed Student's further progress in sixth grade. The IEP team discussed the accommodations from Student's February 2022 IEP and considered whether they were helpful and what to retain or change for the 2023 IEP they were developing. As a result of Student's continued progress and growth almost one year after the annual 2023 IEP team meeting started, Venture Academy changed its proposed placement, and the proposed quantity and location of speech therapy.

Mother continued to insist Student receive 660 minutes per week of specialized academic instruction outside the general education setting and to a lesser degree she wanted Student to receive 180 minutes a week of speech therapy outside the general education setting. But Venture Academy believed the appropriate placement for

Student to work on her new goals was to spend the vast majority of her day in general education and to receive specialized academic instruction outside the general education setting for a total of 180 minutes per week, with speech therapy outside the general education setting for 180 minutes per month. Venture Academy's proposed decrease in specialized academic instruction and speech therapy increased Student's time in the general education setting, compared to the February 2022 IEP, from 44 to 88 percent.

The preponderance of the evidence established that as of November 29, 2023, placement in the general education classrooms of the Keystone program with some pull-out specialized academic instruction was appropriate for Student. Student significantly benefited educationally from attending general education classes, where she performed work in the core curriculum near and at grade level. She also received non-academic benefits from attending general education classes, in the form of developing friendships with her classmates and growing as a leader, maturing from being a student who needed a peer helper to being the helper to her peers. Student did not disrupt her general education class teachers or classmates, and was a valued member of her sixth-grade general education classes. There were no added costs to mainstreaming Student. However, Student required small group instruction for specific skills she was developing unique to her disability-related needs, and as of November 29, 2023, she required some time outside general education for specialized academic instruction and speech therapy. Under *Rachel H.* and *Daniel R.R.*, Venture Academy's offer of general education placement with 180 minutes per week of specialized academic instruction, and 180 minutes per month of speech therapy, both outside the general education setting, offered Student mainstreaming to the maximum extent appropriate in light of the continuum of program options, and in light of Student's unique circumstances.

The evidence also established 180 minutes per month of speech therapy outside the general education settings was a level of support sufficient to enable Student to benefit from special education. Also, the evidence established Venture Academy offered Student sufficient supports and accommodations in the February 23, 2023 IEP, as amended on November 29, 2023.

The February 23, 2023 IEP, as amended on November 29, 2023, and transmitted to Parents on January 18, 2024, presented a coherent, formal, written offer specifying the placement Venture Academy offered with the related services and supports necessary for Student to access that placement. The present levels of performance were reported in February 2023 and the goals developed in April 2023 appropriately addressed Student's needs and reasonably determined the progress Student was anticipated to make by February 2024. Mother's dispute with Venture Academy over the services to support those goals, and the delay in finalizing the offer of placement and services, did not take away from the accuracy and appropriateness of those statements of present levels of performance and annual goals. Student's IEP team updated Student's general progress and confirmed the appropriateness of the goals at each IEP team meeting, and this Decision does not find that Venture Academy should have developed new goals prior to the next annual review in February 2024.

The 2023 IEP included an adequate plan to continue to provide Student her educational program in the event of emergency conditions preventing normal instruction. The 2023 IEP stated Student was not offered extended school year because she did not meet eligibility criteria, and the preponderance of the evidence supported that conclusion.

Venture Academy provided Parents a complete copy of the IEP it sought their consent to implement, and a prior written notice on January 18, 2024. Parents refused to consent to the 2023 IEP, and on February 14, 2024, Venture Academy sought a determination from OAH that it offered Student a FAPE and authorization to implement the 2023 IEP without Parents' consent. Venture Academy expeditiously requested a due process hearing when it determined, after months of collaborating with Parents and prioritizing parental participation, that Parents would not consent to the goals, placement, related services, supports and accommodations Venture Academy believed were necessary to provide Student with a FAPE.

By a preponderance of the evidence, Venture Academy adequately demonstrated the February 27, 2023 IEP, as amended November 29, 2023, offered Student a FAPE.

ISSUE 2: MAY VENTURE ACADEMY ASSESS STUDENT PURSUANT TO THE NOVEMBER 1, 2023 ASSESSMENT PLAN WITHOUT PARENTS' CONSENT

Venture Academy contends it complied with all procedural requirements regarding notice to Parents seeking their consent to conduct a three-year-review reassessment of Student, and that it is appropriate and necessary to assess Student. Venture Academy therefore requests an Order authorizing it to assess Student under the November 1, 2023 assessment plan without Parents' consent.

Parents refused to sign consent for Venture Academy to conduct a comprehensive, three-year-review assessment due February 2024.

To assess or reassess a student, a local educational agency must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321(a).) Parental consent for an assessment is generally required before a local

educational agency can assess a student. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1); Ed. Code, § 56381, subd. (f).) Parental consent is not required before reviewing existing data as part of an assessment or reassessment, or before administering a test or other assessment that is administered to all children, unless before administration of that test or assessment, consent is required of the parent of all the children. (34 C.F.R. § 300.300(d)(1); Ed. Code, § 56321, subd. (e).)

A local educational agency must conduct a reassessment at least once every three years, unless the parent and the agency agree that it is unnecessary. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).) The agency must also conduct a reassessment if it determines that the educational or related service needs of the child, including improved academic achievement and functional performance, warrant a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

If parents do not consent to a reassessment plan, the local educational agency may conduct the reassessment by showing at a due process hearing that it needs to reassess the student and it is lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).)

Without an order after a due process hearing, reassessments require parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To obtain parental consent, the local educational agency must provide parents the proposed assessment plan and a copy of parental procedural rights under the IDEA and related state laws. (Ed. Code, § 56321, subd. (a).) The assessment plan must be in language easily understood by the public and in the native language of the parent, explain the types of assessments to be conducted, and state that no IEP will result from the assessment

without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4); 20 U.S.C. § 1415(b)(3)&(4); see also 34 C.F.R. § 300.9(a).) The district must give the parent at least 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

NOVEMBER 1, 2023 ASSESSMENT PLAN

Before November 29, 2023, Venture Academy sent Parents an assessment plan marked as a “plan review” and “eligibility evaluation” assessment plan dated November 1, 2023. The November 1, 2023 assessment plan proposed to assess Student in the following areas, by the identified category of personnel:

- academic achievement, explained as assessment measuring reading, arithmetic, oral and written language skills, and/or general knowledge, to be assessed by a resource specialist, being a credentialed special education teacher;
- health, explained as information and testing gathered to determine how Student’s health affected school performance, to be assessed by a school nurse;
- intellectual development, explained as measuring how well Student thought, remembered, and solved problems, to be assessed by a school psychologist;
- language/speech communication development, explained as measuring Student’s ability to understand and use language and speak clearly and appropriately, to be assessed by a speech-language pathologist;

- motor development, explained as measuring how well Student coordinated body movements in small and large muscle activities, and possibly measuring perceptual skills, to be assessed by a school psychologist;
- social emotional/behavior, explained as identifying how Student felt about herself, got along with others, and took care of personal needs at home, school, and in the community, to be assessed by a school psychologist;
- adaptive behavior, explained as identifying how Student took care of personal needs at home, school, and in the community, to be assessed by a school psychologist; and
- observations, records review, interviews, questionnaires, curriculum-based assessments/work samples, and portfolios, if appropriate, to be conducted by a school psychologist, speech-language pathologist, and/or resource specialist.

The November 1, 2023 assessment plan stated the purpose as “eligibility evaluation,” being Student’s three-year-review reassessment due on February 28, 2024. It noted as further reasons for the assessment that it was necessary to determine Student’s present levels of performance, eligibility, needs, and goals. It also cited Parents’ request for Student’s specialized academic instruction and speech therapy to be provided only outside the general education setting.

The November 1, 2023 assessment plan was in English language easily understood by the public, explained the types of assessments to be conducted, and stated that no IEP would result from the assessment without parental consent.

Venture Academy sent Parents the November 1, 2023 assessment plan on November 8, 2023. Multiple Venture Academy staff sent the assessment plan, repeatedly, electronically and by mail, including certified mail. Special education teacher Rocha also sent the November 1, 2023 assessment plan home in Student's backpack three times. When the IEP team reconvened on November 29, 2023, Mother acknowledged Parents received the assessment plan and the IEP team discussed the need to start the assessments to have them completed by February 28, 2024. Mother refused to sign the assessment plan.

At the IEP team meeting on January 8, 2024, Venture Academy asked Mother if she had any questions about the assessment plan. Mother stated she would not sign the assessment plan until Venture Academy provided Student 660 minutes per week of specialized academic instruction outside the general education setting.

On January 18, 2024, De Alba emailed and sent by regular and certified mail to Parents a prior written notice letter addressing the need for Parents to consent to the November 1, 2023 assessment plan, requesting Parents' consent, and advising Parents of the possibility of obtaining authorization to conduct the reassessment through a due process hearing if Parents did not consent. As of February 14, 2024, the date Venture Academy filed a request for due process, Parents had not consented to the November 1, 2023 assessment plan.

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Venture Academy repeatedly provided Parents notice of their procedural rights and safeguards. The most recent time was on January 18, 2024, when De Alba sent the notice of procedural rights electronically and by mail, in both English and Spanish. Venture Academy gave Parents more than 15 days to sign and return the assessment plan before Venture Academy filed a request for a due process hearing to obtain authorization to assess Student without parental consent.

ASSESSMENT PLAN IN PARENTS' NATIVE LANGUAGE

Federal and State law require an assessment plan be provided to parents in their native language. Under applicable federal law, the preponderance of the evidence established Parents' native language was Spanish. Any reference to a parent's native "mode of communication" is not applicable in this case as Parents were not deaf/hard of hearing or blind/visually impaired, and their native language of Spanish had a written form. Venture Academy's argument that written English was Parents' preferred "mode of communication" is rejected. Therefore, Venture Academy was required to provide Parents the November 1, 2023 assessment plan written in Spanish.

However, under the very unique circumstances of this case, Venture Academy's failure to comply with this procedural requirement did not interfere with Parents' opportunity to participate in the formulation process of the IEP, and did not result in the loss of an educational opportunity to Student. (Ed. Code, § 56505, subd. (j).) Parents repeatedly, over a series of years, requested Venture Academy provide Parents documents related to Student's IEP and the IEP process in English only, and the most recent written request, on April 28, 2023, was for documents in "English only."

For the 2018 initial assessment and 2021 reassessment, Venture Academy provided Parents the assessment plans in English and Spanish. Parents ultimately signed consent on and returned to Venture Academy the English versions. The preprinted portions of the November 1, 2023 assessment plan were identical to the 2021 assessment plan with only two minor changes. The 2021 assessment plan called the type of assessment proposed a "Triennial," and that item on the list of check boxes was changed on the 2023 assessment plan to be preprinted as "Eligibility Evaluation," still distinct from the other options of initial, annual, transition, interim, or "other" assessment description options. And with regard to the check box option for consenting to the assessment, the 2021 assessment plan stated,

"I understand that the results will be kept confidential and that I will be invited to attend the IEP team meeting to discuss the results. I also understand that no special education services will be provided to my child without my written consent."

The 2023 assessment plan check box for consenting to the assessment stated that same language, with one additional statement after the language quoted above: "..., and that no individualized education program will result from the assessment without my consent, as required by EC Section 56321(b)(4)."

Parents had twice been provided with a form assessment plan in their native language and could have referenced it as a model if they so desired to understand the form in 2023. Parents were afforded multiple opportunities to confer and consult with Venture Academy staff to have any questions about the assessment plan addressed. Parents explicitly rejected opportunities at the November 29, 2023, and January 8, 2024 IEP team meetings to discuss the November 1, 2023 assessment plan directly with

bilingual Venture Academy staff or through the Spanish language interpreter. Parents did not decline consent based on any lack of information about why the three-year-review assessment was proposed, what it would consist of, what types of personnel would conduct the assessment components, or the next steps that would occur after the proposed assessment was conducted. Parents declined consent as a bargaining tool to obtain from Venture Academy an offer of special education and related services Parents preferred.

All criteria have been satisfied for Venture Academy to be authorized to conduct assessments pursuant to the November 1, 2023 assessment plan, without Parents' consent.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

ISSUE 1:

The February 27, 2023 IEP, as amended on November 29, 2023, offered Student a FAPE such that Venture Academy may implement it without Parents' consent.

Venture Academy prevailed on Issue 1.

ISSUE 2:

Venture Academy may assess Student pursuant to the November 1, 2023 assessment plan without Parents' consent.

Venture Academy prevailed on Issue 2.

ORDER

1. Venture Academy may assess Student pursuant to the November 1, 2023 assessment plan, without Parents' consent.
2. Venture Academy may implement the February 27, 2023 IEP, dated September 27, 2023, as amended on November 29, 2023, and as transmitted to Parents on January 18, 2024, without Parents' consent.

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.

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings