

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

V.

PALO ALTO UNIFIED SCHOOL DISTRICT.

CASE NO. 2024070468

DECISION

February 27, 2025

On July 12, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Palo Alto Unified School District, called Palo Alto. On October 9, 2024, Student filed an amended due process hearing request. Administrative Law Judge Alexa Hohensee heard this matter by videoconference on November 26 and 27, 2024, December 3, 4, 5, 6, 10, 11, 12, 13, 17, 18, and 20, 2024, and January 22, 2025. The Administrative Law Judge is called the ALJ.

Attorneys Alexis Casillas and Jennifer Chang represented Student. One of Student's parents appeared on behalf of Student each hearing day. Attorneys Matt Tamel, Nicole Mirkazemi, and Matthew Juhl-Darlington represented Palo Alto. Teri Lee, Interim Director of Special Education, or Cynthia Loleng-Perez, Special Education Coordinator, appeared on behalf of Palo Alto each hearing day.

At the parties' request, the matter was continued to February 14, 2025, for written closing briefs. The record was closed, and the matter was submitted on February 14, 2025.

ISSUES

The issues at the due process hearing, as alleged in the amended due process hearing request, called a complaint, were clarified by the parties and the ALJ during the PHC and at hearing.

Following the November 15, 2024, prehearing conference, Student filed on November 21, 2024, a notice of objection regarding the issues as restated in the prehearing conference order. On the first day of hearing, November 26, 2024, after discussion with the parties on the record, Student's requested changes were incorporated into the issues.

During the due process hearing, on December 13, 2024, Student withdrew, in writing, her claims that Palo Alto did not offer or implement appropriate goals or services in motor skills, behavior, and toileting. Student also withdrew her claims that Palo Alto failed to file to defend its offers of free appropriate public education, called a

FAPE, during the years at issue. On December 16, 2024, Student filed a corrected notice of withdrawal re-instating claims that Palo Alto did not offer appropriate goals in behavior, which the ALJ allowed.

Accordingly, the issues for decision are stated below. An individualized education program is called an IEP.

1. Did Palo Alto deny Student a FAPE during the 2022-2023 school year by failing to:
 - a. Assess Student in her native language for the January 2023 multidisciplinary assessment;
 - b. Reflect measurable baselines or accurate present levels of performance for goals offered;
 - c. Offer appropriate goals in the following areas:
 - English language development,
 - speech and augmentative and alternative communication,
 - functional academics,
 - behavior, and
 - transition;
 - d. Offer appropriate services in the following areas:
 - English language development,
 - speech and augmentative and alternative communication,
 - functional academics, and
 - transition;

- e. Implement the following goals:
 - English language development,
 - speech and augmentative and alternative communication,
 - functional academics, and
 - transition;
 - f. Implement the following services:
 - English language development,
 - speech and augmentative and alternative communication,
 - functional academics, and
 - transition;
 - g. Give Parents a prior written notice regarding Palo Alto's lack of implementation of the goals and services offered; and
 - h. Convene an IEP team meeting in response to Student's lack of expected progress?
2. Did Palo Alto deny Student a FAPE during the 2023-2024 school year by failing to:
- a. Reflect measurable baselines or accurate present levels of performance for goals offered;

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- b. Offer appropriate goals in the following areas:
 - English language development,
 - speech and augmentative and alternative communication,
 - functional academics,
 - behavior, and
 - transition;
- c. Offer appropriate services in the following areas:
 - English language development,
 - speech and augmentative and alternative communication,
 - functional academics, and
 - transition;
- d. Implement the following goals:
 - English language development,
 - speech and augmentative and alternative communication,
 - functional academics, and
 - transition;
- e. Implement the following services:
 - English language development,
 - speech and augmentative and alternative communication,
 - functional academics, and
 - transition;

- f. Give Parents a prior written notice regarding Palo Alto's lack of implementation of any of Student's goals and services offered; and
 - g. Convene an IEP team meeting in response to Student's lack of progress?
- 3. Did Palo Alto deny Student a FAPE from the beginning of the 2024-2025 school year through October 9, 2024, by failing to:
 - a. Reflect measurable baselines or accurate present levels of performance for goals offered;
 - b. Offer appropriate goals in the following areas:
 - English language development,
 - speech and augmentative and alternative communication,
 - functional academics,
 - behavior, and
 - transition; and
 - c. Offer appropriate services in the following areas:
 - English language development,
 - speech and augmentative and alternative communication,
 - functional academics, and
 - transition?

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JURISDICTION

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

- all students 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 students with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the student, or the provision of a FAPE to the student. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this due process hearing, Student 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 19 years old and attending a post-secondary adult transition program at the time of hearing. Student resided with Parents within Palo Alto's geographic boundaries at all relevant times. Student was diagnosed with intellectual disability, autism, cerebral palsy, and spastic dysarthria, and was eligible for special education under the categories of multiple disabilities and orthopedic impairment.

ISSUE 1a: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO ASSESS STUDENT IN HER NATIVE LANGUAGE FOR THE JANUARY 2023 MULTIDISCIPLINARY ASSESSMENT?

Student contends she should have been assessed in Korean, her native language, during a January 2023 multidisciplinary assessment by Palo Alto. Student contends she understands Korean better than English and Palo Alto did not obtain an accurate picture of her abilities and performance. District contends accurate information on Student's educational needs could not be obtained by assessing her in Korean.

A FAPE means special education and related services that are available to an eligible student 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.)

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A student eligible for special education must be provided access to specialized instruction and related services individually designed to provide educational benefit through an IEP reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 (*Endrew F.*).

In assessing a student with a disability, the assessment must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified. (34 C.F.R. § 300.304(c)(6).)

Assessments must be selected and administered to best ensure that if the student has impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills, unless those skills are the factors the test purports to measure. (34 C.F.R. § 300.304(c)(3); Ed. Code, § 56320, subd. (d).) Assessment tools and strategies must provide relevant information that directly assists persons in determining the educational needs of the student. (20 U.S.C. § 1414(b)(4); 34 C.F.R. § 300.304(c)(7); see also Ed. Code, § 56320, subd. (b)(1).)

The IDEA and California law require assessment materials be provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so. (20 U.S.C. § 1414(b)(3)(A)(ii); Ed. Code, § 56320(b)(1);

34 C.F.R. § 300.532; Cal. Code Regs., tit. 5, § 3023, subd. (a).) It is not a procedural violation if a school district conducts appropriate nonverbal assessments. (See *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 2032.)

The weight of the evidence did not establish that Palo Alto was required to assess Student in Korean in January 2023.

PRIOR ASSESSMENTS

In early childhood, Student was diagnosed with severe intellectual disability, autism, cerebral palsy, and spastic dysarthria. Student's intellectual disability and autism manifested as Student being in her own world, staring into space or at people and objects, failing to react to sounds or speakers, and needing maximum verbal, gestural, and physical prompts to respond or follow directions. Student's cerebral palsy manifested in low muscle tone, left-side weakness, an inability to control movement, and muscle spasms. In particular, Student had severe spastic dysarthria, which affected muscle spasms in her face and throat that made it very difficult to form her lips or use her breath to make words. Student could imitate some sounds but was effectively non-verbal.

Student's intellectual ability and academic achievement were assessed in 2017 in South Korea, presumably in the Korean language. Student's cognitive standard scores were below the first percentile, and the assessors were unable to obtain formal achievement scores.

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In 2019, when Student was 13 years old, her family moved to Texas, where Student was first exposed to the English language. A Texas school district assessed Student for special education using a Korean language interpreter for all portions of the assessment. Student continued to score below the first percentile in cognitive tests and extremely low on adaptive living skills. Student exhibited global delays in all developmental areas, including communication.

In receptive language, in 2019, Student understood basic commands like sit down, stand up, and come here in Korean, and in English if accompanied by a visual model or gesture. However, Student did not appear to comprehend nouns or verbs in either language, and was unable to identify body parts, emotions, shapes, or colors.

Expressively, Student moved her body and pointed to items she wanted and used vocalizations to gain attention. She smiled or laughed to express pleasure. She grimaced, cried, or used vocalizations to express discomfort, and pushed things away to refuse an item or task. Student would choose when presented with two preferred physical items, such as water and juice, but would not choose between pictures representing physical items, and could not answer yes-or-no questions. Student did respond to the assessor's request for a high-five. The Korean language interpreter reported Student did not verbally answer any questions, make choices, or make requests in Korean.

Socially, Student seemed unaware of peers in the classroom but exhibited joint attention and shared enjoyment when an adult pushed her on a swing. The interpreter indicated that Student looked in his direction when he greeted her in Korean, but did not use vocalizations, gestures, or facial expressions to respond.

The Texas language assessment concluded Student had severe receptive, expressive, and pragmatic language delays, and her language abilities did not improve when information or tasks were presented in Korean.

A childhood rating scale included in the Texas assessment indicated Student had severe symptoms of autism. Autism spectrum disorder is characterized by deficits in social communication and interactions. Student did not initiate interactions with others except to obtain desired items. She invaded the space of others, grabbed edible and inedible items and put them in her mouth, and showed little interest in toys or classroom materials. Student frequently looked away during academic instruction and required heavy prompting to respond, although she could be redirected.

2020-2021 AND 2021-2022 SCHOOL YEARS

Student attended Palo Alto for the 2020-2021 school year after her family moved to California. Student communicated through eye gaze, gestures, vocalizations, and physical movement. Palo Alto staff worked with Student on using augmentative and alternative communication, called AAC. An example of low-tech AAC Palo Alto attempted with Student was pointing to pictures printed on a page, such as a picture of a toilet to request the bathroom. An example of mid-tech AAC Palo Alto attempted with Student was pushing yes-or-no switches or pushing buttons on a simple speech generating device with four to eight pictures and pre-recorded words. Palo Alto encouraged Student to be a multimodal communicator, using any and all means of communication available to her.

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Student needed hand-over-hand assistance to perform most tasks, including using AAC. In May 2021, Palo Alto assigned Student two dedicated instructional aides for safety in the classroom, moving on campus, and toileting.

Palo Alto's English Learners department provided English language development support to students with a primary language other than English. English language development support was a general education support for both disabled and non-disabled students alike. Palo Alto provided students who scored very low on statewide English proficiency assessments, as Student did, with primary language interpreters, called tutors, to interpret English instruction. Primary language tutors were not credentialed teachers and did not teach. Their sole responsibility was to interpret instruction. This support was offered when tutors in the needed language could be found and hired, and was usually for 40 hours per year, or the equivalent of one hour per week. In this Decision, the terms Korean language interpreter and Korean tutors will be used interchangeably.

The English Learners department provided Student with a Korean tutor to interpret instruction for Student during the 2021-2022 and 2022-2023 school years, often for several hours per day, several days per week. However, the Korean tutors assigned to interpret instruction for Student reported to teachers and staff that Student did not respond to or speak Korean words, consistent with the findings of the 2017 and 2019 assessments.

In January 2022, when Student was in 10th grade, her communication abilities were assessed by a speech-language pathologist at Stanford Children's Hospital, called Stanford, for a high-tech speech-generating device to use at home. Stanford

recommended Student use a Tobii Dynavox electronic speech-generating device with the TD Snap program, which could be programmed in English and Korean. Stanford recommended no more than eight icons on a screen to avoid visual overload.

Parents provided a copy of the assessment to Palo Alto. In spring 2022 Palo Alto purchased a Tobii Dynavox with the TD Snap program for use at school, which Student was using at the time of the January 2023 assessment. Near the end of the 2022-2023 school year, Palo Alto transitioned Student to an iPad with the TD Snap program, which evidence suggested was essentially the same as the Tobii Dynavox with TD Snap. Student's school-based AAC devices were programmed in English.

During the 2022-2023 school year at issue, Student attended a Futures classroom at Palo Alto High School, called Paly High, taught by special education teacher Eileen McCarthy. Palo Alto's Futures classrooms were for students with moderate to severe disabilities. The Futures program built on an individual's strengths and potential, with opportunities for transferable academic, life, vocational, social, and leisure skills. Futures programs in Palo Alto's high schools focused heavily on functional academics and vocational training.

By the time of Palo Alto's January 2023 multidisciplinary assessment, Student had been attending school in the United States for four years, with all instruction in English. The January 28, 2022 IEP in effect offered Student individual, direct speech and language services for one hour per week. Student could follow simple and routine one-step commands, like sit or stop, with support. Student understood some basic concepts like her name, food items, stomach, and head. The only English word Student could accurately articulate was "go."

JANUARY 2023 MULTIDISCIPLINARY ASSESSMENT

In December 2022 and January 2023, Palo Alto conducted a multidisciplinary assessment of Student as part of a three-year review of Student's educational program.

As discussed in more detail below in section "Issue 1b," each assessor who participated in administration of the January 2023 multidisciplinary assessment testified persuasively and convincingly that they obtained accurate and relevant information that directly assisted Student's IEP team in determining Student's educational needs. Each assessor selected and administered their assessment tools to best ensure that the assessment results accurately reflected Student's aptitude or achievement level or other factors the tests purported to measure, rather than reflecting Student's impaired sensory, manual, or speaking skills, except where those skills were the factors the test purported to measure. However, the assessors did not assess Student using Korean language.

The evidence was overwhelming that Student could not understand or respond to administration of any of the assessments in Korean and it was not feasible to assess Student in Korean.

The January 2023 multidisciplinary report included assessments of cognitive and psychological processing, achievement, post-secondary transition, speech and language, Student's need for adapted physical education, and her social, emotional, and behavioral functioning. A separate assessment of gross motor development by a physical therapist was completed at the same time. Student did not offer into evidence any cognitive, language, or other assessments indicating that in January 2023, or at any time, Student would have understood testing instructions in any of these areas in Korean.

Parent told Palo Alto that Student understood 90 to 100 percent of what was said to her in Korean and was pretending to be nonverbal. Parent appeared to be referencing a few simple directions that were part of familiar home routines. Parent's statements contradicted all other information available to Palo Alto in January 2023.

Prior assessment reports, prior Korean language interpreters, Palo Alto staff working with Student and an interpreter, and Korean tutors all indicated Student did not understand or respond to Korean instruction. Speech-language pathologist Julia Harris had provided speech services to Student during the 2021-2022 and 2022-2023 school years with a Korean tutor and opined Student was as limited in Korean as she was in English. Although hearsay, multiple witnesses who had worked with Student at Palo Alto alongside bilingual Korean speakers consistently testified the bilingual speakers told them Student never spoke in Korean, beyond making a "shh" sound, which Parent represented was a word approximation of "shee," the Korean word for pee.

Student had been diagnosed since she was one year old with profound intellectual and communication disabilities that severely affected Student's ability to understand and engage in language. Parent's unsubstantiated statements that Student understood and spoke Korean, contrary to years of work with Korean interpreters showing otherwise, did not establish that in January 2023 Student could be tested using Korean to obtain results that differed from tests using English.

Palo Alto assessors took into consideration prior assessments and the experience of Palo Alto educators using Korean interpreters that Student did not respond to Korean or English instruction. Instead, they administered assessments that were nonverbal, and consisted of a combination of records review, observation, and Parent and teacher rating scales. Korean interpretation was not required.

For example, speech-language pathologist Harris administered a functional communication profile for students with significant disabilities that consisted of observations and parent feedback. Harris had been Student's school-based speech services provider for two school years and had worked on Student's receptive communication with a Korean interpreter. Harris was a well-qualified speech-language pathologist and experienced in assessing students with severe language impairments. She was extremely familiar with Student, and her choice of data review, parent input, and observation to measure Student's receptive, expressive, and pragmatic language was within her scope of expertise and appropriate. Student's speech language expert Sarina Murrell, in April 2024, similarly relied on data review, parent input, and observation to measure Student's communication skills. Student failed to present any persuasive evidence that in January 2023, Harris would have obtained different results by administering comprehensive language testing in Korean.

School psychologist Jaime Fanciullo assessed Student using rating scales, parent interview, observation, and dynamic interaction with Student through prompts and modeling. She attempted administration of a standardized cognitive test as a diagnostic tool without attempting to obtain a standardized score. At hearing, she persuasively opined that cognitive ability, unlike academic achievement, does not change as a person ages. Student was diagnosed in South Korea with severe intellectual disability in early childhood, and that was confirmed years later by a cognitive assessment using a Korean interpreter in Texas, and consistent with Student's performance for four years at Palo Alto with or without Korean language support.

Fanciullo supported and regularly visited Student's Futures classroom during the 2002-2023 school year, and observed Student in the classroom, on the school campus, during breaks, and at lunch. Fanciullo was a credentialed and well-qualified school

psychologist experienced in assessing students with severe cognitive and language impairments. Her choice of data review, parent input, observation, and nonverbal interaction to measure Student's psychoeducational, behavioral, and social-emotional functioning was within her scope of expertise and appropriate. Student did not call any psychologist to contradict Fanciullo's choice of test instruments that did not need Korean interpretation, and did not offer any psychoeducational assessment to establish that Fanciullo's assessment results were incomplete or inaccurate for lack of a Korean component.

Student did not produce cognitive or speech and language assessments to establish Student understood Korean and could be tested in that language. As discussed in more detail at Issue 2a, Student's expert Murrell did not speak Korean, and herself used parent ratings and an observation inventory to assess Student's communication abilities in April 2024. Murrell also relied on Parent's report of Student's ability to understand and respond in Korean without independent bilingual confirmation, and her repetition of Parent's statements did not corroborate them.

Student did not offer into evidence copies of the 2017 South Korea or 2019 Texas assessments reports to contradict Palo Alto's summaries that attempts to administer cognitive, achievement, and other education-based assessments in Korean or using Korean interpretation were unsuccessful. Student submitted the Stanford March 2022 AAC evaluation report, but although it indicated that a Korean language interpreter was available by videoconference, it did not distinguish when or if Student responded to Korean verbal requests rather than English verbal requests, modeling, gestural or physical prompts, or with hand-over-hand assistance during AAC device trials. Murrell conducted a communication evaluation in October 2023 that was not too remote in time from January 2023, but Student did not offer that assessment into evidence.

The reasonable inference from Student's failure to offer independent documentary or testimonial evidence of Student's ability to understand and be assessed in Korean is that Student cannot produce such evidence, as attempted or completed assessments that distinguished between Korean and English verbal instructions would show that Student did not respond to Korean any better than she responded to English. (See *Williamson v. Superior Court of Los Angeles County* (1978) 21 Cal.3d 829, 836, fn. 2 [If a party does not produce evidence that naturally would have been produced, he must take the risk that the trier of fact will infer, and properly so, that the evidence, had it been produced, would have been adverse].)

Student's only evidence of her ability to understand spoken Korean language is Parent's report. Murrell documented and repeated Parent's report but was not herself a Korean-language speaker. Student was represented by two law firms experienced in special education due process hearings, who knew Parent's statements were contrary to years of documented bilingual assessment data and the experience of educators and interpreters working with Student in the school setting. Yet Student did not offer into evidence any assessment results or data establishing Student's understanding of or ability to speak Korean conducted by a bilingual assessor or an assessor using a non-party Korean language interpreter. If Parent's statements were correct, such evidence should have been readily obtainable.

If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust. (Evid. Code, § 412; see also Judicial Council of California

Civil Jury Instructions 203, *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1537 (*Vallbona*) [the trier of fact may reasonably disbelieve a party's self-serving assertions].) Parent's uncorroborated statements that Student understood spoken Korean and could speak Korean were self-serving and not credible.

In summary, there was overwhelming evidence that in January 2023 Student did not understand Korean beyond simple one-step directions for home routines. Administration of her multidisciplinary assessment in Korean was not more likely to yield accurate results on Student's special education or related services needs than those obtained by testing her using English.

Even if Palo Alto committed a procedural violation by failing to assess Student in Korean, which it did not, a procedural violation does not deny a student a FAPE unless it impedes the student's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 (*Target Range*); see also *Park, supra*, 464 F.3d at p. 1033, fn. 3; *Rowley, supra*, 458 U.S. at pp. 206-207.)

Student did not prove her right to a FAPE was impeded or that she lost educational benefit because she was not assessed in Korean. Student did not offer into evidence any assessment or expert opinion to contradict the results obtained by Palo Alto's January 2023 multidisciplinary assessment in any area, which included

- cognitive and psychological processing,
- achievement,

- post-secondary transition,
- speech and language,
- fine and gross motor skills,
- Student's need for adapted physical education, and
- her physical and social, emotional, or behavioral functioning.

Student's speech language expert Murrell opined generally that the lack of a Korean interpreter could impact standardized testing, and an interpreter might allow more comprehensive receptive language results. However, Murrell did not herself assess Student's receptive language with an independent interpreter in April 2024, rather than relying on Parent's report. Even Murrell's May 2024 progress report, after working with Student for 16 months, presented results generally consistent with Palo Alto's January 2023 speech and language assessment. Murrell's October 2023 communication evaluation was not offered into evidence. Murrell's opinion that different results might have been obtained in January 2023 had Palo Alto assessed Student in Korean was speculative and unpersuasive.

Palo Alto's assessment of Student with observation, non-verbal test instruments, and parent ratings, rather than by testing in Korean, did not significantly impede Parents' opportunity to participate in the decisionmaking process regarding the provision of a FAPE to Student. Palo Alto obtained accurate and comprehensive information on Student's educational needs to inform the IEP team. Parents' input was documented in the January 2023 multidisciplinary report and discussed at the IEP team meetings during which the February 14, 2023 IEP was developed. Parents were integral participants in the January 2023 assessment and the development of Student's

educational program. (See *Capistrano Unified School Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1134 (*Capistrano*.) [school district heard the parents' concerns and just disagreed; it did not infringe on their opportunity to participate].)

Student argues that she does not need to show that assessment results would have been different if conducted in Korean, only that they might have led to different considerations, citing *Doug C.v. Hawaii Dept. of Education* (9th Cir. 2013) 720 F.3d 1038, 1047 (*Doug C.*) and *Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1125 (*Timothy O.*). These cases are very distinguishable.

First, *Timothy O.* involved a failure to comply with the IDEA's requirement that a school district assess in all areas of suspected disability. A primary language other than English is not a disability (see Cal. Code Regs., tit. 5, § 3030) and Palo Alto was not required to probe the extent of Student's understanding of Korean language. Secondly, the parents in *Timothy O.* proved the student had autism, a suspected disability that was not assessed by the school district and a violation of the IDEA. Student did not prove that Student had a suspected disability not assessed by Palo Alto, or that any of the assessment results on the impact of Student's disabilities on Student's access to education were inaccurate.

In *Doug C.*, the school district convened an IEP team meeting without the parent, which the United States Court of Appeals for the Ninth Circuit held was a procedural error that seriously infringed on the parent's opportunity to participate in making educational decisions for the student. Here, unlike the parent in *Doug C.*, both parents

attended the January 25, 2023 IEP team meeting at which the assessors presented the results of the January 2023 multidisciplinary assessment. They had an opportunity to express concerns, ask questions, and give their input on the assessment results.

Support for Student as an English language learner was discussed at the January 25 and February 14, 2023 IEP team meetings, which included Parents. As discussed in more detail at Issue 1c, the February 14, 2023 IEP team was well aware Student was learning English at the most basic level. The IEP team had members familiar with Students disabilities and the acquisition of a second language. An English language coordinator was present to address supports for Student's English language development. By January 25, 2023, Student was receiving the general education support of a primary language tutor from Palo Alto's English Learners department to support English instruction. Two of Student's annual goals expressly supported English language development standards. Several members of the IEP team had worked with Student and a Korean tutor. Student did not prove that any alternative educational strategies would have been considered had Student been additionally assessed in how she performed in response to Korean.

Student did not prove by a preponderance of the evidence that Palo Alto denied Student a FAPE during the 2022-2023 school year by failing to assess Student in her native language for the January 2023 multidisciplinary assessment.

Palo Alto prevailed on Issue 1a.

ISSUE 1b: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO REFLECT MEASURABLE BASELINES OR ACCURATE PRESENT LEVELS OF PERFORMANCE FOR GOALS OFFERED?

Student contends Palo Alto denied her a FAPE during the 2022-2023 school year by failing to include measurable baselines or accurate present levels of performance in Student's annual goals, in both the January 28, 2022 IEP in effect at the beginning of the 2022-2023 school year, and the February 14, 2023 IEP developed during the school year.

District contends Student's challenge to the January 28, 2022 IEP is beyond the statute of limitations, and that the annual goals in the February 14, 2023 IEP included measurable baselines and accurate present levels of performance.

THE STATUTE OF LIMITATIONS BARS JANUARY 28, 2022 IEP CLAIM

Student's claim that the January 28, 2022 IEP did not include measurable goals or accurate present levels of performance is barred by the two-year statute of limitations.

The adequacy of an IEP for a disabled student is measured at the time that it was created. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*); *Tracy N. v. Dept. of Educ., State of Hawaii* (D.Hawaii 2010) 715 F.Supp.2d 1093, 1112.) This evaluation standard is known as the "snapshot rule." (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 439 (*J.W.*).

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An IEP team meeting to review a student's IEP must be convened at least annually, unless:

- The student has been reassessed,
- The student demonstrates a lack of anticipated progress, or
- The parent or teacher requests an IEP team meeting. (Ed. Code, § 56343, subds. (a)-(d).)

Implementation of an educational program is an ongoing, dynamic activity. (*O'Toole v. Olathe Unified School Dist. No. 233* (10th Cir. 1998) 144 F.3d 692, 702.) However, a parent may not bring a due process claim challenging the appropriateness of an IEP that was created outside the statute of limitations, although the IEP document is in effect within the statute of limitations, as special education law does not recognize the doctrine of continuing violations as an exception to the two-year statute of limitations. (*E.F. v. Newport-Mesa Unified School Dist.* (C.D.Cal., June 23, 2015, No. SACV 14-00455-CJC(RNBx)) 2015 WL 3867982, *8, fn. 6)(*Newport-Mesa*).)

The statute of limitations in California on special education claims is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).)

In California, the discovery rule applies to IDEA claims and the limitations period begins to run when a parent has knowledge that a student's education is inadequate, not when the parent learns they have a cognizable legal claim. (*Hathaway v. Santa Barbara Unified School Dist.* (9th Cir. Feb. 14, 2025) 2025 WL 502487, at p. 2 [nonpub. opn.](*Hathaway*), citing *Avila v. Spokane School Dist. 81* (9th Cir. 2017) 852 F.3d 936, 944.) That is, the statute of limitations begins to run when a parent is aware of the underlying facts that would support a legal claim, not when the parent learns that the action was wrong. (*M.M. & E.M. v. Lafayette School Dist.* (N.D.Cal., Feb. 7, 2012,

Nos. CV 09– 4624, 10–04223 SI) 2012 WL 398773, *18, affd. in part and revd. in part on other grounds by *M.M. v. Lafayette School Dist., et al* (9th Cir. 2014) 767 F.3d 842, 859; *Miller v. San Mateo-Foster City Unified School Dist.* (N.D.Cal. 2004) 318 F.Supp 2d 85, 8611.)

The IDEA contains exceptions to the statute of limitations if the parent was prevented from filing a request for due process due to specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint, or if the school district withheld information from the parent that was required to be provided. (*Hathaway, supra*, at p. 2, citing 20 U.S.C. § 1415(f)(3)(D)(i) and (ii); Ed. Code, § 56505, subd. (1)(1), (2).)

Student contends Parent was not aware of the shortcomings of the January 28, 2022 IEP until Student failed to make appropriate progress on her annual goals during the 2022-2023 school year with the special education and related services offered in that IEP. However, Parent was well aware of the underlying facts on which Student now claims the January 28, 2022 IEP was not appropriate, both at the January 28, 2022 IEP team meeting and during the 2021-2022 school year.

Parents attended the January 28, 2022 IEP team meeting, which was interpreted into Korean for Parents. At the meeting, and memorialized in the IEP notes, Parent raised concerns about instruction in English:

Parent shared about progress at home and what Student can say to her in Korean. Parent wonders if it is harder for Student to communicate in English at school.

Parent signed that she understood and consented to implementation of the IEP on March 2, 2022, but on that same day sent a letter to speech-language pathologist Harris complaining that Student did not respond to pictures and could not match picture icons, and should have been working on the alphabet instead. On March 4, 2022, Parent sent Harris and AAC specialist Karen Natoci a copy of Stanford's AAC assessment in an attempt to have Palo Alto change Student's AAC device. In a letter to Palo Alto before the first day of the 2022-2023 school year, Parent detailed a list of bad experiences with Student's aides and toileting protocols from the prior school year. Accordingly, Parent had knowledge of the facts upon which Student contends her education was inadequate on January 28, 2022, and through the remainder of the 2021-2022 regular school year.

Parent knew or should have known from January 28, 2022, through the end of the 2021-2022 regular school year, the underlying facts that would support Student's legal claims against Palo Alto that the January 28, 2022 IEP denied her a FAPE. Student did not file her due process complaint until July 12, 2024, more than two years after Parent was aware of the underlying facts of the claim. Accordingly, the claim as to the appropriateness of the January 28, 2022 IEP is beyond the two-year statute of limitations.

Student did not allege misrepresentations by Palo Alto prevented Parents from bringing a timely claim regarding the adequacy of the January 28, 2022 IEP, or that Parents did not receive required information regarding the information in that IEP, as exceptions to application of the two-year statute to this claim. Accordingly, no exceptions to the statute of limitations at Education Code section 56505, subdivision (f) apply.

Student argues that under a recent United States Supreme Court case, OAH should no longer rely on cases that gave deference to agency regulations, as did *Newport-Mesa*, in refusing to recognize continuing violations as an additional exception to the statute of limitations in IDEA cases. (See *Loper Bright Enterprises v. Raimondo* (2024) 603 U.S. 369, 402 [144 S.Ct. 2244, 2267](*Loper*).) However, *Newport-Mesa* did not rely on the Code of Federal Regulations or the California Code of Regulations in finding the ALJ properly concluded there is no continuing violation exception to the statute of limitations. It cited to the United States Code itself as creating only two exceptions to the statute of limitations. (*Newport-Mesa, supra*, 2015 WL 3867982, at *12, fn.6.)

Student then clarifies she is not alleging a continuing violation but that a new violation accrues each day an inappropriate IEP is in effect. Student contends Palo Alto had an obligation to convene an amendment IEP to correct the shortcomings of the January 28, 2022 IEP every day it was in effect during the 2022-2023 school year, which is within the two-year statute of limitations.

Student's second argument is not supported by law. The Ninth Circuit expressly rejected the concept of asking whether an IEP was adequate in light of the student's progress and explained that an IEP should be evaluated on whether or not it was objectively reasonable at the time the IEP was drafted. (*J.W., supra*, 626 F.3d at p. 439, quoting *Adams, supra*, 195 F.3d, at 1149.)

Student contends that the January 28, 2022 IEP must be evaluated for appropriateness every day that it is in effect, creating new violations every day, through and until implementation of the next IEP on March 22, 2023. However, Palo Alto was only obligated to convene an annual review of Student's January 28, 2022 IEP by January 28, 2023, unless there was a reassessment, Parent or one of

Student's teachers requested a meeting, or Student failed to make anticipated progress. (20 U.S.C. § 1414(d)(4); Ed. Code, § 56343.) A claim that Student failed to make anticipated progress and Palo Alto was obligated to convene another IEP team meeting to address that lack of progress is a different claim from the one Student attempts to assert here, that the January 28, 2022 IEP was inappropriate.

Student's claim that she can revisit the appropriateness of the January 28, 2022 IEP based on her lack of progress during the 2022-2023 school year is precisely the type of progress-based review the Ninth Circuit barred in *J.W.* and *Adams*. Student's alleged lack of progress is also neither a specific misrepresentation by Palo Alto that it had resolved the problem forming the basis of Student's complaint, or the withholding of information by Palo Alto that was required to be provided to Parent and is not an exception to the statute of limitations. Student has failed to articulate any legal basis for tolling the statute of limitations for Student to raise claims regarding an IEP that was drafted more than two years prior to the filing of Student's complaint.

Student's line of reasoning also leads to impracticable results. If the IDEA or California law required a school district to convene an IEP team meeting every day to review whether a student was making anticipated progress, teachers and service providers would be in IEP team meetings every day for each of their students with IEPs. This begs the question of when teachers would teach, and when service providers would serve their students. It is illogical to impose such an obligation on a school district, or to find a procedural violation for each day an IEP is in effect without review of the student's progress.

Student may, and does at Issue 1h, claim that Palo Alto denied her a FAPE by failing to convene an IEP team meeting in response to a lack of expected progress. However, Student's claims regarding the appropriateness of the January 28, 2022 IEP at the time it was drafted remain time barred.

As a final point, Student contends that the ALJ improperly raised the statute of limitations on her own. This is incorrect, as Palo Alto raised the defense of the IDEA's statute of limitations in its July 22, 2024 response to Student's complaint. In addition, at least one federal court in California has held an ALJ may raise the statute of limitations in due process proceedings. (*Irvine Unified School Dist. V. A.G.* (C.D.Cal. Sept. 5, 2023, Case No. SA CV 22-cv-00197-DOC-JDE) 2023 WL 6787448, **7-8.)

Student's claim that the January 28, 2022 IEP did not reflect measurable baselines or accurate present levels of performance for goals is barred by the statute of limitations. Palo Alto prevailed on this portion of Student's Issue 1b.

In this matter, the statute of limitations bars all of Student's claims regarding the appropriateness of the January 28, 2022 IEP. Accordingly, the January 28, 2022 IEP is excluded from the analysis of Student's claims for Issues 1b, 1c, and 1d.

FEBRUARY 14, 2023 IEP TEAM MEETING

Palo Alto convened IEP team meetings on January 25 and February 14, 2023, to conduct the annual review of Student's educational program. Parents attended the January 25, 2023 meeting, with special education teacher McCarthy, school psychologist Fanciullo, speech-language pathologist Harris, and others. The same IEP team members attended the February 14, 2023 meeting, except only one parent was present, plus

physical therapist Jyoti Saboo, transition specialist Merna Khoury, and English language coordinator Kindel Launer from Palo Alto's English Learners department. Palo Alto provided a Korean interpreter at both meetings for Parents.

In this Decision, the IEP developed over two meetings will be called the February 14, 2023 IEP. Both IEP team meetings will be called the February 14, 2023 IEP team meeting unless there is a reason to differentiate them. The details of the February 14, 2023 IEP are discussed in the following sections "Issue 1b," "Issue 1c," and "Issue 1d." Parent consented to implementation of the February 14, 2023 IEP on March 22, 2023.

SUB-ISSUE 1b - FEBRUARY 2023 PRESENT LEVELS OF PERFORMANCE

Student contends the present levels of performance in the February 14, 2023 IEP should have incorporated her ability to respond to Korean language instruction, and her baselines should have been measured from her ability to perform in response to Korean. Palo Alto contends the present levels were accurate, and the baselines, in English, were appropriate and measurable.

Annual goals in an IEP are designed to enable the student to be involved, and make progress, in the general education curriculum. (20 USC § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320; Ed. Code, § 56345, subd. (a)(1).) For each area in which a special education student has an identified need resulting from their disability, the IEP team must develop measurable annual goals that are based upon the student's present levels of academic achievement and functional performance, and which the student has a reasonable

chance of attaining within a year. (*Ibid.*) The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. (Ed. Code, § 56345, subd. (a).)

The IEP must describe how the student's progress toward meeting the annual goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(III), see also 34 C.F.R. § 300.320(a)(3).) However, there is no specific form of measurement required by statute or caselaw. (*Capistrano, supra*, 21 F.4th at p. 1134.) Nor does the IDEA require a district to adopt the specific form of data collection preferred by the parent. (*Id.* at p. 1135.)

The IDEA requires goals to target a student's needs but does not require an IEP to contain every goal from which a student might benefit. (*Capistrano, supra*, 21 F.4th at p. 1133.) Moreover, a school district is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (Fed. Reg., *Appendix A, Part 300 – Assistance to States for the Education of Children with Disabilities* (1999) [discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C. § 1414(d)(1)(A)(i)(II)].)

The weight of the evidence established that the present levels of performance for each of the goals in the February 14, 2023 IEP were accurate.

The results of the January 2023 multidisciplinary and physical therapy reports were uncontradicted by any other assessments. These reports were attached to the February 14, 2023 IEP and provided detailed breakdowns of Student's present levels of performance in the areas of

- cognitive functioning,
- academics,

- social-emotional functioning,
- behavioral functioning,
- gross and fine motor skills,
- adapted physical education,
- vocational and transition skills,
- adaptive living skills,
- communication development, and
- general health.

The present levels of performance recited in the February 14, 2023 IEP were summaries of the assessment results, and included information from progress reports, service logs, and observations, which was the type of data deemed appropriate in *Capistrano*. The present levels of performance also frequently overlapped. For example, Student's level of functional academics indicated she was learning to use her AAC device to greet customers at the Futures Café, which related to her emerging vocational skills, as well as her communication development. The present levels of performance in the February 14, 2023 IEP, when combined, provided a full picture of Student's present levels of academic achievement and functional performance.

SUB-ISSUE 1b - COMMUNICATION DEVELOPMENT LEVELS AND BASELINES

Student's present levels of performance in communication development were prepared by speech-language pathologist Harris, who assessed Student in January 2023. Harris provided Student with speech services in the 2021-2022 and 2022-2023 school years and was very familiar with Student's communication development levels. During the 2022-2023 school year, Harris worked with Student 15 minutes per day, four days

per week, usually during brunch or lunch when Student was alert and highly motivated for food and drink. Harris appeared confident during her testimony about her work with Student, Student's performance, educational needs, and progress, and Harris's responses to questions in that area were detailed and credible.

Harris wrote the present levels of performance on Student's communication development using multiple sources of information. These included her measures of Student's speech and language during her work with Student on the January 28, 2022 communication goal to make choices from a field of two. They also included her data on Student's AAC device use, and the information from the January 2023 assessment.

The February 14, 2023 IEP communication present levels described Student as a multimodal communicator who expressed her wants and needs through

- gestures,
- facial expressions,
- body language,
- vocalization approximations, and her
- AAC device.

Student was highly motivated to make food and drink choices during speech sessions at mealtimes, and at those times was able to select her choice of an item from a field of two with over 90 percent accuracy, although Student performed with less accuracy outside of mealtimes. Student performed better with her AAC device when her 60-minutes-per-week of speech sessions were provided 15 minutes at a time, four times per week. Student exhibited receptive language skills when she was attentive and followed one-step routines, but Student required adult support to manage attention, sensory regulation, and the motor skills required for AAC device use.

Harris included a summary of the results of a March 2022 AAC assessment by Stanford's department of speech-language pathology in the multidisciplinary report. This informed the IEP team of why the AAC device recommended in the Stanford report had been adopted by Palo Alto and was the device Student used while working towards her communication goals.

Harris drafted the communication goals adopted by the IEP team. Goal 1 focused on receptive language. The baseline was that Student could choose between a field of two preferred items with greater than 90 percent accuracy, but when presented with more than two choices, Student's accuracy decreased. Goal 1 was for Student to use her AAC device, vocalizations, or gestures to communicate basic wants and needs from a field of three with minimal support, in four of five opportunities.

Goal 2 sought to increase communication in all areas of language. The baseline was that Student required support to identify functions and concrete information, such as basic greetings, emotions, and body parts. Goal 2 was for Student, from a field of two, to identify concrete items such as body parts, greetings, and feelings, in three of five opportunities with moderate support.

Goal 3 focused on articulation. As a baseline, Student was able to produce the word "go," but needed moderate to maximum assistance to approximate other one-syllable words. Goal 3 was for Student to articulate five single-syllable words to communicate her wants and needs, including hi, bye, go, stop, and juice, in four of five opportunities with an immediate model.

Harris opined that the present levels of performance were accurate, and progress could be measured from each goal's baseline. Progress on each communication goal was to be monitored by data collected by a speech-language pathologist.

Each goal in the February 14, 2023 IEP included three short-term objectives that identified incremental progress Student was anticipated to make over a 12-month period. Palo Alto divided each school year into quarters, and Parents would receive progress reports each quarter. Measurement of Student's progress against the short-term objectives would accurately track acquisition of the goal, regardless of minor alleged deficiencies in the baselines.

Student contends the communication goals should have been based on Student's performance in response to Korean instructions, and the baselines should have included Student's performance in response to Korean. However, Palo Alto was required to develop Student's English language abilities, not Student's ability to understand or speak Korean.

English language learners with disabilities, including English language learners with the most significant cognitive disabilities, must receive English language development instruction to enable the student to speak, listen, read, and write in English and meet challenging state standards. (*Letter to Dear Colleague* (U.S. Dept. of Justice and U.S. Dept. of Education, Jan. 7, 2015), pp. 26-27, citing 20 U.S.C. §§ 6823(b)(2), 6825(c)(1),(2), 6826(d)(4) (*Dear Colleague*).) Teaching Student to respond to or articulate words in Korean, with baselines in Korean, would not enable Student to meet any state speech and language standards, let alone enable her to speak, listen, read, or write in English.

Parents preferred Student speak in Korean, rather than English. Student's expert Murrell opined that because Parents were Student's primary caregivers and Student would need adult support throughout her life, it would be preferable for Student to learn to communicate with Parents in their primary language. Student learning to articulate in Korean was not an educational need, but Parents' preference.

The IDEA did not require Palo Alto to provide the educational program preferred by Parents. (See *Crofts v. Issaquah School District No. 411* (9th Cir. 2022) 22 F.4th 1048, 1056 (*Crofts*)). School districts are entitled to deference in deciding what programming is appropriate as a matter of educational policy. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 945, fn.5; see also *Rowley, supra*, 458 U.S. at p. 208.) Palo Alto was not required to write Student's communication present levels, or the baselines of Student's communication goals, to measure Student's progress in Korean because Parents preferred that type of data be collected. (*Capistrano, supra*, 21 F.4th at p. 135.) Communication Goals 1, 2, and 3 of the February 14, 2023 IEP appropriately measured Student's progress in English on English language development standards.

In January 2023, Student was developing the very beginnings of English language skills, learning the simplest of English words such as colors, body parts, and object names. Parent's frequent and often extensive correspondence with Palo Alto staff demonstrated that Parent read, wrote, and spoke English very well, if not quite fluently. Parent was capable of helping Student acquire elementary English language skills to advocate for herself at home, at school, and in the local community, but preferred not to do so. No part of the IDEA or its implementing regulations obligated Palo Alto to write Student's communication goals to measure Student's progress in responding to or speaking Korean because Parent chose not to support Student's acquisition of English communication skills in the home.

Student moved from her birthplace in Korea to a country that speaks English. One of Student's primary educational needs was to be able to communicate with the people around her. Student had to be able to greet people appropriately and tell them that she was happy or in pain or needed to go to the bathroom. She needed English language skills to get her wants and needs met at school and in a community that spoke

English. Present levels of performance or baselines measuring Student's progress in understanding and responding to Korean would have been inappropriate, as well as failed to contribute to a FAPE that met state educational standards. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.)

The weight of the evidence did not show that Student's February 14, 2023 communication present levels of performance were inaccurate, or that the baselines for the communication goals were not measurable.

SUB-ISSUE 1b - 2023 FUNCTIONAL ACADEMICS LEVELS AND BASELINES

Student's functional academic skills were summarized in the February 14, 2023 IEP by her special education teacher McCarthy, in collaboration with Student's general education art teacher and Jordan French, Student's academic enhancement period teacher. McCarthy had assessed Student's academic achievement and ability to communicate basic information as part of the January 2023 multidisciplinary assessment.

In the Futures Café, where Futures students provided coffee and snacks to faculty and staff, Student was learning to press keys on her AAC device to greet or say goodbye to customers, and she looked in their direction 50 percent of the time. Student was generally late to art class in the mornings, and often sad and dysregulated. But once seated, Student seemed to enjoy dipping a brush in paint and painting with adult support, although she attempted to eat the brush if allowed to paint independently and

pushed the paint to the floor if frustrated. Student enjoyed being outside to deliver mail from the front office to various teachers but needed the support of two adults and frequent redirection to accomplish the task.

McCarthy drafted functional academics Goal 4 to promote independent living. The baseline was that Student could not identify images of important people on her AAC device. Goal 4 was for Student, on her AAC device, to identify important people such as her mother, father, teacher, and classmates with no more than three prompts, as measured by staff observation and data collection.

Goal 5 was a functional academics goal that benefitted Student's English language development as well as independent living skills. The baseline was that Student, depending on her attention, needed six to eight prompts to make a choice. Goal 5 was for Student, given two visual options, to make a choice with no more than two prompts, as measured by staff observation and data collection.

Student argues in her closing brief that it was presumably only on the AAC device that Student could not identify Parents, and that should have been specified. However, the goal was expressly to increase AAC device use, and the baseline was accurate and appropriate.

Student also contends that the baseline for Goal 4 should have been taken after Student's mid-tech AAC device was upgraded to a high-tech device. However, Palo Alto's AAC specialist for the 2021-2022 and part of the 2022-2023 school years, Natoci, testified consistent with her service logs that Student began using a high-tech, speech-generating Tobii Dynavox with TD Snap in March 2022, after Palo Alto received the Stanford AAC report. Harris also recalled Student transitioned from a mid-tech to

high-tech AAC device in spring 2022. The Tobii Dynavox with TD Snap was functionally the same as an iPad with TD Snap, which Palo Alto purchased in spring 2023 after the February 14, 2023 IEP. There was no reason to reassess Student for present levels of performance on her AAC device, or recalculate functional academic baselines, when Student was issued a school-based iPad with the TD Snap software later in the 2022-2023 school year.

Even had the devices varied, there was no evidence that Student's ability to identify important people on her new AAC device was any different than it had been when using her old AAC device. Therefore nothing warranted a modified baseline for Goal 4.

Student contends that the baseline for Goal 4 was not measurable because it did not specify whether the question or direction to make a choice would be asked in Korean or English. However, as discussed above, Student's educational program was based on English language acquisition standards and required the question in English. Student's contention also assumes incorrectly that because Student may have identified her mother with the Korean word for mother, "oma," Student did not need to learn to identify her mother as "mother" or "mom" in English.

Student contends Goal 5's baseline was not measurable because it did not specify the items Student would be choosing. Student cites no law or regulation requiring a goal to be so specific. As the school year progressed, Student was expected to learn to identify new functional and concrete items such as body parts, greetings, feelings, and important people, which could be incorporated into her choices. More importantly, Goal 5 focused on Student's ability to respond more independently with fewer prompts, regardless of the visual options presented.

The weight of the evidence did not show that Student's February 14, 2023 functional academics present levels of performance were inaccurate, or that the baselines for the functional academics goals were not measurable.

SUB-ISSUE 1b - 2023 ADAPTIVE AND DAILY LIVING SKILLS PRESENT LEVELS AND BASELINES

McCarthy prepared and summarized Student's present levels of adaptive and daily living skills in the February 14, 2023 IEP. Student needed two aides for stability but was becoming stronger and more stable at walking. Student enjoyed pulling things off the wall and dropping things to the floor but was easily redirected to pick them back up. Student needed maximum support to eat and drink, and to go to the bathroom. At lunch Student often dropped food but fed herself small pieces and ate food presented to her with a fork. Student was learning to stabilize a tray on a table.

Proposed annual Goal 6 impacted independent living with a baseline that Student responded to a speaker in English only with maximal prompting and after more than 45 seconds. Self-care/independent living Goal 6 was for Student to respond to a speaker within 30 seconds with, for example, eye contact or a wave, as measured by staff observation and data collection.

Student contends the present levels of performance should have included Student's response time for a Korean speaker. However, Palo Alto was required to write goals that complied with state curriculum standards directed at English language proficiency. Whether Student responded faster, at the same rate, or slower to a Korean speaker was an irrelevant metric and not required to be in Student's present levels of performance in the area of self-care and daily living.

The weight of the evidence did not show that Student's February 14, 2023 self-care and daily living skills present levels of performance were inaccurate, or that the baseline for the self-care and daily living skills goal was not measurable.

SUB-ISSUE 1b - 2023 MOTOR SKILLS PRESENT LEVELS AND BASELINES

Student's present levels of gross motor skills stated in the February 14, 2023 IEP were that Student, with encouragement, walked independently for up to 100 yards in her physical education class. Student did better with ball activities when she had peers as models and received lots of verbal encouragement. When performing fine motor skills, Student's challenges with limb control and object manipulation, coupled with low muscle tone, made it difficult for her to engage in fine motor tasks and self-care. Student required physical assistance to initiate and complete activities, and supervision due to lack of safety awareness and coordination, including mouthing of nonfood items. With opportunities and supports, Student was increasing participation in fine motor self-care activities such as feeding herself, and classroom art projects.

The baseline for gross and fine motor skills Goal 7 was that Student could receive a ball using two hands if she was looking at the ball. Goal 7 was for Student to catch a bounced ball thrown from five feet away and drop the ball into a basket next to her with up to four verbal and physical assists, in four of five trials as measured by teacher recorded data.

The baseline for fine motor skills Goal 8 was that Student could open her lunch box and take out containers, open a snack container, put the snack container back in her lunchbox with verbal and gestural prompts and moderate to maximum assistance. Goal

8 was for Student to set up or clean up to two to three items during Futures Café or another designated job, given verbal, gestural, and minimal physical assistance in four of five opportunities. Goal 8 was to be monitored by data collected by Student's occupational therapist and special education teacher.

Student contends it was not clear that Goal 7 was an ambitious bump in skill level due to a vague performance level. However, the baseline acknowledged that Student could catch a ball and Goal 7 required Student to catch the ball and then manipulate it to drop it into a basket. The ambitiousness of this goal was subsequently demonstrated at the February 2024 IEP team meeting when the adapted physical education teacher explained that working on this goal not only improved Student's coordination, it increased muscle tone in Student's upper body because the basket was raised and Student had to reach to put the ball in the basket, which she enjoyed doing.

Student contends her present levels of performance and baselines for Goal 8 should have included measurements of how well Student responded to fine motor tasks after directions in Korean. However, as previously discussed, there was no persuasive evidence that Student responded to directions in Korean any better than she responded to directions in English, and substantial evidence that Student did not respond to directions in either Korean or English without repeated prompting and modeling.

Goal 8 addressed Student's need to learn vocational skills for a job in the campus-based Futures Café or a possible volunteer job with one of Palo Alto's community business partners. A job required Student to interact with and take direction from job supervisors, coworkers, and customers who spoke English. Performance levels and baselines in Korean were not necessary or appropriate for motor skills Goal 8.

The weight of the evidence did not show that Student's February 14, 2023 motor skills present levels of performance were inaccurate, or that the baselines for the motor skills goals were not measurable.

SUB-ISSUE 1b - 2023 OTHER PRESENT LEVELS OF PERFORMANCE

The present levels of performance in the February 14, 2023 IEP included social, emotional, and behavioral summaries. Student was happy to be at school. Student was a bit sad to leave her mother in the morning but adjusted well once she was in class with peers and staff. Student was working on not pushing table items to the ground and not putting them in her mouth.

Vocationally, Student enjoyed walking and exploring the school campus and riding her adapted tricycle. Student was involved in community-based instruction, performing services on and around the campus, including the Futures Café, distributing mail, and delivery service. Student was learning to get onto a bus, follow directions, and recognize community signs. Student required maximum adult support with these activities at all times.

Student's health was fair, but she had

- muscle and skeletal problems,
- poor coordination,
- frequent stomach aches,
- unspecified allergies,
- a history of high fevers, and
- mental health concerns.

Parent reported Student had pain when urinating, and Student was receiving three to four doses of laxatives each day. Student ate edible and inedible items and was at risk of choking. Student needed to have a catheter inserted into her urinary tract to relieve pressure in her bladder if she did not urinate on her own within a six-hour interval. She had a health plan for this. Student passed her hearing screening. Student's vision screening indicated possible myopia and astigmatism, but Parent represented she could not have Student's vision tested due to the optometrist's inability to conduct a test with Student.

Student did not contend, let alone prove by a preponderance of the evidence, that Student's February 14, 2023 social-emotional, behavioral, vocational, or health present levels of performance were inaccurate.

In summary, Student did not prove by a preponderance of the evidence that Palo Alto denied Student a FAPE by failing to reflect measurable baselines or accurate present levels of performance for any goals offered.

Palo Alto prevailed on Issue 1b.

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ISSUE 1c: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE GOALS IN THE FOLLOWING AREAS: ENGLISH LANGUAGE DEVELOPMENT, SPEECH AND AUGMENTATIVE AND ALTERNATIVE COMMUNICATION, FUNCTIONAL ACADEMICS, BEHAVIOR, AND TRANSITION?

Student contends Palo Alto denied her a FAPE by failing to include annual goals for English language development, behavior, and transition in Student's February 14, 2023 IEP, and that the annual goals for communication and functional academics were inappropriate. Palo Alto contends it wrote appropriate goals and was not required to write additional goals.

SUB-ISSUE 1c - 2023 NO ENGLISH LANGUAGE DEVELOPMENT GOAL

Student contends she needed an English language development goal because, due to her language disorder and language differences, Student did not understand English and could not speak English words. Student also contends she should have been instructed in Korean for better performance. District contends that an English language development goal was not necessary because Student's English language development needs were supported by her other goals, and by general education English Learner supports.

Having a primary language other than English is not a disability. (See 20 U.S.C. § 1401(3)(i); Ed. Code, § 56026, subds. (a) & (e); Cal. Code Regs., tit. 5, § 3030.)

The fact that a student with a disability is an English language learner does not automatically require the student's IEP team to insert language development goals into the IEP. (*Letter to Boals* (U.S. Dept. of Education, Office of Special Education Programs (OSEP) November 15, 2021) 21-03, p. 2 [80 IDELR 24] (*Letter to Boals*).)

Whether a student's IEP needs to include a language development goal for the student to be involved in and make progress in the general education curriculum is a determination that must be made on an individual basis by the student's IEP team in light of the particular disability-related needs of the student. (*Letter to Boals, supra*, at pp. 2-3.) The IEP team should include participants who have the requisite knowledge or special expertise regarding the student's language needs, such as people with expertise in second language acquisition and speech-language pathologists, who understand how to differentiate between limited English proficiency and a disability. (*Id.*, at p. 3) An IEP team with appropriate members should ensure informed decisions about the content of an English language learner's IEP. (*Id.*, at p.3; 34 C.F.R. § 300.321(a)(6).)

Palo Alto's English language coordinator Launer attended Student's February 14, 2023 IEP team meeting. Prior to the IEP team meeting, Launer coordinated with Student's special education teacher and case manager McCarthy to ensure that the goals proposed by McCarthy would include support for California's English language development curriculum standards.

Launer was a credentialed general education teacher and English language acquisition specialist in Palo Alto's English Learner department. Launer had a calm and professional demeanor at hearing and gave detailed and informative responses to questioning. She explained that special education case managers proposed goals based on a student's educational and disability-related needs, and it was her responsibility to

ensure the proposed goals were grounded in English language development standards and promoted the student's English language development. Launer was familiar with Student from observations of Student in the classroom and on campus during the 2022-2023 school year and from working with McCarthy on Student's goals.

Launer opined that by linking Student's goals to English language development standards, work on Student's goals would coincide with an understanding of and ability to communicate in English. In addition, Student would receive support from the English Learner's department in the form of a primary language interpreter.

The English Learners department supported many English language learners, whether disabled or not, with primary language tutors. Primary language tutors were particularly helpful when, for example, a student was confused because their primary language and English used different sentence structures or verb-noun agreement. Primary language tutors did not support primary language development.

Launer explained that Student was an English language learner working on receptive and expressive language skills due to language-based disabilities of intellectual disability and autism. At the February 14, 2023 IEP team meeting, Launer discussed with the IEP team how Student's proposed communication goals to identify common objects, communicate her wants and needs, and articulate words aligned with English language development curriculum standards, as did the independent living goal to respond to a speaker within 30 seconds.

Student's February 14, 2023 IEP expressly identified Student's functional academics goal to choose between identified options, and the self-help/independent living goal to respond to a speaker within 30 seconds, as supporting English language development in California's curriculum standards. The IDEA did not require Palo Alto to

include separate English language development goals to support Student's English language development that was already addressed by other goals. (See *Capistrano, supra*, 21 F.4th at p. 1133.)

The February 14, 2023 IEP team included team members with the necessary expertise in accordance with the U.S. Department of Education's IDEA guidance in *Letter to Boals*. Special education teacher McCarthy and speech-language pathologist Harris had knowledge and expertise in Student's disability-related language needs. Launer had special expertise in the acquisition of English as a second language, and in English language development standards and curriculum. McCarthy, Harris, and Launer understood how to differentiate between limited English proficiency and Student's disabilities and discussed Student's English language development with the February 14, 2023 IEP team.

The February 14, 2023 IEP team made an informed determination that Student did not need a separate English language development goal. Launer's testimony was compelling and convincing that the IEP team correctly determined Student did not require a separate English language development goal because the existing annual goals offered in the February 14, 2023 IEP appropriately addressed Student's English language development needs.

Student's English language proficiency scores were consistently in the lowest range. Palo Alto did not dispute that Student's English language development was extremely slow and there was not significant movement in her English proficiency scores. At hearing, Student's school-based speech-language pathologist during the 2023-2024 school year, Sophia Lo, as well as Harris and Fanciullo, persuasively explained that Student's severe cognitive and communication deficits had a profound effect on

Student's ability to comprehend, acquire, and use language. Even after 17 years of exposure to Korean language in South Korea and at home, Student did not respond to more than a few simple and routine Korean words. Student's slow and incremental progress in responding to, speaking, and using multimodal means to communicate in English was to be anticipated, and was appropriate in light of her circumstances. Student's limited vocabulary of English words did not need to be addressed by a separate English language development goal.

Student argues in her closing brief that the functional academics goal to choose between two visual options, and the self-care/independent living goal to respond to a speaker in 30 seconds, did not have English components and did not support English language development. However, the functional academics goal contained a prompting element and would require naming the item, both of which would be in English. The self-care/independent living goal required Student to respond to a speaker, who would be speaking English in a school-based program. Both goals supported English vocabulary development.

Student's contention that her goals should have included instruction in Korean was not supported by the evidence. Student did not perform better in response to Korean than English. Even if she had, increasing Student's reliance on communication in Korean rather than English would limit rather than expand Student's ability to communicate basic wants and needs at school, at work, and in the community. The goals requested by

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Student would widen language barriers and isolate Student, in contravention of the IDEA's purpose of promoting independence in individuals with disabilities. (See 20 U.S.C. § 1400(d)(1); Ed. Code, § 56000, subd. (a).)

The weight of the evidence did not establish that Palo Alto was required to offer an English language development goal in the February 14, 2023 IEP.

SUB-ISSUE 1c - 2023 SPEECH AND AAC GOALS

Student contends that the February 14, 2023 speech and AAC goals were not ambitious, and that the articulation goal was more reachable in Korean. Palo Alto disagrees. In her closing brief Student argues that the goals should have identified a specific model of high-tech AAC device. Palo Alto contends the communication goals were appropriate and supported use of Student's AAC device.

The February 14, 2023 IEP contained three annual goals in communication, and except for the articulation goal, recognized that Student was a multi-modal communicator and could respond with gestures, vocalizations, or her AAC device. Goal 1 was for Student to communicate her wants and needs from a field of three options with minimal support in four of five opportunities. Goal 2 was for Student to identify concrete common objects, such as body parts, feelings, and greetings given a field of two. Goal 3 was for Student to articulate five one-syllable words to communicate her needs, specifically hi, bye, go, stop, and juice.

Student's February 14, 2023 goals were suitably ambitious. Goal 1 for Student to communicate wants and needs from a field of three was a step up from Student's fairly successful ability to choose from a field of two when motivated. Goal 2 for

Student to learn common object names and greetings was designed to make Student's communication more interactive. Goal 3 aimed to increase Student's verbal speech, which Parent indicated had regressed during the COVID-19 pandemic school closures. Parent stated increasing Student's verbal output was a priority, to give Student the ability to communicate basic wants and needs without an AAC device.

In her closing brief, Student argues that she already knew common names and greetings and could say a dozen words in Korean. However, the evidence in support of that argument is Parent's unsubstantiated report to Stanford, which remarked in its March 2022 report that only Parent could understand Student's verbal approximations. It recommended an AAC device in part because Student had poor speech intelligibility secondary to severe spastic dysarthria, which presented as imprecise rate of speech, slow rate of speech, strained vocal quality, and difficulty coordinating respiration with phonation for sustained speaking. Student's evidence fell far short of establishing that the February 14, 2023 communication goals were unambitious because Student had the communication skills targeted by those goals.

The first two communication goals were supported with Student's AAC device. Greeting and farewell keys on the AAC device supported Student's social language and vocational work as a greeter at the Futures Café, and additional keys could be programmed into the AAC device to support the identification of common objects and choice-making. Student was a multimodal communicator, and although Parent preferred Student work only with an iPad, the Tobii Dynavox was the high-tech communication device recommended by Stanford and used by Student at Palo Alto,

along with a variety of mid-tech and low-tech devices. Specifying a particular AAC device would limit Student's communication modes and was not required or appropriate.

Student's February 14, 2023 communication goals appropriately addressed Student's receptive, expressive, and pragmatic language needs, her articulation needs, and her ability to communicate through multiple modes including an AAC device. Student did not question her speech language and AAC expert Murrell about the February 14, 2023 IEP goals, and no witness contradicted Harris's opinion that the communication goals met Student's communication needs in February 2023 and were appropriately supported by Student's use of an AAC device.

Student's articulation goal did not need to include Korean words. Again, Palo Alto was obligated by federal law to develop Student's English language proficiency, not her ability to speak in Korean. Student's contention that her intellectual disability, autism-related communication deficits, and spastic dysarthria somehow affected her ability to learn or articulate in English more than her ability to learn or articulate in Korean was fundamentally illogical and was not supported by any expert opinion.

Student's closing brief seemed to suggest that if Parent could understand a vocal approximation by Student, Palo Alto should have offered a speech goal that increased Student's vocabulary rather than her intelligibility. In such a case, Student would be

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developing the equivalent of a “secret” language with Parent, that neither increased her ability to communicate with peers and adults in her community nor supported independent living skills. Such a communication goal was not required.

The weight of the evidence did not establish that Palo Alto denied Student a FAPE by failing to offer appropriate speech and language and AAC goals.

SUB-ISSUE 1c - 2023 FUNCTIONAL ACADEMICS GOALS

Student contends the February 14, 2023 IEP did not offer adequate or ambitious functional academics goals for Student to make meaningful academic progress. Palo Alto contends that the functional academics goals appropriately addressed Student’s functional academic needs.

The February 14, 2023 IEP contained two functional academics goals. Goal 4 was for Student to identify from images on her AAC device important people in her life with no more than three prompts, and Goal 5 was for Student to make a choice from a field of two options with no more than two prompts.

School psychologist Fanciullo assessed Student’s cognitive and psychological processing for the January 2023 multidisciplinary assessment and presented her findings to the February 14, 2023 IEP team. Fanciullo consulted and collaborated with McCarthy in the Futures classroom during the 2022-2023 school year and was familiar with Student. Fanciullo was not a credentialed special education teacher, but she had 21 years of experience assessing adaptive behaviors consisting of practical and functional skills, which included functional academic skills. Fanciullo testified knowledgeably and in detail regarding Student’s problem-solving and thinking abilities, how well Student

understood and reasoned with both visual and verbal information, and Student's social, emotional, and behavioral functioning in January 2023. Her opinions of Student's ability to access her education, including functional academics, were given significant weight. They were uncontradicted by another psychologist, special education teacher, or psychoeducational assessment.

Fanciullo opined that functional daily living skills were Student's greatest area of need. Student's functional academics goals, including Goal 4 to identify important people and Goal 5 to choose between two options, taught important functional skills that addressed Student's academic needs at her developmental level. Student's functional academics goals not only taught Student basic academic concepts like identifying people and distinguishing between items or options, but important skills from many areas of learning like responding to prompts, interacting and engaging with others, and attention to task. Fanciullo opined that Student's functional academic goals, combined with her other annual goals and the functional academics embedded in the Futures curriculum, met all of Student's daily living skills needs, including her functional academic needs.

Student's February 14, 2023 functional academics goals were appropriately ambitious. As discussed at Issue 1b, Goals 4 and 5 built on Student's earlier gains and met the *Andrew F.* standard of being reasonably calculated to ensure Student made progress appropriate to her circumstances.

The weight of the evidence did not establish that Palo Alto denied Student a FAPE by failing to offer appropriate functional academics goals.

SUB-ISSUE 1c - 2023 NO BEHAVIOR GOAL

Student contends she left her seat to avoid functional academics because she could not sit and attend, and therefore required a behavior goal. Palo Alto contends Student did not get out of her seat to avoid instruction and all of her annual goals and the Futures program addressed Student's attention needs without a separate behavior goal.

Student's present levels of performance in behavior indicated Student was generally happy at school, adjusted well to the classroom, enjoyed watching her peers, and enjoyed being around staff and other students. The only maladaptive behavior noted was Student pushing items from her table onto the ground, which staff was already working on by having Student pick the items up. Student had difficulty participating in many academic activities, but she enjoyed listening to and observing what other students were doing.

Student did not need a separate behavior goal to address attention. Multiple service providers, teachers, and staff who worked with Student prior to February 14, 2023, testified that Student was easily redirected with verbal or gestural prompts if she lost focus on a task. Student's dual diagnoses of intellectual disability and autism resulted in difficulty engaging in joint attention and attending to instruction, but both were appropriately addressed by giving Student breaks to regulate herself and redirection. Breaks and redirection were already part of Student's schedule and the Futures curriculum. The February 14, 2023 annual goals requiring Student to respond in less time, or perform certain actions with less prompts, addressed Student's attention

needs. There was no persuasive evidence that Student got out of her seat to avoid instruction or exhibited maladaptive behavior that required more than moderate prompting to begin or re-engage in a nonpreferred activity.

There were several reasons Student took frequent walks and was out of her seat that did not involve maladaptive behaviors and did not warrant a behavior goal. Student needed movement breaks for relief of the discomfort of sitting or sustaining fine motor skills such as tracing shapes and pressing the icons on her AAC device. Student's school-based physical therapist Saboo consulted with Student's teachers on Student's physical needs during the 2021-2022 and 2022-2023 school years. Saboo was an extremely well-qualified physical therapist and opined persuasively and convincingly that symptoms of Student's disabilities, such as lack of endurance, inability to sit in a chair without slumping, and inability to sustain fine and gross motor movements without deteriorating, adversely impacted Student's ability to attend and Student therefore required frequent movement breaks.

Similarly, Student had two motor skills goals, for coordination and to acquire vocational skills. Saboo opined that walking breaks, which Student loved, increased Student's endurance for motor skills as well as Student's ability to attend.

Last, and most importantly, Student was medically required to get up frequently and walk. Parent informed Palo Alto that Student had pain from urinary tract infections and constipation and had to drink water and walk frequently to encourage urination and voiding. If Student did not urinate every four to six hours, Student's bladder would stretch out of shape and take six months of medical treatment to return to normal functioning.

Parent supplied a doctor's letter and Palo Alto created a health plan in May 2022 that required school staff to ensure that Student drank measured amounts of fluids during the school day and did not go more than six hours between urinations. During the 2022-2023 school year, Parent emailed McCarthy every morning with the time of Student's last urination. Staff logged Student's fluid intake and urination or voiding, and at Parent's request called her to pick up Student if Student had not urinated for four hours so Parent could perform catheterization at home. Parent stressed that frequent walks encouraged Student to spontaneously urinate and avoided significant medical intervention, and Student walked regularly for that reason.

Parent taught Student to make a "shh" sound, which she told staff meant that Student needed to urinate or had just urinated. Student made the "shh" sound often and her two aides responded by taking Student to the bathroom to urinate or to change Student's diaper. Student was also scheduled for regular bathroom breaks, whether she made the "shh" sound or not. Student's diaper needed to be changed two to three times each day. Parent did not consent to Student participating in off-campus community-based outings with her Futures classroom unless Student had urinated first. Student was frequently out of the classroom to use the bathroom.

In summary, Student was frequently up and walking as appropriate breaks from her difficulty sustaining joint attention, the discomforts of maintaining posture and fine motor movements, to work on endurance for gross motor skills, as a medical necessity, and as part of her toileting schedule. Student was easily redirected to attend to nonpreferred tasks. The evidence did not establish that in February 2023 Student's

walking breaks were a maladaptive behavior to escape functional academic instruction, or that Student required a behavioral goal to reduce the number of Student's walking breaks.

The weight of the evidence did not establish that Palo Alto denied Student a FAPE by failing to offer an appropriate behavior goal.

SUB-ISSUE 1c - 2023 NO TRANSITION GOAL

Student contends she had transition needs in February 2023 that should have been addressed by one or more annual transition goals. Parents wanted Student to do volunteer work at the Veterans Administration hospital, called the VA hospital, and Student contends she needed a goal to specifically address any skill gap needed for that position. Palo Alto contends Student's transition needs were addressed by her post-secondary transition plan and the hours of daily vocational activities embedded in the Futures curriculum.

The IDEA defines transition services as a coordinated set of activities for a student with a disability that:

- Is designed as a results-oriented process focused on improving the academic and functional achievement of the student to facilitate the student's movement from school to post-school activities, including
 - post-secondary education,
 - vocational education,
 - integrated or supported employment,
 - continuing and adult education,

- adult services,
- independent living, or
- community participation,
- Is based on the individual student's needs, accounting for the student's strengths, preferences, and interests,
- Includes
 - instruction,
 - related services,
 - community experiences,
 - the development of employment and other post-school adult living objectives, and, if appropriate,
 - acquisition of daily living skills and provision of a functional vocational evaluation.

(20 U.S.C. § 1401(34); 34 C.F.R. § 300.43; see also Ed. Code, § 56345.1, subd. (a).)

A transition plan is a set of activities created to help the disabled student move from school to post-secondary activities. (20 U.S.C. § 1414(d)(1)(A)(VIII); 34 C.F.R. § 300.43; Ed. Code, § 56345.1, subd. (a).) Transition services may, but are not required to, be special education or related services, and the IDEA does not require a student's transition plan to dictate her IEP goals. (34 C.F.R. § 300.43(b), see also Ed. Code, § 56345.1, subd. (b).)

The February 14, 2023 IEP contained a post-secondary transition plan with three goals of its own. Transition plan Goal 1 was for Student to attend an adult day program after completing high school. Transition plan Goal 2 was for Student to obtain volunteer work experience. Transition plan Goal 3 was for Student to live with Parents.

To support these goals, Student would go on weekly community outings where Student could prepare for the transition to an adult day program, attend two periods daily of vocational training to gain work experience, and work on daily living skills that would help her access the community and be more independent.

Palo Alto's transition specialist Khoury worked with McCarthy to draft transition goals based on Student's needs and accounting for Student's strengths and interests. Khoury was not a credentialed teacher and did not work with students directly on their transition goals, but consulted with their special education teachers who did work with the students on goals. Khoury was the liaison with employers who offered work experience to Futures and post-secondary students and was responsible for job placement.

Student argues in her closing brief that it is unclear how these goals were developed. However, Khoury attended the February 14, 2023 IEP team meeting and credibly testified that the IEP team discussed the transition plan with Parent input. At hearing, Khoury was not asked to, and did not, offer an opinion on whether the goals in the transition plan were appropriate. However, she helped McCarthy draft them and testified persuasively that the transition goals were consistent with the Futures program's focus on preparing students with severe disabilities for movement from school to post-school activities.

No other transition expert testified. Khoury's testimony did not establish that Student's transition plan goals for post-secondary education and training, employment, and independent living transition goals were not appropriate or comprehensive, or that additional IEP goals were required to address Student's transition needs.

As discussed in section “Issue 1d,” below, Palo Alto was not required to provide Student with the volunteer work opportunity Parents preferred. Student cites no authority for her contention that Palo Alto was obligated to offer her a goal to acquire the skills for a particular job opportunity requested by Parents.

The weight of the evidence did not establish that Palo Alto denied Student a FAPE during the 2022-2023 school year by failing to offer appropriate goals in transition.

In summary as to Issue 1c, Student did not prove by a preponderance of the evidence that Palo Alto denied her a FAPE during the 2022-2023 school year by failing to offer appropriate goals in the areas of English language development, speech and AAC, functional academics, behavior, and transition.

Palo Alto prevailed on Issue 1c.

ISSUE 1d: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE SERVICES IN THE FOLLOWING AREAS: ENGLISH LANGUAGE DEVELOPMENT, SPEECH AND ALTERNATIVE COMMUNICATION, FUNCTIONAL ACADEMICS, AND TRANSITION?

Student contends Palo Alto denied her a FAPE by failing to offer English language development services, specifically a Korean language interpreter, as a related service to access her education. She also contends Palo Alto failed to offer sufficient speech and AAC, functional academics, or transition services. Palo Alto contends it offered Student appropriate special education and related services.

SUB-ISSUE 1d - ENGLISH LANGUAGE DEVELOPMENT SERVICES OFFER

Student contends Palo Alto should have offered her Korean language interpretation as a related service, with the specified frequency and duration required of a related service. Palo Alto contends that a Korean interpreter was not needed for Student to make progress on any of her goals, and general education supports from the English Learners department were not required to be offered with the specificity of related services.

An IEP must contain a statement of the special education and related services that are to be provided to the student with the date they are to begin and the anticipated frequency, location, and duration of those services. (20 U.S.C. §§ 1414(d)(1)(A)(IV), (VII); Ed. Code, § 56345, subd. (a)(4).) Related services may include interpreting services. (20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34(a); Ed. Code, § 56363, subd. (b)(17).)

Federal statutes require states to ensure that English language learners with disabilities receive appropriate accommodations on state assessments. (20 U.S.C. § 6311(b)(2)(B)(vii); 34 C.F.R. § 200.6(h)(4).) But there is no IDEA requirement that an IEP team do more than consider the student's language needs as those needs relate to the IEP. (*Letter to Boals, supra*; 34 C.F.R. § 300.324(a)(2)(ii).)

If a student has limited English proficiency, the IEP team must consider the language needs of the student as those needs relate to the IEP. (Ed. Code, § 56341.1, subd. (b)(2).) The IEP must include linguistically appropriate programs and services for individuals whose native language is other than English. (Ed. Code, § 56345(b)(2).)

As discussed in section "Issue 1b" and section "Issue 1c," the February 14, 2023 IEP team considered Student's English language development needs and offered Student appropriate goals to meet those needs. Functional academics Goal 5 to choose between two options, and self-care/independent living Goal 6 to respond to a speaker within 30 seconds, expressly supported Student's English language development, as did all of Student's goals requiring her to identify items, or to comprehend and respond to verbal directions. The February 14, 2023 IEP team included members with specialized expertise in

- English language development,
- English language development standards,
- acquisition of English as a second language,
- Student's disabilities and disability-related needs, and
- how to distinguish between limited English proficiency and a disability.

The February 14, 2023 IEP team determined Student was in a linguistically appropriate program, and offered Student 1,350 minutes of specialized academic instruction, 300 minutes of AAC consultation per year, and 60 minutes per week of individual speech services, pushed-into the classroom or pulled-out to a separate speech room to support Student's goals and English language development. The IEP team determined that Student did not need English language development, as English instruction into Korean or in any other form, as a related service.

Student was still in the earliest stages of communication development in February 2023, and there was overwhelming evidence that Student did not understand or respond to her primary language of Korean any better than she understood or

responded to English. Student did not need specialized academic instruction in Korean, or interpretation of instruction as a related service, to advance appropriately, to attain her annual goals, or to be involved in or make progress in the core curriculum.

Student's speech and AAC expert Murrell notably testified that exposure to multiple languages could be confusing to students and make learning more difficult. In particular, presenting a student with a different vocabulary set across various settings could cause delays in independent learning. Here, where Student's cognitive impairments and communication deficits already made language development extremely slow and difficult, the weight of the evidence did not demonstrate that interpretation of Student's emerging English language vocabulary into Korean would improve her English language development. To the contrary, instruction in both Korean and English was likely to adversely impact Student's communication development in general, and her English language development in particular.

At the beginning of the 2022-2023 school year, Palo Alto's English Learner department had already informed Parent that it was looking for and would hire a Korean language tutor as part of its general education interventions for novice-level English language learner students. Due to scheduling challenges discussed in detail under section "Issue 1f," below, Student's Korean tutor did not start until January 17, 2023, one week before the first IEP team meeting to develop the February 14, 2023 IEP. At the time of the February 14, 2023 IEP team meeting, Student was already receiving Korean interpretation of instruction and did not need duplicative interpreter services as a related service in the February 14, 2023 IEP.

Student asserts in her closing brief that Palo Alto was required to offer services to progress students, including Student, out of the English learner classification, citing Education Code section 56305, subdivision (a). That subsection does no more than impose on the California Department of Education the obligation to develop a manual to, among other things, determine when students identified as both English learners and student with exceptional needs should be either removed from classification as English learners or exited from special education. It imposes no obligation on Palo Alto.

There were significant typographical errors in the February 14, 2023 IEP with regard to the Korean tutor provided by the English Learner's department. First, a box was checked on the English Learner's support page that Student's educational setting was "transitional bilingual," which it was not. Palo Alto offered all students only structured English immersion settings with English instruction district-wide. The Futures classroom offered on the FAPE pages of the IEP was a structured English immersion program. In addition, even if Palo Alto had a transitional bilingual program available, the placement offered in the February 14, 2023 IEP is not an issue in this hearing.

Second, at the end of a sentence on the English Learners support page stating "The student requires instruction in special education using the following language," someone had typed "Korean." Multiple Palo Alto witnesses seemed genuinely shocked and perplexed by both typos, and uniformly testified that the typos were clearly errors because Palo Alto did not offer transitional bilingual programs and all instruction district-wide was in English. Witnesses who attended the February 14, 2023 IEP team meeting testified consistently and convincingly that there had been no discussion about a bilingual setting or special education instruction in Korean.

The typos on the English Learners support page were separate from, and not reflected on, the offer of special education and related services on the FAPE page of the February 14, 2023 IEP. Nor were they stated in the summary of the FAPE offer in the notes of that IEP. The typos were not an offer of interpreting services as a special education related service, and Palo Alto was not required to include the frequency, duration, or other information about general education English learner interpreting services in the offer of related services.

Even if these typos were a procedural error in documenting the offer of FAPE, they did not impede Student's right to a FAPE, significantly impede Parents' right to participate in the decisionmaking process regarding the provision of FAPE to Student, or deprive Student of educational benefit. (See 20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subds. (f)(1), (2); *Target Range, supra*, 960 F.2d at p. 1482.) Student was offered and received the special education and related services identified in the FAPE pages of the February 14, 2023 IEP, and as discussed below in section "Issue 1f", met several goals and made good progress on others. Student also received Korean tutor services through the English Learners department. Student's right to a FAPE was not impeded and she did not lose educational benefit due to the typos.

The typos did not significantly impede Parents' opportunity to participate in the decisionmaking process regarding a FAPE for Student. Parent was aware at the IEP team meetings to develop the February 14, 2023 IEP that Student had been offered and was receiving receive Korean tutor support through the English Learners department.

In fact, Palo Alto hired a Korean tutor for Student in November 2022, and Parent was informed by the English Learners department in December 2022 that Student was scheduled to receive interpretation for one hour, three times per week. In response,

Parent requested Harris and the Korean tutor's schedules be rearranged several times to accommodate Parent bringing Student to school late and pulling her out of school early for medical therapies, which resulted in a delay in Korean interpretation of Student's instruction until January 17, 2023. Parent was aware that Student would receive, and was receiving, Korean interpretation from the English Learners department during the 2022-2023 school year and was not confused by typos in the February 14, 2023 IEP.

The weight of the evidence did not establish that Palo Alto was required to offer Student any special education or related services for English language development.

SUB-ISSUE 1d – FEBRUARY 2023 SPEECH AND AAC SERVICES OFFER

Student contends she should have been offered additional AAC services in the February 14, 2023 IEP because she had made little progress in using her AAC device. She also contends Palo Alto should have adopted Stanford's recommendations for a home program and Parent training. Palo Alto contends the speech service minutes and AAC consultation support minutes it offered were appropriate.

For a school district's offer of special education services to a disabled student to constitute a FAPE under the IDEA, the offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances. (*Endrew F.*, *supra*, 580 U.S. at p. 402; *Los Angeles Unified School Dist. V. A.O.* (9th Cir. 2024) 92 F.4th 1159, 1172 (*A.O.*); *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*); 20 U.S.C. § 1401(9).) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Gregory K.*, *supra*, 811 F.2d at p. 1314.)

The January 28, 2022 IEP in effect at the beginning of the 2022-2023 school year offered speech therapy for 60 minutes per week and 300 minutes per year of AAC consultation to Student's teachers, aides, and service providers. Progress reports for the January 28, 2022 IEP goals were not offered into evidence, but Harris testified convincingly that Student was making good progress on her communication goals with 15 minutes of speech services per day, four days per week. Harris did not recommend increasing speech services at the February 14, 2023 IEP team meeting. Similarly, AAC specialist Natoci believed that 300 minutes per year had been sufficient to service Student's AAC needs through consultation with Student's service providers, teachers, and aides, including the upgrade to the high-tech Tobii Dynavox with TD Snap. She did not recommend increasing AAC consultation at the IEP team meeting.

The three communication goals in the February 14, 2023 IEP addressed Student's receptive, expressive, and pragmatic language needs, and her need to articulate words as well as use a speech-generating AAC device. Harris testified persuasively and convincingly 60 minutes per week of speech and language services was an appropriate level at which Student had made good progress in communication skills from February 2022 through February 2023. That level of service was reasonably calculated to enable Student to make progress in light of her circumstances.

The 300 minutes per year of AAC consultation in the February 14, 2023 IEP maintained the same number of minutes as the prior January 2022 IEP. Natoci testified persuasively that 300 minutes per year, or approximately 30 minutes per month, was sufficient and appropriate to provide Student's teachers, aides, and service providers with the training and support they needed to work with Student on Student's AAC device.

Towards the end of the 2021-2022 school year, Natoci considered recommending an increase to 450 minutes per year, but ultimately did not think increasing the minutes was required and did not do so. Student's AAC expert Murrell's opinion that she would have recommended 600 to 1,000 minutes per year to support Student's AAC use was limited to the February 13, 2024 IEP and was not well explained. For the many reasons stated below in section "Issue 2a", Murrell's opinions regarding Student's educational needs and educational program were generally given very little weight and were outweighed by the opinions of Harris and Natoci.

The Stanford AAC report recommended Student receive up to eight 60-minute sessions of AAC programming, treatment within the community, and a strong home program with parent education. The Stanford report was hearsay, and none of the Stanford assessors testified. However, on the face of the report, it is making recommendations of medical necessity to treat Student's spastic dysarthria and other medical diagnoses, which is not the standard for FAPE in the IDEA. Presumably, Student and Parent received those medical services. The Stanford report did not establish that the services recommended were designed to provide Student with educational benefit or were a necessary component of Student's IEP for it to be reasonably calculated to enable Student to make educational progress appropriate in light of her circumstances under the *Endrew F.* standard.

The weight of the evidence did not establish that the February 14, 2023 IEP failed to offer appropriate speech and AAC services.

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SUB-ISSUE 1d – FEBRUARY 2023 FUNCTIONAL ACADEMIC SERVICES OFFER

Student contends that the February 14, 2023 IEP should have offered her more specialized academic instruction because she had made little progress on her functional academic goals. Palo Alto contends that the amount of specialized academic instruction offered was appropriate.

The February 14, 2023 IEP offered specialized academic instruction for 1,350 minutes per week in the Futures program, or approximately 270 minutes per day. Of that time, approximately 120 minutes per day was allocated to two periods of functional academics. Student did not offer the opinion of any credentialed special education teacher or other qualified professional that the special education minutes offered were not reasonably expected to enable Student to make progress in functional academics appropriate in light of her circumstances.

Student argues the insufficiency of the specialized academic instruction offer in the February 14, 2023 IEP was shown by Palo Alto's inability to report any progress on Student's functional academic Goals 4 and 5 by the first benchmark date of March 15, 2023. That benchmark presumed implementation of the goals to start on the date of the first IEP team meeting on January 25, 2023. However, Parent did not consent to implementation of the February 14, 2023 IEP until March 22, 2023, and Student's new functional academic goals were not implemented before March 22, 2023. There was nothing to report.

Student contends in her closing brief that McCarthy and French were ineffective teachers, there was no curriculum for the Futures program, and Student needed stability,

systematic teaching, and data tracking to make progress in functional academics and needed an offer of intensive academic remediation. Student's attack on the qualifications of McCarthy and French is misplaced, as parents have no private right of action against a school district under the IDEA for failure to provide a properly licensed teacher. (20 U.S.C. § 1412(a)(14)(E).) French testified he and McCarthy were using parts of three related curriculums to determine which one should be permanently adopted, and not that there was no curriculum.

In addition, by the June 2, 2023 progress report on goals, Student had met functional academics Goal 5 to make a choice with no more than two prompts given two visual options with 100 percent accuracy and made good progress on functional academics Goal 4 to identify important people on her AAC device, moving from zero percent accuracy to 50 percent accuracy in two of four observations. This progress is evidence that the level of services offered in support of Student's functional academic goals was appropriate.

As discussed below in section "Issue 1f" regarding implementation of services, Student's progress on functional academics throughout high school was impacted, at least in part, by Student's chronic absenteeism. During the 2021-2022 school year, Student was in South Korea for two months and over the entire year missed approximately 117 periods of functional academics. During the 2022-2023 school year, Student missed 53 periods of functional academics. Parent disputed absences from other periods, but the evidence showed she routinely pulled Student out of school for private therapies during the Futures classroom's functional academic periods. Student's voluntary absences from functional academics during the 2022-2023 school year did not establish that Palo Alto was obligated to offer Student in the February 14, 2023 IEP additional specialized academic instruction to remediate that loss of instruction.

Student's cognitive and information processing deficits manifested as slow and incremental progress in functional academics, adaptive living skills, communication, and access to curriculum in general. Evidence that Student's progress was not as fast as Parents wanted did not establish that Student should have been offered additional specialized academic instruction minutes, to the exclusion of other important components of the Futures curriculum.

The weight of the evidence did not establish that the February 14, 2023 IEP failed to offer appropriate services for functional academics.

SUB-ISSUE 1d – FEBRUARY 2023 TRANSITION SERVICES OFFER

Student contends the February 14, 2023 IEP offered her inadequate transition services. Palo Alto contends the services in Student's post-secondary transition plan were reasonably calculated to enable Student to make progress on her transition plan goals appropriate to her circumstances.

The February 14, 2023 IEP's transition plan offered Student 60 minutes of transition services per year with a transition specialist to work on her goal of transitioning to an adult day program. It offered Student 30 minutes per week of job coaching with a transition specialist to work on her goal of volunteering. It offered 10 minutes per month of transition services to support daily living skills to work on Student's goal of independent living with her Parents. The activities of weekly community outings supported all three transition goals.

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Student contends that insufficient services were offered to close her skill gap to obtain a volunteer job at the VA hospital, but Palo Alto was not required to offer Student the program Parents' preferred, or services in support of that program. (*Gregory K., supra*, 811 F.2d at p. 1314.)

Christina Dias, Student's case manager and teacher for part of the 2023-2024 school year, testified about implementation of Student's February 14, 2023 transition goals during the 2023-2024 school year, but Student did not call a special education teacher or transition specialist to opine about the appropriateness of the February 14, 2023 IEP offer of transition services.

Accordingly, the weight of the evidence did not establish that the February 14, 2023 IEP failed to offer appropriate transition services.

In summary on Issue 1d, Student did not prove by a preponderance of the evidence that Palo Alto denied her a FAPE during the 2022-2023 school year by failing to offer appropriate services in English language development, speech and augmentative and alternative communication, functional academics, or transition.

Palo Alto prevailed on Issue 1d.

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ISSUE 1e: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO IMPLEMENT THE FOLLOWING GOALS: ENGLISH LANGUAGE DEVELOPMENT, SPEECH AND AUGMENTATIVE AND ALTERNATIVE COMMUNICATION, FUNCTIONAL ACADEMICS, AND TRANSITION?

Student contends that the February 14, 2023 annual goals were inconsistently implemented. Palo Alto contends it consistently implemented Student's annual goals.

Once a student's parent has consented, a school district must implement a student's IEP by making special education and related services available to the student in accordance with the IEP. (34 C.F.R. § 300.323(c)(2); see also Ed. Code, §§ 56345, subd. (c), 56346, subd. (e).)

When a student alleges the denial of a FAPE based on a failure to implement the IEP, to prevail, the student must prove the failure to implement was material, which means the services provided to the student fell significantly short of what was required by the IEP. (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822 (*Van Duyn*).) There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a FAPE. (*Id.* at p. 821.)

Student filed her complaint on July 12, 2024. Issues 1b, 1c, and 1d challenged IEP contents and were limited by the *Adams's* snapshot rule to the one IEP within the two-year statute of limitations, the February 14, 2023 IEP. However, Student's Issues 1e through 1h allege implementation failures and are not so limited. The 2022-2023 school

year began after July 12, 2022, and the entire school year is within the statute of limitations. Therefore, Student's implementation claims in Issues 1e through 1h span the entire 2022-2023 school year.

SUB-ISSUE 1e – 2022-2023 ENGLISH LANGUAGE DEVELOPMENT GOALS IMPLEMENTATION

Student did not have separate English language development goals in either the January 28, 2022, or February 14, 2023 IEPs. Accordingly, Student cannot show that English language development goals were not implemented.

Student's January 28, 2022 IEP, which was in effect at the beginning of the 2022-2023 school year, expressly identified communication Goal 8 as supporting one or more English language development standards, but that annual goal is discussed below under speech goals.

SUB-ISSUE 1e – 2022-2023 SPEECH AND AAC GOALS IMPLEMENTATION

Student's January 28, 2022 IEP had one communication goal. Communication Goal 8 supported English language development and required Student to initiate communication when given two options by making a choice with 70 percent accuracy, without prompting other than repetition due to non-responsiveness.

Speech-language pathologist Harris worked with Student on the January 28, 2022 communication goal during the 2022-2023 school year. Harris opined at hearing that Student reached 70 to 75 percent accuracy making choices in the classroom or at lunch when speech sessions were shortened to 15 minutes and Student was highly motivated.

Harris wrote in the present levels of performance for the February 14, 2023 IEP that Student showed progress and benefitted greatly from input being presented through multiple modalities, such as auditory, tactile, visual, and written cues and prompts. In particular, Student showed progress on using her AAC device for communication. Harris's testimony showed that the January 28, 2022 communication goal was implemented during the 2022-2023 school year.

After Parent consented to the February 14, 2023 IEP, Harris worked with Student on its three communication goals.

The February 14, 2023 IEP communication Goal 1 was for Student to communicate basic wants and needs using multimodal communication, such as her AAC system, vocalization, gestures, and body language. Harris drafted this goal to increase Student's initiation of communication, and by the end of the 2022-2023 school year Student was routinely using and responding on her AAC device.

Goal 2 was to identify common objects, and Student was highly motivated at lunch to choose between water and a snack. Harris also worked with Student on this goal to correctly choose colors, and to identify common objects such as pencils. Harris had Student greet her aides by prompting Student to say "hi," and worked with Student on identifying feelings such as happy and sad. Student's aides were present during Harris's sessions and worked on these skills with Student throughout the day.

Goal 3 was to build verbal speech through one-syllable words. Based on Parent input, Harris worked on modeling sounds with her lips and teaching Student to imitate consonants, differentiate between vowel sounds, and practice making word approximations.

Harris prepared reports of Student's progress on the February 14, 2023 communication goals on March 31 and June 1, 2023. Student was making progress on all three communication goals in spring 2023, although her ability to articulate one-syllable words was inconsistent. Harris's testimony and the contemporaneously prepared progress reports established that Palo Alto was implementing the February 14, 2023 IEP goals during the 2022-2023 school year.

The February 14, 2023 IEP also contained functional academics Goal 4, for Student to use her AAC device to identify important people in her life. On June 2, 2023, special education teacher McCarthy reported Student had difficulty with the AAC device and was only 50 percent accurate in identifying people. Student contends that this was evidence that Student's AAC device was not being used to implement her goals.

French, Student's special education teacher during her academic enhancement period, testified that he did not see Student with the AAC device during the 2022-2023 school year. However, he worked with Student for one period devoted to vocational training and community outings where Futures students could practice acquired functional academics and independent living skills in the Futures Café or off-campus sites like a shopping center or the park. French worked with Student on the functional academic and independent living goals of the February 14, 2023 IEP, but when he was in the Futures Café with Student, he specifically worked on Goal 6 to respond to a speaker within 30 seconds by having Student make eye contact or wave to people as a greeter, which he thought was an important job and independent living skill.

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In contrast, Fanciullo observed Student over a four-week period in December 2022 and January 2023, and saw Student using her AAC device at the Futures Café to greet people and documented that observation in the multidisciplinary report. Fanciullo saw Student prompted to use the device and needing adult engagement to do so. Harris worked with Student on her AAC device. During the 2022-2023 school year, Harris, a very well-qualified AAC provider, took over implementation of Student's AAC consultation from Natoci in fall 2022, and completed Student's 300 minutes of AAC consultation. Harris trained Student's aides and staff on Student's AAC device. Harris collaborated with Natoci on updating Student's AAC device to change or add words as appropriate and as requested by staff. Natoci had great respect for Harris's AAC knowledge and no concerns about Student receiving her AAC services.

The weight of the evidence established that throughout the 2022-2023 school year, Harris was working with Student four days per week on her AAC device, Harris trained and regularly consulted with staff and programmed the AAC device, and Fanciullo observed Student using her AAC device with her aides. Therefore, Student's goals were being implemented with her AAC device. Harris, Natoci, and Fanciullo were far more persuasive than French's testimony that he did not see Student's AAC device being used while he was working with Student on a non-AAC skill.

The evidence did not establish that Student's speech and AAC goals were not implemented during the 2022-2023 school year.

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SUB-ISSUE 1e – 2022-2023 FUNCTIONAL ACADEMIC GOALS IMPLEMENTATION

Student had two functional academic goals in the January 28, 2022 IEP. Goal 1 called for Student to participate in group or individual activities by remaining seated with no more than two prompts using visual schedules and communicative support. Goal 2 was for Student to complete at least one step of a two-step task with visual supports and no more than two prompts.

Although no progress reports were submitted into evidence for the January 28, 2022 goals, documentary and testimonial evidence established that Futures classroom teachers McCarthy and French were working with Student on the functional academic goals of the January 28, 2022 IEP. English language specialist Launer observed Student in her Futures classroom in January 2023, and saw Student working with McCarthy and Student's two aides. Khoury also observed McCarthy working on classwork with Student during her monthly visits to McCarthy's classroom for transition support throughout the 2022-2023 school year. Physical therapist Saboo observed Student monthly at the beginning of the 2022-2023 school year to collaborate with classroom staff to find seating to optimize Student's participation in classroom activities. Saboo logged in her contemporaneous notes that McCarthy reported to her on December 13, 2022, that Student was sitting in a preferred chair and participating willingly in school-related activities.

Psychologist Fanciullo observed Student in the Futures classroom for the January 2023 multidisciplinary report and in frequent visits to the Futures classroom for consults and collaboration. Fanciullo saw McCarthy working for many hours with Student on instructional activities, vocational training, and goal work. During the 2022-2023 school

year, French had Student for one period and worked with Student on her functional academic goals. French collaborated with McCarthy on Student's functional academic goal work throughout the school year. Student's January 28, 2022 functional academics goals were implemented during the 2022-2023 school year.

After Parent consented to the February 14, 2023 IEP, Student had two functional academic goals. Goal 4 was to identify important people such as her mother, father, teacher, and classmates. Goal 5 was to make a choice from two options with no more than two prompts. French worked with Student in the Futures Café on Goal 5, Goal 6 to respond to a speaker within 30 seconds, and Goal 8 to set up and clean items. Student did not receive a March 15, 2023 short-term objective progress report on functional academics because Parent had not consented to the new goals until March 22, 2023. However, the June 2, 2023 report showed that Student had already attained functional academics Goal 5 to make two choices with no more than two prompts, and on Goal 4 was 50 percent accurate in identifying important people, up from a zero-percent baseline. Student's progress on her functional academic goals was compelling evidence that those goals were implemented during the 2022-2023 school year.

Harris, who testified in detail and persuasively about working with Student on Student's communication goals, testified generally and unconvincingly about her criticisms of the other educators in the Futures classroom. When testifying about her observations of other Palo Alto employees, Harris displayed the demeanor of a disgruntled former employee who felt undervalued by Palo Alto. Harris appeared irritable and less confident during criticism of other school professionals and staff, and her testimony in that regard was vague, broad, and lacked specifics. Harris believed she was the only person in the Futures classroom who was doing their job correctly. Harris offered suggestions to, or complained about, the special education teacher, general

education teacher, instructional aides, and school psychologist. Harris appeared offended nobody had taken her advice or made the changes she demanded. Harris's credibility was adversely affected by her willingness to venture opinions about whether professionals outside her field of expertise were performing their jobs appropriately.

Harris testified that she watched every adult with every student in Student's classroom whenever Harris was working with one student, and never saw any students receiving any instruction or services. Her broad and general representations seemed unlikely and grossly exaggerated and contradicted other more specific and credible testimony and service logs in evidence. Therefore, these general assertions were given little weight. Her observations specific to Student took place during lunch, when Student was not receiving academic instruction and was instead transitioning to speech services, and were insufficient to establish that Student lacked instruction on goals, including functional academic goals, during the 2022-2023 school year.

Harris testified, often in response to leading questions on direct, that she was the only person in the Futures classroom working with the students on goals. There was no foundation for that testimony, or evidence that Harris was familiar with the non-communication goals of Student or the other students in the Futures classroom during the 2022-2023 school year. Although Harris's testimony and opinions regarding Student's speech needs, provision of Student's speech services, and speech services necessary to meet Student's needs was credible and persuasive, the remainder of her testimony was not.

The weight of the evidence established Palo Alto teachers and staff implemented Student's functional academic goals throughout the 2022-2023 school year.

SUB-ISSUE 1e – 2022-2023 TRANSITION GOALS IMPLEMENTATION

Academics Goal 1 and functional academics Goal 2 in the January 8, 2022 IEP were also identified as transition goals. As discussed in the functional academics implementation section above, these goals were implemented during the 2022-2023 school year prior to new goals taking effect on March 22, 2023.

The January 28, 2022 IEP contained self-care Goal 3, also identified as a transition and independent living goal. Goal 3 was for Student, when presented an object during a classroom activity, to find the same object in a field of three. Matching was an important skill transferrable to job opportunities and promoted independence.

The January 28, 2022 IEP also contained a post-secondary transition plan with three transition goals. The education and training goal was to work in a grocery store and was supported by functional academics Goal 2 to independently perform one of a two-step task. The employment goal was to find employment working with plants and was supported by academic Goal 1 to participate in group activities. The independent living goal was to live at home with her family and was supported by self-care Goal 3 to match objects.

Although progress reports on self-care Goal 3 in the January 28, 2022 IEP were not offered into evidence, the testimony of Launer, Khoury, Saboo, Fanciullo, and French, summarized above, was sufficient to establish that McCarthy was working with Student on all classroom goals, including Goal 3 for the first half of the 2022-2023 school year.

Student's February 14, 2023 IEP did not have annual transition goals, but it, too, had a post-secondary transition plan with three goals in the areas of education and

training, employment, and independent living. Although these goals were not expressly linked to Student's annual goals, Goal 6 was a self-care/independent living goal to respond promptly to others. Promptly responding was another important vocational skill, as well as a skill to enable living more independently with Parents at home and in the community.

The Futures curriculum gave Student opportunities to work on academic Goals 1 and 2 in support of transition in the January 28, 2022 IEP, self-care/independent living Goal 6 in the February 14, 2023 IEP, and the post-secondary transition plan goals in both IEPs, during multiple class periods devoted to functional academics and vocational training. Student worked on campus in the Futures Café, delivering mail, shredding paper, bagging dog biscuits for sale, and other tasks that helped her acquire transferrable vocational skills at her developmental level. Student also went on community outings to practice riding a bus, visiting community stores and services, and learning directional and safety signs.

McCarthy was a qualified vocational and transition specialist as well as a special education teacher. She arranged Student's participation in on-campus vocational opportunities. McCarthy reported on June 6, 2023, that Student had made good progress consistent with the second short-term objective on self-care/independent living Goal 6 of the February 14, 2023 IEP. There was substantial evidence that Palo Alto teachers and staff implemented Student's transition goals, including Goal 6 and the three post-secondary transition plan goals from the February 14, 2023 IEP during the 2022-2023 school year.

In summary for Issue 1e, Student did not prove by a preponderance of the evidence that Palo Alto denied her a FAPE by materially failing to implement Student's goals in English language development, speech and AAC, functional academics, and transition during the 2022-2023 school year.

Palo Alto prevailed on Issue 1e.

ISSUE 1f: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO IMPLEMENT THE FOLLOWING SERVICES: ENGLISH LANGUAGE DEVELOPMENT, SPEECH AND AUGMENTATIVE AND ALTERNATIVE COMMUNICATION, FUNCTIONAL ACADEMICS, AND TRANSITION?

Student contends she was denied a FAPE because her speech services were inconsistently implemented, she did not receive the amount of functional academics offered, and her transition services were not implemented. Palo Alto contends Student's special education and related services were fully implemented, Student's chronic absenteeism resulted in lost speech services and functional academics instruction, and Student's inability to qualify for the VA hospital volunteer position was not a failure to implement transition services.

A school district must implement a student's IEP by making special education and related services available to the student in accordance with the IEP. (34 C.F.R. § 300.323(c)(2); see also Ed. Code, § 56345, subd. (c).) A failure to implement an IEP does not result in a denial of FAPE unless the services provided fell significantly short of the services required by the IEP. (*Van Duyn, supra*, 502 F.3d at p. 822.)

SUB-ISSUE 1f – 2022-2023 ENGLISH LANGUAGE DEVELOPMENT SERVICES IMPLEMENTATION

Student contends Palo Alto failed to implement the English language development services in Student's January 28, 2022, and February 14, 2023 IEPs due to the delay in getting a Korean language interpreter, called a tutor, to interpret instruction for Student.

As discussed above in section "Issue 1d," a primary language tutor was a generic support offered to both disabled and non-disabled English language learners by Palo Alto's English Learners department. A Korean tutor was not part of the FAPE offer, or included in the related services offer, in either the January 28, 2022, or February 14, 2023 IEPs. Any delay in the English Learners department arranging a Korean tutor did not affect Palo Alto's implementation of Student's special education and related services.

In fact, the notes of the January 28, 2022 IEP expressly documented that English language coordinator Rebecca Shen-Lorenson informed the January 28, 2022 IEP team that the English Learner department would provide a primary language tutor only through the end of the 2021-2022 school year. Shen-Lorenson gave the tutor's schedule, explained to Parent that times would not be made up if Student was absent, and informed the IEP team Student would be reevaluated by the English Learners department at the beginning of the 2022-2023 school year to see if the service would be offered again.

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The delays in a Korean tutor providing interpretation of instruction during the 2022-2023 school year were primarily due to Student's absences, and not the result of hesitation or inability to provide support by Palo Alto. On October 13, 2022, Shen-Lorenson wrote Parent that Palo Alto was hiring primary language tutors, and Student would receive Korean interpretation as soon as one could be hired. On November 10, 2022, Shen-Lorenson emailed Parent that a Korean tutor had been hired and was going through a background check. On December 5, 2022, Shen-Lorenson approved McCarthy's proposed schedule for Student's Korean tutor to work with Student in the morning three days per week. Parent then informed Shen-Lorenson by email on December 12, 2022, that Student had private medical therapies and would not arrive at school on Wednesdays and Thursdays until 11:00 a.m., and on Mondays, Tuesdays, and Fridays until 10:00 a.m. Parent requested that Palo Alto rearrange the schedule of the tutor and Harris's speech services so Student received interpretation during speech sessions, but not in the mornings.

Harris agreed to adjust Student's speech sessions to start at 11:00 a.m. or later. On December 14, 2022, McCarthy arranged with the tutor to be available from 11:00 a.m. to 1:00 p.m. on Tuesdays, Wednesdays, and Thursdays, beginning on January 17, 2023, after the winter break. The schedule changed again in February 2023, as Parent had rearranged a private therapy so that Student did not arrive at school until 12:00 p.m. on Thursdays, and the Korean tutor had prior commitments on Tuesdays that month. Harris changed her schedule again, and Palo Alto asked the tutor to come Wednesdays from 1:00 to 2:00 p.m. and on Thursdays from 2:30 to 3:30 p.m., when Harris was available or Student was in functional academics. The Korean tutor worked at another school until 10:00 a.m. on Wednesdays, wanted to start at 11:00 a.m., and was

not available after 2:00 p.m. on any day. Palo Alto and the Korean interpreter were not able to finalize a schedule for Student until March 2023, which remained in effect for the remainder of the school year.

Student contends that the Korean tutor quit after one day. However, despite incomplete email chains submitted into evidence, that evidence showed the interpreter worked hard with English Learner department staff through February 2023 to finalize a permanent schedule for Student. On March 7, 2023, the Korean tutor agreed to the final change and sent an email that she would be at Paly High for Student on March 8, 2023. Shen-Lorenson testified that Student received her Korean tutor during the 2022-2023 school year. Harris testified to having a Korean tutor during speech sessions during the 2022-2023 school year. On this evidence, Palo Alto provided the Korean tutor support during the 2022-2023 school year, for one hour per day, for at least two days per week, from March 8, 2023, through the end of the 2022-2023 school year.

The delays in providing Korean interpretation support were due to scheduling hardships caused by Student's absences and Parent's requested schedule changes. Evidence of a delay in receiving general education supports did not establish a material failure by Palo Alto to implement special education or a related service during the 2022-2023 school year.

The weight of the evidence did not establish that Palo Alto materially failed to implement English language development services during the 2022-2023 school year.

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SUB-ISSUE 1f – 2022-2023 SPEECH AND AAC SERVICES IMPLEMENTATION

Student contends her speech services were inconsistently implemented because Palo Alto did not make up sessions missed when Student was absent for scheduled services. Palo Alto contends it was not obligated to make up speech sessions due to Student's absences and it implemented all speech and AAC services.

A student's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided. If the student is not provided with the instruction called for in one area of need, and there is a lack of anticipated progress, it would tend to show a material failure to implement the IEP. On the other hand, if the student performed at or above the anticipated level, that would tend to show no material shortfall in instruction. (*Van Duyn*, 502 F.3d at p. 822.)

Harris testified persuasively and convincingly that she provided Student with the 60 minutes per week required by Student's January 28, 2022, and February 14, 2023 IEPs during the 2022-2023 school year. Natoci's and Harris's testimony established that Student received the 300 minutes per year of AAC consultation offered as supplemental support in Student's January 28, 2022, and February 14, 2023 IEPs during the 2022-2023 school year. Student's January 2023 present levels of performance and Harris's testimony established that Student made good progress on her January 28, 2022 IEP goals over the first half of the 2022-2023 school year. The March 31 and June 1, 2023 progress reports on the February 14, 2023 IEP goals and Harris's testimony established Student made steady progress on her communication goals over the second half of the

2022-2023 school year. The evidence of services provided, and of Student's slow and steady progress, demonstrated no material shortfall in Student's speech and AAC services.

Student may have received inconsistent speech services because Parent dropped Student off at school late and picked her up early, missing scheduled speech sessions. However, Student cites no federal or state authority requiring school districts to make up service hours missed due to student absences. Palo Alto did not fail to implement Student's speech services when Student missed scheduled speech services due to absence, especially when Palo Alto made significant efforts to schedule Student's speech services for the limited days and times Parent was willing to have Student at school.

Student contends her two instructional aides did not carry over Student's speech session lessons throughout the school day, depriving her of speech and AAC services. However, Student's aides, identified as intensive individualized services in her IEPs, were offered in support of Student's safety, physical assistance, and toileting needs. Student's aides also provided repetition and redirection to task to address Student's attentional deficits.

Student's aides were not credentialed special education teachers and did not provide special education instruction. They were not licensed speech-language pathologists and did not provide speech services. They were not AAC specialists and did not provide AAC consultation. The two aides' services were not accounted for as part of the speech and AAC consultation services required by the January 2022 and February 2023 IEPs. Whether or not Student's aides carried out Student's speech lessons throughout the school day did not determine whether Student received her speech or AAC consultation services.

In addition, evidence that Student's aides failed to make Student's AAC device available to her throughout the day was not credible and was contradicted by the substantial evidence that Student was making good progress with her AAC device and on all her communication goals.

Harris showed Student's aides how to work with Student on the AAC device. Natoci and Harris confirmed Student's aides were trained and capable with the AAC device and communicated with Harris about any difficulties encountered with the device or new vocabulary for Student. The aides' facility with the AAC device during the 2022-2023 school year was persuasive evidence that the aides used the device with Student and brought the need for modifications to the attention of the appropriate speech or AAC provider.

During the 2022-2023 school year, French had Student for one period of academic enrichment and was specifically working on Student's functional academic goal to choose between two options, her self-care/independent living goal to respond to a speaker within 30 seconds with eye contact and a wave, and her motor skills goal to set up or clean items in the Futures Café. French was not working on AAC-related goals. His testimony that he did not see Student with her AAC device during the 2022-2023 school year was also very general and somewhat confusing. French referred to Student's "talker" and "iPad" as if one was an AAC device and one was not, and he was unclear if Student had an iPad during the 2022-2023 school year. His testimony was contradicted by that of other witnesses who observed Student working with her AAC device during the 2022-2023 school year and memorialized their observations

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contemporaneously in writing. Little weight was given French's testimony about Student's AAC devices due to the lack of foundation and French's uncertainty and lack of clarity.

The weight of the evidence did not establish that Palo Alto materially failed to implement Student's speech or AAC services.

SUB-ISSUE 1f – 2022-2023 FUNCTIONAL ACADEMIC SERVICES IMPLEMENTATION

Student contends she was allowed to walk around too much and missed a significant portion of her functional academics instruction. Palo Alto contends Student received all of the functional academics instruction offered, walked around or left the classroom only as necessary, and missed a significant amount of instruction due to absences.

As discussed in section "Issue 1e," above, Student's functional academic goals from the January 28, 2022, and February 14, 2023 IEPs were being implemented throughout Student's school day during the 2022-2023 school year. In addition, by the end of the 2022-2023 school year, Student met the functional academics goal from the February 14, 2023 IEP to make choices from a field of two with two prompts and progressed from zero percent accuracy to 50 percent accuracy on the functional academic goal to identify pictures of important people.

Student's progress on her functional academic goals throughout the 2022-2023 school year demonstrated that she received the specialized academic instruction offered in her IEPs to support those goals. Fanciullo opined persuasively that Student's multiple

severe disabilities would manifest as slow and incremental progress. Here, Student made slow and incremental progress on both goals and met Goal 5 in less than the 12 months anticipated.

Some delays in Student's functional academics progress were inevitable due to her tardiness and chronic absenteeism. Multiple teachers testified that Student needed to attend school to receive instruction. During the 2022-2023 school year, Student was absent 18 times, or the equivalent of over three weeks, from her functional academics period and 17 times from her academic enhancement period with French. Student likely made slower progress on some goals than she would have attained with regular school attendance, with no failure by Palo Alto to provide instruction.

Student's progress on her functional academic goals was compelling evidence that Student received her specialized academic instruction when she attended school.

Student contends that McCarthy was not teaching her students based on Harris's testimony. As discussed earlier, Harris's testimony on this topic was not credible, contrary to other reliable evidence, and given little weight. Student also contends that she missed mainstreaming because her aides allowed her to walk around outside the classroom. However, Student was mainstreaming into elective general education arts and culinary arts classes to participate in non-academic activities with her typically developing peers, and any missed classroom time did not impact implementation of specialized academic instruction or related services in support of functional academics.

The weight of the evidence did not establish that Palo Alto materially failed to implement Student's functional academic services.

SUB-ISSUE 1f – 2022-2023 TRANSITION SERVICES IMPLEMENTATION

Student contends her transition services were not implemented during the 2022-2023 school year because McCarthy did not log delivery of transition services, Palo Alto did not provide vocational training at the VA hospital, and because Student did not participate in transition workshops with other students in the Futures classroom. Palo Alto contends Student received the transition services specified in her annual goals and post-secondary transition plans.

If a school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, the school district provided a FAPE, even if the student's parents preferred another program, and even if the parents' preferred program would have resulted in greater educational benefit. (*Gregory K.*, *supra*, 811 F.2d at pp. 1313-1314; *A.O.*, *supra*, 92 F.4th at p. 1172.)

In *Rowley*, the Supreme Court held the IDEA does not require school districts to provide special education students the best education available, or to provide instruction or services that maximize a student's abilities, which was reaffirmed in *Endrew F.* (*Rowley*, *supra*, 458 U.S. at p. 198; *Endrew F.*, *supra*, 580 U.S. at p. 403; *A.O.*, *supra*, 92 F.4th at p. 1172.)

McCarthy provided transition services during the school day along with specialized academic instruction. Unlike speech-language pathologists, occupational therapists, physical therapists, and other service providers who saw students for limited scheduled sessions and logged their service separately for each child, McCarthy was a

classroom teacher for the entire school day and did not log her time. Student received specialized academic instruction and transition services by attending school, and Student's receipt of these services was tracked by her attendance record.

Student's January 28, 2022 annual goals that supported transition were implemented during the 2022-2023 school year. The self-care and transition Goal 3 in the January 28, 2022 IEP was for Student to match an item from a field of three other items. Although the progress reports on that goal were not submitted into evidence, and French was not asked about the goals he worked on with Student from the January 28, 2022 IEP, French did testify that he and McCarthy worked on all of Student's goals during the 2022-2023 school year. Functional academic Goals 1 and 2 in the January 28, 2022 IEP also supported transition, and as discussed above, were implemented during the 2022-2023 school year.

The three goals in the January 28, 2022 IEP post-secondary transition plan were supported by 60 minutes per month each of vocational assessment and guidance, work experience, and transition services in support with daily living skills. In addition to McCarthy's transition services, and as discussed in section "Issue 1e," above, the Futures program supported post-secondary transition plan goals in both in the January 28, 2022, and February 14, 2023 IEPs with its wide variety and extended class periods of vocational activities, daily living skills, and community-based activities. The present levels of performance in the February 14, 2023 IEP summarized Student's enjoyment and success in vocational activities, and her progress on daily living skills at the beginning of the 2022-2023 school year. These things evidenced that Palo Alto implemented transition services in the January 28, 2022 IEP for Student to attain that growth in vocational and independent living skills.

Student's February 14, 2023 IEP also contained post-secondary transition goals in the areas of post-secondary education, employment, and independent living. In addition, independent living annual Goal 6 to respond to others within 30 seconds supported transition. French expressly worked with Student on Goal 6 and was teaching Student to make eye contact and wave hello or goodbye.

Student received transition services in the February 14, 2023 IEP as demonstrated by McCarthy's coordination with French on Student's work in the Futures Café and community outings. McCarthy set up and supported Student's on-campus mail delivery, paper shredding, dishwasher unloading, and dog biscuit bagging vocational training opportunities. Student's slow and incremental progress in all areas of adaptive living and vocational skills reflected in the progress reports of March 2023 and June 2023 were convincing evidence that Student received the transition services in the February 14, 2023 IEP.

Parent stated at the February 14, 2023 IEP team meeting that she wanted to explore having Student work off-campus at the VA hospital. At McCarthy's request, transition specialist Khoury arranged for Palo Alto's credentialed school teacher on site at the VA hospital, Arshdeep Shinh, to observe Student and consider her for job placement at the VA hospital. Shinh observed Student at the Futures Café on March 20, 2023, and determined Student needed to continue working on multiple vocational skills before she could be placed in a job at the VA hospital.

Palo Alto's failure to place Student in the VA hospital job preferred by Parents did not demonstrate a material failure to implement transition services.

The VA hospital was a job partner with Palo Alto but maintained its own job requirements that had to be met by any student working there. The student had to

obtain their own transportation to the VA hospital, work a two-period shift, and be able to do the assigned task independently. Aides could accompany the student, and Palo Alto provided job coaches to guide students, but aides could not do the job for the student. Accommodations were made for AAC device communication, toileting needs, and breaks, and the student could perform the task as slowly as he or she was able while learning, but the student was required to perform the job as specified. This was different from the Futures Café on the Paly High campus, where the aide could perform the student's job for them while they learned.

The VA hospital had jobs for students with disabilities in its canteen, patient transport, technology, logistics and other departments. It also had a coffee shop where students could work cleaning tables, but it did not employ greeters. Other Palo Alto partner employers, such as Starbucks, employed greeters. Jobs with partner employers like Walgreens and CVS required even higher level job skills than the VA hospital.

The evidence did not show that Student could perform a job task at the VA hospital in March 2023 or at any time. As of December 2024, Student was unable to grip a dish towel, dip a dish towel in a bucket of bleach water, or wring a dish towel dry as required for the VA hospital's entry level job of cleaning tables. Parents' preference that Student work at the VA hospital did not make that job opportunity feasible or appropriate, and Palo Alto was not required to offer the program preferred by Parents. (*Gregory K., supra*, 811 F.2d at p. 1314.) Accordingly, the weight of the evidence did not establish Palo Alto was required to implement transition services in Student's February 14, 2023 IEP at, or in support of a job position for, the VA hospital.

Also, Student's lack of participation in Khoury's transition workshops did not demonstrate a failure by Palo Alto to implement transition services. Palo Alto's

transition specialist Khoury presented six or seven workshops during the 2022-2023 school year on topics relevant to the workplace, such as self-advocacy, carrying on a conversation, common safety measures, and common safety signs. Khoury did not provide direct services to students. Not all Futures students attended the transition workshops, and each student's case manager was responsible for determining if a particular workshop was appropriate for the student to make progress on their transition goals.

McCarthy did not have Student attend any of Khoury's workshops during the 2022-2023 school year. However, as Student demonstrated only emerging skills at responding to speakers, did not initiate conversations beyond the vocal approximation "shh" to ask to go to the bathroom, and was still at the pre-symbolic level of language development, it was reasonable of McCarthy to determine that Khoury's workshops would not benefit Student or help her to make progress on her February 14, 2023 post-secondary transition goals.

Student participated in her functional academics and vocational training classes when present at school. McCarthy arranged Student's participation in on-campus vocational opportunities and reported on Student's progress on self-care/independent living Goal 6 throughout the 2022-2023 school year. Student made slow and steady progress in all areas targeted by her post-secondary transition plan. The weight of the evidence did not establish that Palo Alto materially failed to implement Student's transition services.

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In summary, for Issue 1f, Student did not prove by a preponderance of the evidence that Palo Alto denied Student a FAPE during the 2022-2023 school year by materially failing to implement services in English language development, speech and augmentative and alternative communication, functional academics, and transition.

Palo Alto prevailed on Issue 1f.

ISSUE 1g: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO GIVE PARENTS A PRIOR WRITTEN NOTICE REGARDING PALO ALTO'S LACK OF IMPLEMENTATION OF ANY OF THE GOALS AND SERVICES OFFERED?

Student contends Palo Alto failed to implement any of Student's January 28, 2022, and February 14, 2023 IEP goals or services during the 2022-2023 school year and was obligated to give Parents prior written notice of those failures. Student also contends her Korean tutor quit after one session and Parent was not informed. Palo Alto contends it did not fail to implement Students goals or services and was not required to give notice to that effect, and that Student received Korean tutor support.

A school district is required to give the parents of a student with a disability written notice a reasonable time before it refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. (20 U.S.C. § 1415(b)(3)(b); 34 C.F.R. § 300.503(a)(2); Ed. Code, § 56500.4, subd. (a).) A prior written notice must contain a description of the action proposed or refused by the agency, an explanation for the action, and a description of the assessment procedure or report that is the basis of the action. (Ed. Code, § 56500.4, subd. (b).)

The procedures relating to prior written notice are designed to ensure that the parents of a student with a disability are both notified of decisions affecting their student and given an opportunity to object to these decisions. (*C.H. v. Cape Henlopen School Dist.* (3d Cir. 2010) 606 F.3d 59, 70.) When a failure to give proper prior written notice does not actually impair parental knowledge or participation in educational decisions, the violation is not a substantive harm under the IDEA. (*Ibid.*; *Murphy v. Glendale Unified School Dist.* (C.D.Cal. June 14, 2017, Case No. 2:16-cv-04742-SVW-AS) 2017 WL 11632966, *13-14.)

As found in section “Issue 1f,” above, the English Learner department provided a Korean tutor to Student in the 2022-2023 school year. The Korean tutor was a general education support, and not special education or a related service. Accordingly, any delay in providing those services did not constitute a refusal to initiate or change the identification, evaluation, or educational placement of Student or the provision of FAPE to Student and did not trigger an obligation to give Parents’s prior written notice regarding the Korean tutor. It is worth noting that although no prior written notice was required, Parent was notified of, and actively involved in making, arrangements for the Korean tutor.

As found at sections “Issues 1e” and “Issue 1f,” there was no failure by Palo Alto to implement Student’s goals or services in English language development, speech and AAC, functional academics, or transition. Student withdrew claims that Palo Alto failed to implement Student’s goals or services in motor skills, behavior, or toileting. Accordingly, Palo Alto did not initiate or change the identification, evaluation, or educational placement of Student, or the provision of FAPE to Student, to trigger an obligation to give Parents prior written notice regarding implementation of goals and services during the 2022-2023 school year.

Student did not prove by a preponderance of the evidence that Palo Alto denied Student a FAPE during the 2022-2023 school year by failing to give Parents prior written notice of lack of implementation of any of Student's goals and services offered.

Palo Alto prevailed on Issue 1g.

ISSUE 1h: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO CONVENE AN IEP TEAM MEETING IN RESPONSE TO STUDENT'S LACK OF EXPECTED PROGRESS?

Student contends Palo Alto was required to convene an IEP team meeting during the 2022-2023 school year because Student was not making anticipated progress.

Palo Alto contends Student was making anticipated progress throughout the school year.

An IEP team must meet at least annually to review the student's progress and determine whether annual goals are being achieved. The IEP team must revise the IEP as appropriate, taking into account, among other matters, whether there is a lack of expected progress toward the annual goals. (34 C.F.R. § 300.324(b)(1)(ii)(a); Ed. Code, § 56341.1, subd. (d)(1).)

The IEP team must also meet whenever the student demonstrates a lack of anticipated progress. (Ed. Code, § 56343, subd. (b).) However, some students may not meet the growth projected in annual goals and objectives of the IEP. (Ed. Code, § 56345, subd. (c).) A student may make meaningful progress towards goals under the *Endrew F.* standard without meeting all of their IEP goals. (*Crofts, supra*, 22 F.4th at p. 1057.)

The IDEA does not require that states provide students with disabilities opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded students without disabilities. It is enough that an IEP be tailored to a student's circumstances and reasonably calculated to help that student progress appropriate in light of their circumstances. (*Crofts, supra*, 22 F.4th at p. 1057, citing *Endrew F., supra*, 580 U.S. at p. 404.)

French, Harris, Natoci, and Saboo all testified persuasively and convincingly that Student made appropriate progress on her January 28, 2022, and February 14, 2023 IEP goals, even those she did not meet during the 2022-2023 school year. As discussed in sections "Issue 1c," "Issue 1d," "Issue 1e," and "Issue 1f," above, Student made slow and steady progress appropriate to her circumstances in all areas at issue. Student's intellectual disability, autism, cerebral palsy, and severe spastic dysarthria adversely impacted her progress, often causing Student to progress and regress multiple times before making slow and steady academic and functional gains. Student made meaningful progress towards her annual goals under the *Endrew F.* standard during the 2022-2023 school year, even if she did not meet all of her goals.

In addition, the testimony of multiple witnesses and documentary evidence established that Student's excessive absences during the 2022-2023 school year resulted in missed instruction and missed opportunities to practice important emerging skills. This inevitably contributed to slower progress and adversely impacted Student's ability to meet her goals. Under these circumstances, Student's failure to meet her goals was not evidence of a lack of anticipated progress. Palo Alto was not required to convene any IEP team meetings during the 2022-2023 school year beyond the annual review of Student's educational program.

Student did not prove by a preponderance of the evidence that Palo Alto denied Student a FAPE during the 2022-2023 school year by failing to convene an IEP team meeting in response to a lack of expected progress.

Palo Alto prevailed on Issue 1h.

ISSUE 2a: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO REFLECT MEASURABLE BASELINES OR ACCURATE PRESENT LEVELS OF PERFORMANCE FOR GOALS OFFERED?

Student contends she was denied a FAPE because the present levels of performance included in the February 13, 2024 IEP were inaccurate, and the goals were not measurable. Student also contends that the lack of short-term goals and objectives was a procedural violation. Palo Alto contends its performance reports were accurate, and short-term goals and objectives were not required or appropriate.

The requirement that IEPs of all students with disabilities include benchmarks or short-term objectives was removed in the 2004 reauthorization of the IDEA. (20 U.S.C. § 2014(d)(1)(A)(i)(I)(cc); 34 C.F.R. § 300.320(a)(2)(i).)

School districts need only include short-term objectives in the IEPs of students taking alternate assessments during the years when the students actually take the alternate assessments. (*Letter to Kelly* (OSEP, Aug. 24, 2007) 49 IDELR 165.) In California, a description of short-term objectives is only required in a student's IEP if they take alternate assessments aligned to alternate achievement standards. (Ed. Code, § 56345, subd. (a)(1)(C).) However, a school district still has the option to develop short-term objectives if it chooses to do so.

The IDEA does not require districts to report on a student's progress toward meeting short-term objectives. Whether to provide such reports to the parents is within the discretion of the IEP team. (*Letter to Lenz* (OSEP, Feb. 7, 2014) 64 IDELR 283.)

THE 2023-2024 SCHOOL YEAR

During the 2023-2024 school year, Student attended Paly High for approximately one month and transferred to Gunn High School, called Gunn, on September 5, 2023. Grace Park was the teacher of the Futures classroom at Gunn at the beginning of the 2023-2024 school year. There was some confusion about the transfer of Student's AAC device, which Student had started taking home and back to school the prior school year. The AAC device was located in the Paly High equipment locker and arrived at Gunn about one month after Student.

At the beginning of December 2023, Park was replaced by general education teacher Jason Hong and three special education teachers on a rotating schedule. Christina Dias was Student's case manager and one of the three special education teachers for the Futures classroom. Parent was unhappy with the teacher change because Park was of Korean heritage, although there was no persuasive evidence Park spoke Korean to Student or others. Parent sent Park a few emails in Korean, but Park responded in English. After the initial emails, Parent and Park corresponded in English only.

STUDENT'S 2023-2024 AIDES

During the 2023-2024 school year, two significant circumstances occurred. First, Student was assigned two aides at Gunn who were by all accounts extraordinary. The aides, Lucy Ramirez and "Ms. H," particularly focused on getting Student up and

walking, drinking water, and asking to use the bathroom on her AAC device. By spring 2024, Student was able to ask to go to the bathroom and timely urinate on the toilet, something Student had never done before. Parent was ecstatic, writing on February 22, 2024, in English:

I'm so glad to hear about the support from the school team. I'm so proud of [Student]; it's such a happy moment. I almost cried yesterday when I heard she made it. Even the outside doctors and therapists were surprised and started sharing her story. She has had so many ER visits and hospital visits, endured a painful catheter, and lost the ability to urinate over the last 3 years. Then, at 18, she started going to the bathroom like others. What a victorious story. Education truly does make a difference.

Ramirez was a very credible and compelling witness. Her pride in Student's accomplishments, big and small, could be seen in her facial expressions and heard in her voice. When complimented as a big part of Student's progress during questioning, Ramirez's wide smile and evident happiness at being recognized for her commitment appeared genuine. Being Student's aide was hard work, but Ramirez applied to go, and went, with Student to the post-secondary program for the 2024-2025 school year because she felt Student needed her. Neither Ramirez nor Ms. H spoke to Student in Korean, yet Student made good progress with them speaking to her in English.

STUDENT'S EXPERT WITNESS

The second event was that Parent found a private speech-language pathologist willing to share Parent's dream of teaching Student to speak Korean. Parent pulled Student out of school each week beginning December 2023 of the 2023-2024 school

year to attend speech therapy with Sarina Murrell. Murrell provided medical speech therapy to her clients, and devoted part of her practice to helping parents cope with their child's disabilities. Murrell had sufficient education, training, and experience as a speech-language pathologist working with students on AAC devices to qualify as an expert in speech-language pathology and the use of AAC devices, however, her expert opinions were generally unpersuasive.

According to Murrell, Student was going to rely on Parents for her wants and needs for the rest of her life, so it was important Student communicated in Parents' primary language of Korean. However, taking this concept to its logical conclusion, by learning a language convenient to Parents, Student would limit her ability to communicate with those around her at school and in the community, and would become increasingly dependent on Parents. That result is contrary to the purpose of the IDEA to prepare students with disabilities for further education, employment, and independent living. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

Murrell repeatedly insisted she provided medical services, but did not define what medical speech services encompassed or explain how they differed from educational speech services. No treatment plan was offered into evidence, and Murrell did not appear to have a treatment plan or specific goals for Student. Student's medical insurance did not pay for Murrell's services, and Student seeks reimbursement for Murrell's medical speech services as an educational remedy for Palo Alto's alleged denial of FAPE.

Murrell had many patients who spoke a primary language other than English and offered interpreters for her speech services. Parent declined an interpreter and chose

instead to interpret herself for Student and Murrell. Murrell did not speak Korean and was solely reliant on Parent to speak Korean to Student and inform her of the accuracy or intelligibility of Student's verbal responses.

Murrell did not specify, in her testimony or her April 2024 AAC evaluation report, if or when she worked with Student on Student's AAC device in Korean or English. Pictures in the report of English AAC screens were examples of available program features, not the screens used during medical therapy. There was no evidence that Murrell ever independently verified Parent's representation that Student understood 100 percent of what was said to her in Korean, or that Student could speak words and phrases in Korean. Murrell occasionally looked up the pronunciation of Korean words to see if Student's vocal approximations were similar. Murrell's failure to verify Parent's representations with an independent Korean interpreter adversely affected her credibility and opinions regarding Student's understanding of Korean or Student's ability to speak Korean.

Murrell devoted 60 percent or more of each speech session working through Parent to teach Student to speak in Korean. This meant Murrell worked with Student in English for only 12 minutes or less in each 30-minute session. Murrell also frequently gave Student breaks, further limiting her interactions with Student in English. Under these circumstances, Murrell spent significantly less time working directly with Student in English than Harris or Lo, Student's speech-language pathologists during the 2022-2023 and 2023-2024 school years, respectively. For these reasons, Murrell's opinions of Student's ability to respond to English instruction or speak English were given less weight than that of Harris or Lo.

Murrell did not keep data on Student's progress beyond vague and non-specific clinical notes. Her November 18, 2024 progress report, prepared for the hearing and after working with Student for almost one year, consisted of nothing more than unquantified anecdotal conclusions, such as Student was making choices "more quickly," was being "more receptive," was "more comfortable," "benefited" from repetition and familiarity, or "often" needed a direct model. No actual data on Student's percentage of accuracy, type or amount of prompts needed, or rate of success in trialed opportunities was included.

Half of the November 18, 2024 progress report consisted of vague ratings by Parent, consisting of checked boxes in five categories on whether Student was independently doing a skill, doing it with a little help, doing it with medium help, doing it with maximum help, or not doing it at all, within the home, at school, or in the community. How Parent could rate Student's performance at school was not explained. In November 2024, Student did not display any of the rated skills independently, and only at home displayed skills with "a little help."

The four imprecise "skills" Murrell purported to be working on in her November 18, 2024 progress report were:

- Understanding expectations and emotional regulation,
- Receptive language processing (yes/no answering),
- Expressive language – practice AAC and saying core vocabulary words (Korean and English), and
- Speech – making progress in her sounds.

Murrell did not distinguish in her report at any point whether Student was given English or Korean requests. She did not specify whether Student was

responding in English or Korean, or orally or with her AAC device. In sum, the report was anecdotal, primarily regurgitating Parent's report, and devoid of specific goals or quantitative measures of progress. Murrell's willingness to represent such a vague and uninformative document as a meaningful progress report seriously diminished her credibility.

Murrell's testimony about Student's ability to hold and use the AAC device was contrary to all other witnesses' observations. Everyone but Murrell testified consistently, and often demonstrated for the record, that Student did not have enough arm control, arm strength, or stamina to consistently reach out and use her AAC device. Student needed someone to lift their arm under and perpendicular to Student's arm to give Student's arm support. The Stanford AAC report and testimony of Palo Alto staff all indicated that Student needed her AAC device secured against a wall or desk or held by somebody else. Murrell testified that Student held the device herself and could not have icons along the edge of the device screen because Student accidentally pressed them with her thumb. In light of the overwhelming evidence of Student's inability to hold the AAC device by herself, Murrell's inconsistent testimony was not credible and suggested a surprising lack of familiarity with Student's AAC use.

Murrell also gave opinions that were illogical. For instance, she opined that Student needed a particular AAC program with certain icons always in the same place so Student could develop muscle memory for the icons, which Murrell described as similar to a person learning to touch type on a keyboard. In light of Student's severe lack of motor control, this opinion made little sense, and her explanation was vague and unclear. Such a program would also limit the number and size of icons available on a screen, if the same icons were required to be in the same place on any screen Student used in any situation.

As another example, Murrell taught her patients articulation skills by assigning a different color and shape to every short and long vowel sound, and every consonant sound, and combining those symbols on cards to form words. A three-sound word might be represented by a large yellow triangle, a small pink circle, and a teal square. Murrell opined that Student understood each symbol and formed words using those cards and may have begun independently reading them. Her testimony was contrary to overwhelming evidence, including Murrell's own April 2024 AAC report, that Student was still at the pre-symbolic stage of communication development with emerging recognition that pictures could represent physical objects.

During the second half of the 2023-2024 school year, Student was specifically working on a goal at school to match colored items and by May 2024 was unable to sort or match items by any color other than red, and even that only in three of five opportunities. Murrell's testimony that Student was recognizing abstract symbols and combining them by color and shape to form words was not credible.

Murrell was highly critical of Lo, Student's 2023-2024 school-based speech-language pathologist, working on AAC vocabulary words different from those Murrell was working on with Student privately. Murrell likened a different vocabulary set on an AAC device as exposing Student to multiple languages, which Murrell opined was confusing and made learning difficult. Yet Murrell herself was working with Student in Korean, knowing that Student was receiving instruction at school using many of the same icons on her AAC device in English. Her opinion that teaching a language learner in two languages made language acquisition difficult and slow, while she was doing exactly that with Parent, adversely affected the persuasiveness of her opinions on how Student's language development needs should be addressed.

Student had the burden of proving her claims, many of which relied on the premise that Student performed better with Korean instruction than English instruction. Murrell was Student's expert. Despite working with Student almost weekly for an entire year, no objective measures of progress with instruction in Korean versus English, by trials, elapsed response time, or other metrics were documented by Murrell and submitted into evidence. This raised a reasonable inference that the documents, if they existed, did not support Murrell's opinions or she would have produced them. (See Evid. Code, § 600, subd. (b); see also Evid. Code, § 412; *Vallbona, supra*, 43 Cal.App.4th at p. 1537.)

FEBRUARY 13, 2024 IEP

IEP team meetings were held during the 2023-2024 school year on February 13 and March 14, 2024, to conduct the annual review of Student's educational program. Parents attended the meetings, with special education teacher Dias, English Learner specialist Shen-Lorenson, and Student's service providers including speech-language pathologist Lo, physical therapist Saboo, AAC specialist Jennifer Warren, her occupational therapist, and her adapted physical education teacher, among others. Palo Alto provided a Korean interpreter at both meetings. Attorneys for both Student and Palo Alto attended.

In this Decision, the IEP developed over these two meetings will be called the February 13, 2024 IEP. Both IEP team meetings will be called the February 13, 2024 IEP team meeting, unless there is a reason to differentiate between the meetings. The details of the February 13, 2024 IEP are discussed in sections "Issues 2a," "Issue 2b," and "Section 2c." Parent consented to implementation of the February 13, 2024 IEP on March 20, 2024.

SUB-ISSUE 2a - FEBRUARY 2024 MOTOR SKILLS BASELINES AND LEVELS

Although Student withdrew all claims that Palo Alto did not offer or implement appropriate motor goals or services, Student did not limit Sub-Issue 2a to exclude a claim that the present levels of performance for motor skills in the February 13, 2024 IEP were inaccurate, or that the baselines for the motor skills goal were unmeasurable.

Student's occupational therapist and her adapted physical education teacher for the 2023-2024 school year reported Student's progress on her February 14, 2023 annual motor skills goals in a January 12, 2024 final progress report. Student did not meet her motor goal of catching a bounced ball from five feet away with four verbal prompts in four of five trials, but she did make progress and could do it in two of five trials. She did not meet her motor goal of setting up or cleaning two to three items during a designated job with minimal assistance, but she made steady progress on setting up or cleaning one to two items during vocational activities with minimal verbal or gestural prompts in four of five opportunities.

Student's present levels of motor performance were summarized in the February 13, 2024 IEP by her occupational therapist, adapted physical education teacher, and physical therapist Saboo. Student had recently been introduced to stamping her name on a line with maximum assistance and was learning to stabilize items with one hand during two-hand activities. Student had gained strength and stamina during adapted physical education and improved her time peddling around the track on her tricycle. She was able to catch a ball and manipulate it into a basket four feet high, and completed three simple band exercises, although she tired after several attempts. Student sat for up to 20 minutes, stood for up to one minute,

accessed the school campus by walking with aides for safety, and used an adapted tricycle for long-distance mobility. Student offered no evidence that the present levels information on motor skills presented to the February 13, 2024 IEP team were inaccurate.

The February 13, 2024 IEP team adopted two motor skills goals. Goal 1, drafted by Student's occupational therapist, addressed fine motor skills. The baseline was that Student could use a name stamp with proper pressure in three of six trials with assistance for alignment and moderate verbal or gestural cues. Goal 1 was for Student, with set-up assistance for stability, to independently use a name stamp to sign her name on a document or class worksheet in four of five opportunities as measured by occupational therapist collected data and observations.

Goal 3 was drafted by Student's adapted physical education teacher and addressed gross motor skills. The baseline was that Student could demonstrate three resistance band exercises with moderate support, such as bicep curls, rows, and chest flies, in three of five opportunities. Goal 3 was for Student in her physical education class to demonstrate six exercises, including chest flies, rows, bicep curls, tricep extensions, and lat pull-downs, with moderate support in four of five trials.

The baselines for the February 13, 2024 motor goals were measurable. Goal 1 required Student to progress from stamping her name with set-up assistance and moderate cues in three of six trials, to stamp her name independently after set-up assistance in four of five trials. Student's progress would be monitored with data collected by the occupational therapist and observation. Goal 3 required Student to progress from doing three specified band exercises in three of five trials, to

demonstrating six band exercises, including chest flies, rows, bicep curls, tricep extensions, and lat pull-downs, with moderate support in four of five trials. Progress would be measured with data recorded by the adapted physical education teacher.

Student contends that the February 13, 2024 goals, including the motor goals, should have included short-term objectives to measure the rate of anticipated progress.

If Student was taking an alternate assessment during the 2023-2024 school year, Palo Alto was required to develop short-term objectives. (34 C.F.R. § 300.320(a)(2)(ii); Ed. Code, § 56345, subd. (a)(1)(C); *Letter to Kelly, supra*, 49 IDELR 165.) California conducts statewide assessments of students between the 3rd and 12th grades, and different tests are administered to different grades during different years. Students unable to participate in the standard statewide assessments take alternate assessments. The February 13, 2024 IEP indicated Student would participate in a statewide alternate assessment in science because Student was in 12th grade. Accordingly, Palo Alto's failure to draft short-term objectives was a procedural violation.

However, a procedural violation does not deny Student a FAPE unless it impeded Student's right to a FAPE, significantly impeded Parents' opportunity to participate in the decisionmaking process regarding Student's FAPE, or deprived Student of educational benefit. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (j); *Target Range, supra*, 960 F.2d at pp. 1483-1484; *Rowley, supra*, 458 U.S. at pp. 206-207.) None of those occurred here.

Student was just over two months from completing high school and transitioning to a post-secondary adult program when the March 14, 2024 IEP team meeting occurred. The third quarter for the 2023-2024 school year was over on March 15, 2024, and third-

quarter progress reports sent March 22, 2024, simply stated that the skills for each goal had been recently introduced. At the time the February 13, 2024 IEP was written, Palo Alto was only obligated to provide one final progress report on annual goals at the end of the school year.

After Parent consented to the February 13, 2024 IEP on March 20, 2024, Palo Alto implemented the IEP as discussed in section "Issue 2d," below. Student's right to a FAPE was not impeded, and Student was not deprived of educational benefits, by Palo Alto's procedural error of failing to draft short-term objectives for Student's annual goals for the brief remainder of the 2023-2024 school year.

Parents received a report of Student's progress at the end of the 2023-2024 school year, and further short-term objectives were neither required during Student's post-secondary education, nor appropriate. Speech-language pathologist Lo testified persuasively that at Student's developmental level, progress came in spurts, with jumps and regressions in skills along the way, making short-term objectives unreliable indicators of progress or lack of progress. Whether Student had acquired a skill and was able to maintain it was more accurately determined annually.

After Student completed high school, the IDEA and California law required Parents to receive a report of Student's progress on annual goals at the one-year review of her post-secondary adult program. Where one short-term objective report would not reliably inform Parents of whether Student was making expected progress on her February 13, 2024 IEP annual goals, Palo Alto's failure to include short-term objectives to measure Student's progress for two months of the 12-month goal period did not significantly impede Parents' opportunity to participate in the decisionmaking process of providing Student with a FAPE.

Accordingly, under the unique facts of this case, Palo Alto's procedural error of failing to include short-term objectives in the annual goals of the February 13, 2024 IEP did not substantively deny Student a FAPE. This conclusion applies to all of the goals in the February 13, 2024 IEP and is not discussed for each individual goal in Issue 2a.

The weight of the evidence did not establish that the present levels of performance were inaccurate, or the baselines were unmeasurable, for the motor goals in the February 13, 2024 IEP.

SUB-ISSUE 2a - FEBRUARY 2024 TRANSITION BASELINES AND LEVELS

By February 2024, during her vocational training periods, Student participated in delivering mail from the main office to teachers and staff, which provided her with opportunities to interact and practice greeting and responding. Student participated in community outings to learn how to follow directions and community signs. Vocational opportunities during the 2023-2024 school year included folding dish towels, wiping tables, dusting books in the library, sharpening pencils, shredding paper, and bagging dog biscuits. Student needed a demonstration of each task to begin and maximum prompting. Student was also learning to unload the Futures classroom dishwasher, place the cups on a cart, push the cart to a Wellness Center, and place the cups on the appropriate shelf. Student presented no evidence that the transition levels of present performance were inaccurate.

Dias drafted an annual vocational goal for the February 13, 2024 IEP to support Student's post-secondary transition goals to attend an adult day program, volunteer, and live with her parents. Goal 2 focused on acquiring a vocational skill that could be practiced in the Futures program and transferred to a position with one of Palo Alto's

job partners. The baseline was that in February 2024 Student could set up or clean up one to two items during vocational opportunities with verbal or gestural prompts. Goal 2 was for Student to, given visual and modeling support, complete a two- to three-step vocational activity such as sorting, matching, or cleaning, with 80 percent accuracy in four of five opportunities as measured by an occupational therapist and classroom recorded data and observations.

The measures of progress for Goal 2, means of gathering data, and people responsible for monitoring progress were clearly delineated. The February 13, 2024 vocational and transition goal was written to allow an objective measurement of Student's progress toward achieving this vocational and transition goal.

The weight of the evidence did not establish that the present levels of performance were inaccurate, or the baselines were unmeasurable, for the transition goal in the February 13, 2024 IEP.

SUB-ISSUE 2a - FEBRUARY 2024 SELF-CARE AND ENGLISH LANGUAGE BASELINE AND LEVELS

Student had experienced stops and starts in achieving her February 14, 2023 IEP self-care/independent living goal to respond to a speaker within 30 seconds, which expressly supported English language development. She met the goal as measured in June 2023, was inconsistent after returning to school for the 2023-2024 school year through October 2023, but consistently met the goal by the final progress report on January 12, 2024.

In the present levels of adaptive and daily living skills section of the February 14, 2024 IEP, Dias reported Student needed one to three diaper changes per school day and two aides to support her for stability and to use the bathroom. Student required maximum support to eat and drink. This was confirmed by Parent, who told the IEP team she was worried about Student choking by putting too much food in her mouth at one time and asked that Student be closely monitored to prevent her from putting non-edible items in her mouth. Student presented no persuasive evidence that the self-care and daily living skills present levels of performance were inaccurate.

Dias designed the February 13, 2024 annual self-care Goal 4 to support English language development standards. The baseline was that Student, given a verbal prompt in English and with full staff support, completed at least two of six steps for washing her hands with eight to 10 verbal prompts in three of five trials with 80 percent accuracy, showing listening comprehension. The six steps were

1. turning the water on,
2. getting her hands wet,
3. rubbing her hands with soap,
4. rinsing her hands,
5. turning the water off, and
6. drying her hands.

Self-care Goal 4 was for Student, given a verbal prompt in English and full staff support, to complete at least four of the six identified steps for washing her hands with no more than five verbal prompts in three of five trials with 80 percent accuracy, showing listening comprehension, as measured by staff observation.

The measures of progress for Goal 4, means of gathering data, and people responsible for monitoring progress were clearly delineated. The February 13, 2024 self-care and English language development goal was written in a way that allowed for an objective measurement of Student's progress toward achieving this self-care and English language development goal.

The weight of the evidence did not establish that the present levels of performance were inaccurate, or the baselines were unmeasurable, for the self-care and English language development goal in the February 13, 2024 IEP.

SUB-ISSUE 2a - FEBRUARY 2024 FUNCTIONAL ACADEMICS BASELINE AND LEVELS

By January 2024, Student had progressed on one February 14, 2023 functional academics goal to identify her mother, teacher, or a classmate in one of five opportunities, up from a zero baseline. Student met her other functional academics goal of choosing between two visual options with no more than two prompts with 100 percent accuracy.

Dias reported to the February 13, 2024 IEP team Student was working on sorting items by color, and sorting forks and spoons, but needed maximum prompting. She was able to finish folding partially folded towels, dust library shelves, and wipe tables with significant prompting and support. Student's general education art teacher reported that Student's attendance was inconsistent, but when Student was there, she needed frequent breaks during the 90-minute period. The general education culinary arts teacher reported that Student attended but needed frequent breaks to get up and

walk with the aides. Student presented no persuasive evidence that the present levels of performance reported to the February 13, 2024 IEP team regarding functional academics were inaccurate.

The February 13, 2024 IEP team adopted Goal 5, a functional academics goal with an English language development component. The baseline was Student could, given a set of colored objects and English verbal directions, sort out the red item that matched a red category in which the object belonged in three of five opportunities. Goal 5 was to give Student a set of three colored objects and a verbal direction in English to match one of the colors, red, yellow, or blue, and for Student to match a colored item to the corresponding colored item in three of five opportunities as measured by staff observations and monitored by the special education teacher.

The measures of progress for Goal 5, means of gathering data, and people responsible for monitoring progress were clearly delineated. The February 13, 2024 functional academics and English language development goal was written in a way that allowed for an objective measurement of Student's progress toward achieving her functional academics and English language development goal.

The weight of the evidence did not establish that the present levels of performance were inaccurate, or the baselines were unmeasurable, for the functional academics goal in the February 13, 2024 IEP.

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SUB-ISSUE 2a - FEBRUARY 2024 COMMUNICATION BASELINE AND LEVELS

Student partially met her February 14, 2023 communication goal to communicate her basic needs from a field of three options in four of five opportunities with minimal support using multimodal communication. Student communicated her basic needs in four of five opportunities, but from a field of two and with moderate to maximum prompts. Student did not meet her goal of identifying concrete items such as body parts, greetings, and feelings from a field of two in three of five opportunities with moderate support. Student identified pain and discomfort, but did not identify feelings and required maximum prompting. Student did not meet her articulation goal and was very inconsistent in producing sounds.

Lo reported to the February 13, 2024 IEP team on Student's communication development. Student was a multimodal communicator who used vocalizations, gestures, body, and words, as well as low-tech, mid-tech, and a high-tech AAC speech-generating device to meet her wants and needs. Student was capable of independently using her AAC device to greet someone but did so inconsistently. Student could approximate the word "go," but needed to be regulated and have gestural support to imitate word approximations. Student's tolerance for speech therapy and working on her AAC device was intervals of three to 10 minutes. Student offered no persuasive evidence that these present levels of performance were not accurate.

Lo drafted three communication goals adopted by the February 13, 2024 IEP team. Goal 6 addressed Student's receptive language needs. The baseline was Student could identify only one of her six classmates in any communication mode. Goal 6 was

for Student to identify all her classmates using multimodal communication with one verbal or gestural prompt in three of four opportunities as measured by staff observation and data collection.

Goal 7 addressed Student's expressive language needs, with a baseline that Student greeted and advocated wants and needs with moderate to maximum prompts, including hand-over-hand, during vocational tasks in two of four opportunities. Goal 7 was for Student, using multimodal communication, to greet and advocate for wants and needs with one verbal and/or gestural prompt during vocational tasks in three of four opportunities as measured by staff observations and data collection.

Goal 8 addressed Student's articulation and voice. The baseline was Student could articulate two to four single-syllable words, such as hi, go, no, and "shee," with moderate prompts in two of four opportunities. Goal 8 was for Student to articulate four single-syllable words, such as hi, go, no, and "shee," to communicate her wants or needs in four of five opportunities with one verbal prompt and/or one gestural prompt. The speech-language pathologist was responsible for monitoring Student's progress on all three communication goals.

The measures of progress for Goals 6, 7, and 8, means of gathering data, and people responsible for monitoring progress were clearly delineated. The February 13, 2024 communication goals were written in a way that allowed for an objective measurement of Student's progress toward achieving her communication development goals.

The weight of the evidence did not establish that the present levels of performance were inaccurate, or the baselines were unmeasurable, for the communication goals in the February 13, 2024 IEP.

In summary for Issue 2a, Student did not prove by a preponderance of the evidence that Palo Alto denied her a FAPE during the 2023-2024 school year by failing to reflect measurable baselines or accurate present levels of performance for any of the goals offered in the February 13, 2024 IEP.

Palo Alto prevailed on Issue 2a.

ISSUE 2b: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE GOALS IN THE FOLLOWING AREAS: ENGLISH LANGUAGE DEVELOPMENT, SPEECH AND AUGMENTATIVE AND ALTERNATIVE COMMUNICATION, FUNCTIONAL ACADEMICS, BEHAVIOR, AND TRANSITION?

Student contends she was denied a FAPE because the annual goals in the February 13, 2024 IEP were not a meaningful shift in skills from the February 14, 2023 IEP. Student contends she needed English language development and behavior goals, the academic and transition goals were inadequate, and the communication goals were inappropriate because there was an incompatibility between the language of Student's family and the school. Palo Alto contends it drafted goals to meet all Student's educational needs, and the goals were appropriate.

STUDENT'S 2023-2024 SCHEDULE AND SCHOOL PROGRAM

During the 2023-2024 school year, the Futures classroom day started at 9:00 a.m. and finished at 4:22 p.m. Gunn was on a block schedule with every class lasting 45 minutes on Monday, and classes allocated into 90-minute blocks every other day throughout the week. Functional academics were the first and last blocks on Tuesdays

and Thursdays, with the last block starting at 2:40 p.m. Speech services with Lo were scheduled for Tuesdays and Thursdays from 2:00 p.m. to 2:30 p.m. Vocational training was on Monday, Wednesday, and Friday afternoons.

Parent very much wanted Student to attend vocational training on Mondays, Wednesdays, and Fridays, and arranged for Student to attend private medical therapies on most Tuesday and Thursday afternoons. On Tuesdays and Thursdays Parent picked Student up from school between 1:30 p.m. and 2:00 p.m. Student continued to be tardy most mornings, and with the early pick-up schedule on Tuesdays and Thursdays, Student effectively missed most functional academic blocks and many speech sessions during the first half of the 2023-2024 school year.

From December 7, 2023, through March 31, 2024, Parent dropped Student off at school as late as 11:00 a.m. or 12:00 p.m. on Thursday mornings, so Student could attend 60-minute weekly mid-morning speech sessions with Murrell. Student took her school-issued iPad home with her in the evenings, and during the 2023-2024 school year, staff noticed that Student's screens and icons would suddenly change or disappear. In March 2024, Palo Alto's AAC specialist Jennifer Warren password protected the iPad after she spent hours inputting programming that disappeared the following day. Parent complained about being locked out by the password and Palo Alto discovered Parent had been secretly modifying Student's school-issued AAC device.

Parent modified the school-issued AAC device according to her own ideas of what Student should learn and to match her work with Murrell. For example, Parent wanted Student to speak instead of use the AAC device for the English words "hi" and "bye" and removed those icons. Student was an only child, and Parent removed the icons for "brother" and "sister" from the family vocabulary page as unnecessary. Parent

thought Student should learn the colors green, yellow, and red to read a traffic light and deleted all other colors as unnecessary. At hearing, Parent suggested she did this because her husband was colorblind and she thought Student might be as well, although on further questioning Parent admitted Student had not been tested for colorblindness and could differentiate between colors on Murrell's articulation cards.

Warren removed the password at Parent's request, but asked Parent to contact her to discuss changes before making them. Warren offered to train Parent, which Parent declined, telling Warren that Parent had worked with TD Snap for three years since Stanford recommended it and was very familiar with the program. Warren also reached out to Murrell multiple times to collaborate.

In April 2024, Parent gave Palo Alto an AAC evaluation report by Murrell with the recommendation that Student's AAC device program be upgraded from TD Snap to TD Snap Motor 33, and minor recommendations such as giving the device a more durable cover, a handle, and better battery capacity. Murrell also recommended collaboration with Parent, training for Parents and staff, using a passcode to which stakeholders had access, regularly reviewing and updating Student's AAC device, and AAC support. She recommended that the AAC system be tailored to Student's communication needs, considering Student's bilingual background, visual impairments, and motor challenges. Lastly, Murrell recommended the device support both English and Korean and "cultural relevance should be maintained in the vocabulary and organization of the device."

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SUB-ISSUE 2b – FEBRUARY 2024 ENGLISH LANGUAGE DEVELOPMENT GOAL OFFER

Student contends she was struggling to develop academic and functional skills due in part to a language barrier, and therefore required an English language development goal. Palo Alto contends Student did not need an annual English language development goal.

The weight of the evidence did not show that Student needed an English language development goal in addition to the annual goals included in the February 13, 2024 IEP.

Palo Alto teachers and staff with insight into Student's bilingual language needs were part of the February 13, 2024 IEP team. Special education teacher and case manager Dias worked with Student several days per week and tracked Student's progress on annual goals. Speech-language pathologist Lo had rearranged her schedule after the first IEP team meeting on January 25, 2024, to provide Student's speech sessions before Student left early on Tuesdays and Thursdays. Shen-Lorenson, previously of the English Learner department, provided expertise in English language development in students with another primary language and English language development curriculum standards. AAC specialist Warren had consulted with Lo and Student's teachers, aides, and service providers for 60 minutes per month on Student's AAC usage after Student transferred to Gunn. Alexis Letner, an English language specialist from the English Learners department, also attended the February 13, 2024 IEP team meeting.

These participants had the requisite knowledge and special expertise regarding second language acquisition and Student's language needs, with the understanding to differentiate between limited English proficiency and a disability. They participated on the IEP team and ensured that Student's language needs were considered as they related to the IEP, and that Student received linguistically appropriate programs and services. (Ed. Code, §§ 56341.1, subd. (b)(2), 56345, subd. (b)(2).)

Accordingly, the February 13, 2024 IEP team made informed decisions about the content of Student's IEP, and appropriately determined that Student did not need a separate annual goal in English language development. Instead, the IEP team wrote annual goals aligned with the curriculum that were designed to increase Student's English language skills and support her English language development.

Student contends the English Learner department representatives and Dias predetermined which goals would support English language development without IEP team participation. Student presented no evidence of this other than Letner and Dias collaborated on how proposed annual goals could support English language development for presentation to the IEP team. School officials do not predetermine an IEP simply by meeting to discuss a child's programming in advance of an IEP team meeting. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688 at p. 693, fn. 3.) The February 13, 2024 IEP team had an open discussion on Student's English language development which showed a willingness to discuss options proffered by Parents. (See *Anchorage School Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1054-1055.)

Student criticizes the annual goals as not being correlated to an increase in English language skills beyond prompts. However, as explained by Harris and Lo, verbal prompts exposed Student to vocabulary relevant to learned skills, and contributed to

increases in receptive and expressive language. The February 13, 2024 IEP team made an informed determination that Student's goals should focus on skills that supported English language development, rather than English language development goals for the sake of tracking vocabulary words, which was all the IDEA and California law required.

Student contends she needed an English language development goal including Korean instruction to bypass the difficulties of becoming English proficient, claiming she learned faster and better in Korean and needed Korean instruction to become proficient in English. Student's reasoning is fundamentally flawed. The overwhelming evidence was that Student did not learn faster or better in Korean.

Parent's assertion that Student understood 100 percent of what was said to her in Korean, and that Student learned faster in Korean, was not credible. It was also contrary to the nature of Student's disabilities of autism and intellectual disability, which are characterized by significant communication deficits and low cognitive ability. The proposition that Student's disabilities affected her learning in one language more than the other is illogical, and unsupported by any persuasive evidence.

Parent's statements that Student learned quickly in Korean were also suspect. From 2022 through 2024, the list of words Parent reported Student could say in Korean was largely unchanged, with the same core vocabulary of about a dozen words. In a March 2, 2022 email, Parent listed Student's Korean words as

- her name,
- mother,
- father,
- open door,
- let's go,

- give me cookies,
- head,
- stomach,
- glasses,
- pee,
- hello,
- no, and
- don't.

For the January 2023 multidisciplinary report, Parent reported Student's Korean words as

- open door,
- let's go,
- give me cookies,
- head,
- stomach,
- glasses,
- pee,
- hello,
- no,
- don't,
- want this,
- I hurt, and
- read book.

For Murrell's private AAC report in April 2024, Parent reported Student could say in Korean

- her name,
- mom,
- dad,
- give me,
- glasses,
- pee,
- no,
- don't,
- want,
- I'm sick,
- water,
- shower,
- juice,
- all done, and
- bye.

Parent was also working with Murrell on essentially the same list of Korean words in November 2024. Even with Parent speaking Korean to Student every day for 19 years and Student working with Murrell in Korean for a year, Student maintained essentially the same 10-15 words. This evidence, even were it independently corroborated, fell short of showing that Student was a fast learner in Korean.

Lastly, Parent stated Student could say words in Korean, when Student could only make vocal approximations. For example, Parent repeatedly reported that Student

could say “shee, shee” in Korean to ask to go to the bathroom. But multiple credible witnesses reported that Student could, at best, make a soft “shhh” sound. Parent’s tendency to exaggerate adversely affected her credibility.

At the time of the February 13, 2024 IEP team meeting, Student was still learning basic academic concepts such as color, shapes, and objects names, and language concepts such as who, what, and where. No expert testified that at this level of functioning, Student would learn the fundamentals of language better in her primary language than she would in English.

The February 13, 2024 IEP team adopted a self-care goal that supported English language development standards. Goal 4 required Student to demonstrate listening comprehension as staff prompted her through a six-step handwashing routine. Similarly, functional academics Goal 5 supported English language development with Student responding to instruction to match items of a particular color. These goals involved basic verbal prompts and concepts that are typical of early development and did not require Korean interpretation. There was no convincing evidence that Student needed Korean interpretation at her level of learning.

In February 2024, Student did not need instruction in Korean to access her education, or a separate English language development goal including Korean instruction.

The weight of the evidence did not establish the English language development goals offered in the February 13, 2024 IEP were inappropriate.

SUB-ISSUE 2b – FEBRUARY 2024 SPEECH AND AAC GOAL OFFER

Student contends the February 13, 2024 communication goals were inappropriate because of the incompatibility between the language of Student's family and English instruction in school.

Student did not establish that the language spoken in her home was incompatible with Student's education in English at school. School districts in California are required to teach a curriculum promoting English language proficiency, and it is illogical that having a different language at home would exclude a student from the curriculum taught all other students throughout the state. The IDEA requires an IEP team to ensure that a student receives special education and related services, supplementary aids and services, and program modifications and supports for school personnel that are necessary for the student to be involved in and make progress in the general education curriculum. (34 C.F.R. §§ 300.324(a)(2)(ii) and 300.320(a)(4).) Student cites no authority requiring Student's IEP team to draft goals for Student to make progress in a different curriculum in a different language.

Lo proposed the communication goals included in the February 13, 2024 IEP. Lo was a licensed speech-language pathologist with a master's degree in communication disorders and 15 years of experience working with students to facilitate language, including training and experience in using AAC devices. She testified with a professional demeanor and provided detailed and highly informative explanations. She initially appeared somewhat flustered by questions that seemed simple but could only be answered with in-depth responses, and eventually settled in to give a highly detailed picture of Student's communication skills, Student's communication needs, and the goals and services appropriate to meet Student's educational needs.

Lo's testimony provided far more useful information than Murrell regarding Student's speech, language, and AAC needs due to Lo's use of frequent examples of Student's language presentation and thorough explanations. Lo's opinions were given far more weight than that of Murrell, because Murrell relied primarily on Parent reports regarding Student's Korean language skills, gave testimony as vague as her reports, and failed to satisfactorily explain opinions that seemed illogical or contrary to evidence and legal standards.

The February 13, 2024 communication goals addressed Student's identified communication needs in receptive, expressive, and social language. Student was beginning to recognize her Futures classmates and to track a particular student with her eye gaze. Goal 6 built on Student's emerging motivation to communicate by having her identify her classmates. This goal would teach Student to understand concrete symbols– that is, that a picture of a person represents the person – and set the stage for initiating conversation. Student needed to learn to communicate, and an interest in socializing is one of the first steps in communication. Goal 6 was multimodal, allowing Student to receptively respond to a verbal prompt, paper picture, or electronic picture on her AAC device. It also promoted expressive communication by having Student identify classmates by pointing to a picture, using her AAC device, or even shifting her body and eye gaze.

Goal 7 addressed expressive communication by having Student greet or advocate wants and needs with only one verbal or gestural prompt. Being able to greet was an important communication skill, as Student had to gain someone's attention before communicating meaningfully. Student also needed to be able to advocate for herself

when she needed a break or wanted something. Lo had Warren program “I need help” and “I need a break” icons on the vocational page of Student’s AAC device so Student would be able to communicate these important needs during vocational activities.

Goal 8 addressed Student’s need to articulate words, such as hi, go, no, and shee with moderate prompting. “No” was a particularly important safety word. Student had learned to make the beginning sound of “shee”, and Lo recommended building on that by teaching Student to make the “ee” sound, which would also help Student make the end sound for some English words. The ability to articulate words would allow Student to communicate promptly and independently, without the need for assistance in accessing an AAC device.

Teaching Student to speak words was a daunting task. Student’s spastic dysarthria caused her throat muscles to either be too tight to make the proper sounds, or too loose to make audible speech. Lo explained how even the one-syllable word “hi” is divided into three distinct sounds. It requires the lips, throat, and vocal cords to work together to make a “huh” sound with the exhale of air, which was particularly difficult for Student, followed by a long “I” sound followed by a long “ee” sound. Student’s disability impacted her ability to produce sounds and severely limited her capacity for speech.

Lo’s explanation of Student’s difficulty in articulating words was clear, logical, and informative, and consistent with the findings of the Stanford AAC report from March 2022. Murrell’s testimony that Student could speak approximately 15 words and phrases in Korean and English was not credible. When Parent and Murrell testified about the words Student could speak, they appeared to be speaking about Student’s

ability to make sound approximations after a verbal model. Lo's testimony on Student's ability to speak words, and her opinions regarding Student's speech needs, were given greater weight than that of Murrell.

Reliance on an AAC device posed difficulties for Student. An AAC device could

- be misplaced,
- run out of battery charge,
- break,
- be unavailable, or
- be exhausting for someone with Student's physical challenges.

Student required help to use an AAC device, and her conversation target might not know how to assist her. Although Student's AAC device gave her speech-generating capabilities beyond the limitations imposed by Student's spastic dysarthria, the articulation goal would give her powerful skills to appropriately gain attention, be safe, and advocate for wants and needs without one.

To access her education, Student needed to use all her multimodal means of communication throughout the school day. When walking on the school track for physical education, a lightweight paper printed with icons that could be tapped with yes-or-no or go-or-stop would be easier for Student than carrying an AAC device or having to use an AAC device carried by someone else. In the classroom, being able to point, use her eye gaze, or use a yes-or-no switch would enable Student to participate in learning activities when too tired or weak to use the AAC device. All of the February 13, 2024 IEP goals recognized that Student was a multimodal communicator and could not rely exclusively on speech or an AAC device for her communication needs.

Lo's opinion that the February 13, 2024 communication goals, which included AAC use, appropriately addressed Student's communication and AAC needs was persuasive. That opinion was not effectively contradicted by Murrell's less credible and unconvincing opinion that Student should first and foremost have goals requiring her to use a high-tech, speech-generating AAC device at all times.

The weight of the evidence did not establish that the communication goals offered in the February 13, 2024 IEP were inappropriate.

SUB-ISSUE 2b – FEBRUARY 2024 FUNCTIONAL ACADEMIC GOALS OFFER

Student contends the February 13, 2024 functional academics goal was inadequate because Student had made little progress in that area since February 2023. Palo Alto contends the functional academics goal appropriately addressed Student's functional academic needs.

The functional academics Goal 5 offered in the February 13, 2024 IEP was for Student, given a set of three colored items and a verbal direction in English, to match the red, blue, or yellow item with the correspondingly colored item. Student was still learning colors, and matching was a simple academic task that would support a transferable vocational skill, such as matching silverware. As explained by Dias, this goal incorporated important functional concepts at Student's academic level, and supported Student's functional academic needs and English language development. Student was transitioning to a post-secondary adult program just two months after the February 13, 2024 IEP was completed, and it was appropriate for Student's IEP team to focus on academic goals incorporating communication, vocational, and independent-living skills.

Student's contention that she needed different academics goals because she had made so little progress in that area over the past year seems disingenuous. Student's chronic absences from functional academics periods during the 2022-2023 and 2023-2024 school years were compelling evidence that Student's lack of progress was due to being pulled out of school and missing instruction, and not due to any failure by Palo Alto to offer or provide sufficient functional academics goals and services in the February 14, 2023, or February 13, 2024 IEPs. During the 2023-2024 school year, after Student's transfer to Gunn, Student missed 27 morning blocks of functional academics and 53 afternoon blocks of functional academics. Palo Alto did not need to write different functional academic goals or offer more specialized academic instruction. Student needed to be at school during the specialized academic instruction that supported her functional academic goals.

Murell opined that Student's functional academic goals should have required the use of an AAC device because Student's first and foremost priority was learning to use a high-tech AAC device. As discussed, Student using a high-tech AAC device was a Parent preference, and did not support Student as a multimodal communicator. Palo Alto was not required to mandate AAC use in its February 13, 2024 IEP functional academic goals.

The weight of the evidence did not establish that the functional academics goal offered in the February 13, 2024 IEP was inappropriate.

SUB-ISSUE 2b – NO FEBRUARY 2024 BEHAVIOR GOALS OFFERED

Student contends that during the 2023-2024 school year she needed a behavior goal to address walking around inside or outside of the classroom as a means to escape functional academic tasks. Student contends she also needed a goal to sit for longer

periods of time. Student asserts that her lack of progress in functional academics was due to the amount of time Student spent walking instead of attending to academic tasks. Palo Alto contends Student did not have maladaptive behaviors to warrant an annual behavior goal.

The weight of the evidence did not establish that Student was walking in or outside of the classroom to escape academic tasks and needed a behavior goal to address maladaptive behaviors or to sit for longer periods of time during the 2023-2024 school year.

Up to the time of the February 13, 2024 IEP team meeting, Student walked inside and outside of the Futures classroom for many reasons that were not behavior related. Student needed frequent breaks due to discomfort and to regulate herself to maintain attention to task. Student's health plan required Student to drink regularly, walk for correct bodily function, and go to the bathroom. Student had both vocational and motor skills goals that required her to be learning physical tasks. Student participated in vocational training at various locations for up to two 90-minute periods three days per week. Student participated in physical education outside for up to 90 minutes three times per week. She attended general education art and culinary arts in other classrooms for up to 90 minutes every school day. The evidence did not show that Student's walks were a behavior to escape classwork or due to an inability to sit for lessons.

Student's vocational tasks included going to the main office to get mail to

- deliver to teachers,
- shredding paper,
- delivering food orders to staff at lunch,

- bagging dog biscuits baked at Gunn, and
- greeting customers at the Futures Café.

Student's vocational training periods also included community-based instruction off-campus several days per week. Student was learning to step onto and off of a bus safely to use public transportation. Student's adapted physical education took place in the gym, on the track, or on the playground. Each of these tasks required Student to be outside of the classroom for reasons unrelated to behavior or attention.

During the 2023-2024 school year, Parent scheduled Student's private appointments during Student's functional academics periods. Student was not missing her functional academics instruction due to eloping or leaving class, task avoidance, or an inability to sit through functional academic tasks, but due to absences.

Special education teacher Dias and aide Ramirez credibly and persuasively testified Student did not use walking as a means to escape academic tasks and was easily redirected to classroom tasks when her attention wandered. Hong testified that the aides assigned to Student prior to Ms. H and Ramirez returned Student to the Futures the classroom early from general education arts and culinary arts periods, but that testimony fell far short of demonstrating that Student used walking as an escape from academic tasks. Arts and culinary arts were hands-on elective classes, and Student's general education classes were for inclusion. Evidence Student left those classes early did not show Student could not sit for academic tasks.

In March 2024, Parent requested, and Palo Alto conducted, a functional behavior analysis to determine if Student was eloping from instructional spaces to avoid assigned tasks. The functional behavior analysis, also called an assessment, was conducted by

Joshua Shleffar, who had a master's degree in special education, a special education teaching credential, training in conducting functional behavior assessments, and 10 years of experience as a behavior specialist. As part of the behavior assessment, Shleffar observed Student eight times inside and outside the classroom for a total of 10 hours and did not observe any elopement or leaving class without permission, or task avoidance. Staff members who completed rating scales about behavior function rated elopement as not occurring, which was consistent with Shleffar's observations. Staff also rated Student as likely being off task for a non-preferred item or because she was physically ill or in discomfort. However, Shleffar observed that when Student pushed away non-preferred assignments, she was easily redirected to return to the task.

Shleffar presented his findings in a written report and at an IEP team meeting on May 7, 2024. No behavior goals were added at that time because the Palo Alto IEP team members did not identify any maladaptive behaviors needing to be addressed.

Student did not call another behavior specialist to critique Shleffar's functional behavior assessment, or to offer a contrary opinion about Student's behavior needs during the 2023-2024 school year.

If Student had a physical inability to sit for extended periods of time, rather than a behavior, that would have been addressed with accommodations determined during physical therapy consult minutes offered in the February 14, 2023 and February 13, 2024 IEPs. Alternatively, it could be addressed by a gross motor skills goal, and Student withdrew all claims regarding motor skills goals.

The weight of the evidence did not establish that Student had behavioral needs that required an annual behavior goal to be offered in the February 13, 2024 or May 7, 2024 IEPs.

SUB-ISSUE 2b – FEBRUARY 2024 TRANSITION GOALS OFFER

Student contends the transition goals in the February 13, 2024 IEP and its post-secondary transition plan were inadequate because Student should have been targeting specific skills for a specific job. Palo Alto contends the annual transition goals and post-secondary transition plan goals were appropriate.

By February 2024, Student had not met her prior year's motor skills goal of setting up or cleaning two to three items during Futures Café or another designated job with verbal and gestural prompts and minimal physical assistance, although she made good progress. She was able to set up or clean one to two items with minimal verbal or gestural prompts and was learning to sort items.

The February 13, 2024 annual vocational/transition Goal 2 was for Student to complete a two- to three-step vocational activity, such as sorting, matching, cleaning, or other task, given a visual model. This was a step up from Student's baseline of cleaning one to two items with prompts and physical assistance. Student would be learning multiple transferable skills such as sorting and cleaning, with additional steps involved. A visual model at the beginning of the task was less intrusive at a job site than verbal or gestural prompts and would demonstrate independence in task completion. Goal 2 built on Student's progress in engaging in vocational activities and learning to sort matching items. Dias was familiar with Student's physical and cognitive strengths and weaknesses, and Student could be reasonably anticipated to meet this goal within 12 months. Goal 2 was an appropriate transition goal in February 2024.

The February 13, 2024 IEP also contained a post-secondary transition plan with three post-secondary goals in the areas of education and training, employment,

and independent living. The transition plan retained Student's February 14, 2023 post-secondary education goal to attend an adult day program after completion of 12th grade, the employment goal to volunteer, and the independent living goal to live with Parents. All three post-secondary transition goals were linked to and supported by annual vocational and transition Goal 2 to independently complete a two- to three-step vocational activity.

The employment goal in the transition plan was developed around vocational training to prepare Student for work experience in a post-secondary program. Student cites no authority that the transition goals were required to specify a specific volunteer position, let alone Parents' preferred volunteer job at the VA hospital.

Student's post-secondary goals were proposed by Dias and discussed and developed by the entire February 13, 2024 IEP team, including Parents, taking into consideration Student's unique needs and skills. Student had been assessed with a pictorial interest inventory in January 2023 that allowed her to choose pictures instead of giving verbal responses. Her responses were unclear and inconclusive, but Student would receive a certificate of completion of high school, not a diploma, and would continue in a post-secondary program until she turned 22. In February 2024, Parents confirmed for the IEP team Student would go to a post-secondary adult program, wanted to participate in volunteer employment, and would remain living with them. Accordingly, the goals for Student to transition to an adult day program, volunteer, and live with Parents were appropriate and results-oriented.

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The IDEA requires a results-oriented transition plan for transition services. (34 C.F.R. §§ 300.43, 300.320(a)(7).) It does not require that annual goals support a transition plan, although the February 13, 2024 IEP's annual vocational/transition Goal 2, for Student to complete a two- to three-step vocational activity, did just that.

The weight of the evidence did not establish that annual vocational/transition goal and the goals in the post-secondary transition plan offered in the February 13, 2024 IEP were inappropriate.

In summary for Issue 2b, Student did not prove by a preponderance of the evidence that Palo Alto denied her a FAPE during the 2023-2024 school year by failing to offer appropriate goals in English language development, speech and AAC, functional academics, behavior, and transition.

Palo Alto prevailed on Issue 2b.

ISSUE 2c: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE SERVICES IN THE FOLLOWING AREAS: ENGLISH LANGUAGE DEVELOPMENT, SPEECH AND AUGMENTATIVE AND ALTERNATIVE COMMUNICATION, FUNCTIONAL ACADEMICS, AND TRANSITION?

Student contends Palo Alto denied her a FAPE because she did not make a lot of progress on annual goals in the prior year and the February 13, 2024 IEP should have offered English language development services and more speech and AAC services.

Student also contends her lack of progress on the February 2023 goals made the offers of academic and transition services in the February 2024 IEP inadequate. Palo Alto contends that it offered Student appropriate services in the February 13, 2024 IEP.

When it comes to services, parents retain the right to refuse consent to implementation of the IEP, in whole or in part (*I.R. v. Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1170, citing 34 C.F.R. § 300.300(d)(3)), but cannot dictate the terms of the offer itself. The IDEA gives parents the right to participate in decisions about their child's program, but it does not give parents the right to control or veto any individual IEP offer provision. (*Ms. S. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.) Development of an IEP is a team decision, but if the IEP team members do not agree, the school district is responsible for ensuring that a student is offered a FAPE. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526; *Letter to Richards* (OSEP, Jan. 7, 2010), 55 IDELR 107.)

The IDEA's implementing regulations only require that an IEP contain a statement of the special education and related services required by a student with disabilities and a description of the extent to which the student will be able to participate in the regular education program. (34 C.F.R. § 300.346(c).) Therefore, the regulations do not mandate that the IEP list other non-special education services the student might need. (*Letter to Moreno* (OSEP, May 6, 1992) 18 IDELR 1232.)

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SUB-ISSUE 2c – FEBRUARY 2024 ENGLISH LANGUAGE DEVELOPMENT SERVICES OFFER

Student contends she would have made more progress in English language development with Korean instruction, and should have been offered Korean instruction, or Korean interpretation of English instruction, in the February 13, 2024 IEP as a related special education service with documented frequency, location, and duration of that service.

From March 2023 through February 2024, Student made progress on her February 14, 2023 goals. Although Student's English language proficiency scores on statewide English language proficiency testing remained in the lowest range in the 2023-2024 school year, Student's English language development was commensurate with her developmental level and the impact of her disabilities. The February 13, 2024 IEP offered Student 60 minutes weekly of individual speech services and the same level of specialized academic instruction, which continued the rate at which Student had demonstrated slow and steady communication progress and English language development.

Parents' insistence that Student's progress in the school setting would be better and faster with the support of Korean language instruction was based on unpersuasive, anecdotal evidence, and contradicted by bilingual assessments and the testimony of teachers and staff who had instructed Student with the support of Korean language interpreters. There was no credible evidence that Student performed better with Korean instruction than with English instruction, and Palo Alto was not required to offer Student Korean instruction, or interpretation of instruction, as a related service, let alone specify the anticipated frequency, location, and duration of such a service.

Parent preferred that Student receive instruction in Korean, but Palo Alto was obligated to offer Student appropriate services, not the services preferred by Parents. Interpretation of instruction in Korean was not necessary for Student to access her education or develop her English language proficiency in February 2024.

The Support for English Learners page of the February 13, 2024 IEP identified a number of instructional supports for Student's English language development, including pictures and visuals, speaking templates, and word banks. In addition, it indicated Student required support with directions in her primary language, in a structured English immersion special education setting to support instruction in English. Interpretation of directions in a student's primary language was a general education support available to all disabled and non-disabled students in Palo Alto with non-English primary language, coordinated through the English Learners department. It did not need to be listed in the February 13, 2024 IEP (*Letter to Moreno, supra*), let alone offered as a related service.

The weight of the evidence did not establish that Palo Alto failed to offer Student appropriate English language development services in the February 13, 2024 IEP.

SUB-ISSUE 2c – FEBRUARY 2024 SPEECH AND AAC SERVICES OFFER

Student contends she did not make much progress on her AAC device the prior year and should have been offered more AAC services. Student also contends the May 29, 2024 IEP team should have adopted Murrell's AAC services recommendations.

Student did not meet her three communication annual goals from the February 14, 2023 IEP, but by January 2024 had made good progress. On expressive language communication Goal 1 to use multimodal communication, including the AAC

device, vocalizations, gestures, and body language, to communicate basic needs and wants from a field of three with minimal support in four of five opportunities, Student performed from a field of two with moderate to maximum prompts four of five times. This was some progress from the 2023 baseline of choosing preferred items from a field of two. Speech-language pathologist Lo commented in the progress report that Student's absences were affecting Student's progress on this goal.

On expressive, receptive, and pragmatic communication Goal 2, to identify common items and objects, such as body parts, greetings, and feelings, from a field of two with moderate support, Student made progress in identifying pain and discomfort but was not yet identifying feelings in structured scenarios with maximum prompting. On articulation communication Goal 3 to articulate five single-syllable words to communicate her wants and needs with an immediate model, including hi, bye, go, stop, and juice, Student's progress waxed and waned. In March 2023, Student said hi, bye, and go with an immediate model, but by the end of the 2022-2023 school year, she was not articulating any words. In October 2023, Lo reported Student's ability to model sounds was emerging, but inconsistent.

By the time of the February 13, 2024 IEP team meeting, Student communicated verbally with approximations of "go," and with gestural supports, when she was emotionally regulated. Student imitated word approximations, but articulation was still an emerging skill. Student independently used her AAC device to greet, was learning to bid farewell, and could independently select the icon for one classmate and push the icon for "mom" when it was time to go home. At hearing, Lo opined Student was making communication progress appropriate in light of her severe cognitive and communication disabilities.

The February 13, 2024 IEP offered Student individual speech services for 60 minutes per week. This was the same level in the February 14, 2023 IEP that enabled Student to make progress commensurate with her circumstances. Lo testified persuasively that 60 minutes per week of speech sessions with a speech-language pathologist was reasonably calculated to enable Student to make meaningful progress on her new communication goals to identify her classmates, to greet others and advocate her wants and needs, and to articulate four single-syllable words. Lo was familiar with the iPad and TD Snap program Student was using during the 2023-2024 school year and had begun collaborating with Parent. Lo opined that a speech-language pathologist would have sufficient time to work with Student on her expressive, receptive, and pragmatic language goals, including on the AAC device, with 60 minutes of individual speech services per week.

At the February 13, 2024 IEP team meeting, AAC specialist Warren reported Student was using her device for vocational tasks and new vocabulary had been added. Warren did a significant amount of programming during the first half of the 2023-2024 school year, and wanted to collaborate more with Student's educational team. Therefore, she recommended an increase in AAC consult minutes. The February 13, 2024 IEP doubled the support of AAC consult minutes from 300 to 600 per year.

Warren was familiar with the iPad and TD Snap program and testified that 600 minutes per year was sufficient for her to check in with staff on vocabulary words or other modifications to the AAC device requested, train staff on the use of the AAC device and any modifications, program the device, and collaborate with Parents and Student's private speech providers.

Murrell opined at hearing that 600 minutes per year of AAC consultation was the minimum amount to support Student on the goals in the February 13, 2024 IEP. When pressed by Student's counsel during questioning, she opined 900 minutes per year was better, and 1,200 minutes per year was best. Palo Alto was not required to offer the best program available, just an appropriate program. (*Rowley, supra*, 458 U.S. at p. 198; *Endrew F., supra*, 580 U.S. at p. 403; *A.O., supra*, 92 F.4th at p. 1172.). Murrell's testimony was insufficient to establish that more than 600 minutes of AAC consultation was required to appropriately support Student in attaining the annual goals in her February 13, 2024 IEP.

The weight of the evidence did not establish that Palo Alto should have offered Student more or different speech and language services or AAC consultation in the February 13, 2024 IEP.

Student contends that Murrell's AAC report recommendations should have been incorporated into the May 29, 2024 IEP.

A May 29, 2024 IEP team meeting was convened to review Murrell's April 2024 AAC evaluation report. The report recommended, almost entirely, services and supports that were already in place in the February 13, 2024 IEP. Murrell recommended collaboration with Parent, training for Parents and staff, using a passcode to which stakeholders had access, regularly reviewing and updating Student's AAC device, and AAC support, which was already taking place as part of the 600 minutes per year of AAC consultation.

Murrell recommended that the AAC system be tailored to Student's communication needs, considering Student's bilingual background, visual impairments, and motor challenges. This had already been done, with the exception of accommodating Student's

visual impairments, which had not at that time been definitively diagnosed. Nonetheless, Student's school-issued AAC device already displayed large icons and spaces between each icon on each screen to accommodate Student's weak and inconsistent hand control, but which would also accommodate visual impairments.

Murrell recommended the device support both English and Korean, which the iPad loaded with TD Snap software did. Murrell recommended a variety of minor AAC device upgrades, such as a more durable cover, a handle, and better battery capacity, but there was no showing these were necessary for Student to access her education. She recommended a software change from TD Snap to TD Snap 33 to give Student a chance to develop muscle memory in the use of her AAC device, but the IEP team did not determine it to be necessary or appropriate for Student to access her education, and Student did not prove it to be so at hearing.

Murrell recommended that "cultural relevance should be maintained in the vocabulary and organization of the device." This appeared to be a Parent preference, and not necessary for Student to access her curriculum and make progress on her annual goals.

Murrell also recommended school-based speech and language goals at the end of the AAC evaluation report "emphasizing and capitalizing on the verbal speech that Student currently possesses." These included having Student identify named objects from a field of four cards, respond to "who" questions on her AAC device, express needs verbally and with her AAC device, and produce 16 intelligible sounds and 10 intelligible words. Murrell recommended 100 minutes of speech services per month, 100 minutes of group speech services per month, plus 50 minutes per month of direct AAC instruction and 600 minutes of AAC consultation to support the goals.

Murrell's goal recommendations were very significant increases to Student's demonstrated skills and based primarily on Parent's unreliable report of Student's abilities. Murrell did not include the period of time it was estimated Student could accomplish the goals or how progress would be measured. Student's total speech minutes were already at 240 minutes per month, including direct AAC instruction, similar to the 250 recommended by Murrell. Murrell did not clearly explain in her report or at hearing why she recommended providing half of Student's speech services in a group, particularly as none of her proposed goals involved conversational turns with peers. Murrell's proposed speech goals and service recommendations at the end of an AAC report, and her unpersuasive testimony at hearing, were insufficient to demonstrate that the goals and services offered at the February 13, 2024 IEP were inappropriate, or that Murrell's recommendations were necessary for Student to receive a FAPE on May 29, 2024.

The weight of the evidence did not establish that Palo Alto failed to offer Student appropriate speech and AAC services in the February 13, 2024, or May 29, 2024 IEPs.

SUB-ISSUE 2c – FEBRUARY 2024 FUNCTIONAL ACADEMICS SERVICES OFFER

Student contends Palo Alto should have offered additional instruction in functional academics because Student had made so little progress in functional academics since February 2023. Palo Alto contends the specialized academic instruction it offered for functional academics was appropriate for Student.

Student's progress in functional academics over the past year was inconsistent, with one goal met and one not. Functional academics Goal 4 in the February 14, 2023

IEP was for Student to identify important people on her AAC device with no more than three prompts. By January 2024, Student was only 20 percent accurate at this goal. The February 14, 2023 functional academics Goal 5 was for Student to make a choice with no more than two prompts given two visual options, and Student met that goal with as little as one prompt by January 2024.

The February 13, 2024 IEP contained functional academics Goal 5 for Student to match a colored object with another object of the same color from a field of three with a verbal direction in English to match the objects. The February 13, 2024 IEP offered Student 900 minutes per week, or approximately three hours per day, of group specialized academic instruction in a special education classroom to enable Student to meet that goal.

Student's special education teacher Dias opined persuasively, and without contradiction by another credentialed special education teacher, that 900 minutes per week of specialized academic instruction was sufficient to support Student's functional academics Goal 5, along with Student's vocational and independent living goals. The February 13, 2024 IEP offer of 900 minutes of specialized instruction in a special education classroom was reasonably calculated to ensure Student would make progress in functional academics appropriate to her circumstances.

As discussed in section "Issues 1f" and section "Issue 2e," Student's progress in functional academics was adversely impacted by her frequent tardiness and chronic absenteeism in both the 2022-2023 and 2023-2024 school years. Palo Alto IEP team members felt Student had made good progress in light of her absences. Delays in progress due to Parent regularly taking Student out of school for private therapies did

not require Palo Alto to offer additional specialized academic instruction, or a program that focused on functional academics to the exclusion of Student's other educational needs.

The weight of the evidence did not establish that Palo Alto failed to offer Student appropriate services in functional academics in the February 13, 2024 IEP.

SUB-ISSUE 2c – FEBRUARY 2024 TRANSITION SERVICES OFFER

Student contends Palo Alto offered inadequate transition services in the February 13, 2024 IEP. Parent wanted Student to work in the VA hospital program, and Student argues she needed more intensive transition services for that. Student asserts that time spent on skills such as folding towels would not prepare Student for a real job. Palo Alto contends it offered appropriate transition services.

The February 14, 2024 IEP offered vocational/transition Goal 2 for Student to complete a two- to three-step vocational activity, with vocational activity examples such as sorting, matching, and cleaning. Goal 2 was supported by the offer of 900 minutes per week of specialized academic instruction in the Futures classroom. The Futures curriculum itself was designed to support transition to post-secondary educational and vocational programs, with a weekly schedule of 90 minutes of vocational training on Mondays and 180 minutes of vocational training on Wednesdays and Fridays. Built into the Futures program were on-campus job activities such as the Futures Café and school administrative tasks that taught transferrable job skills, as well as off-campus job opportunities with Palo Alto's business partners.

The February 13, 2024 IEP included a post-secondary transition plan, which offered additional transition services to support the plan's three goals. The transition plan offered 60 minutes per year of transition services with a transition specialist like Dias to prepare for transition to a post-secondary adult day program after completion of 12th grade. The transition plan also offered 30 minutes per week of transition specialist services, plus job coaching and weekly community outings in support of Student's employment goal, and 10 minutes monthly of transition services with community outings to support Student's independent living goal.

Special education teacher and transition specialist Dias, and transition specialist Khoury, testified persuasively that the February 13, 2024 IEP offered Student sufficient specialized academic instruction and transition services for Student to make appropriate progress on skills transferable to paid or unpaid job positions. By the time of the February 13, 2024 IEP, Student was exploring different vocational opportunities, including folding dish towels, wiping tables, dusting books in the library, sharpening pencils, bagging dog biscuits, and shredding papers in the school office. Student was also unloading the classroom dishwasher, placing cups on a cart, pushing the cart to the school's Wellness Center, and putting the clean cups on the appropriate shelf. Student needed full prompting for all tasks, and assistance with most, but was making progress on learning to perform these tasks commensurate with her physical abilities and developmental level.

Palo Alto had community business partners who provided job opportunities to students with disabilities, and skills such as greeting customers, sorting silverware, unloading dishwashers, or delivering items might qualify Student for a position with one of those job partners. The specialized academic instruction and Futures vocational curriculum, combined with 30 minutes per week of transition services offered in support

of the employment transition goal, were reasonably calculated to support Student in making appropriate progress on vocational/transition Goal 2 and the post-secondary goal of volunteer employment. The transition services, job coaching, and community outings offered in support of the post-secondary transition plan goals of attending a post-secondary adult program and living with Parents were reasonably calculated to enable Student to make progress appropriate to her circumstances.

Neither Dias nor Khoury opined that Student needed more transition services than offered in the February 13, 2024 IEP to continue making progress on post-secondary education, employment, or independent living skills. Student did not call a transition specialist or other vocational expert to contradict Dias or Khoury.

Student's contention that she should have worked exclusively on skills to enable her to work at the VA hospital fails for several reasons. Palo Alto was not required to focus on job skills for an entry-level, table-cleaning VA hospital job because Parents preferred it. (*Crofts, supra*, 22 F.4th at p. 1056.) There was substantial evidence that Student might not have the physical ability, stamina, or independence to qualify for a table-cleaning job at the VA hospital. Most importantly, Palo Alto could not, and was not expected to, guarantee that any particular off-campus job would be available for Student.

The February 13, 2024 IEP team's decision to offer transition services for Student to participate in a variety of vocational tasks that might qualify her for work at one of Palo Alto's community business partners was reasonably calculated to ensure Student made progress on her annual and post-secondary transition goals appropriate to her circumstances.

The weight of the evidence did not establish that the transition services offered in the February 13, 2024 IEP were inappropriate.

In conclusion for Issue 2c, Student failed to prove by a preponderance of the evidence that Palo Alto denied her a FAPE during the 2023-2024 school year by failing to offer appropriate services in the areas of English language development, speech and AAC, functional academics, and transition. Palo Alto prevailed on Issue 2c.

ISSUE 2d: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO IMPLEMENT THE FOLLOWING GOALS: ENGLISH LANGUAGE DEVELOPMENT, SPEECH AND AUGMENTATIVE AND ALTERNATIVE COMMUNICATION, FUNCTIONAL ACADEMICS, AND TRANSITION?

Student contends she was denied a FAPE because her goals were not being implemented during the 2023-2024 school year. Palo Alto contends it fully implemented Student's goals throughout the 2023-2024 school year.

SUB-ISSUE 2d – 2023-2024 ENGLISH LANGUAGE DEVELOPMENT GOALS IMPLEMENTATION

At the beginning of the 2023-2024 school year, Student had two goals from the February 14, 2023 IEP that supported English language development standards. Goal 5 was a functional academics goal for Student to make a choice from two visual options with no more than two prompts. Goal 6 was a self-care goal for Student to respond to a speaker within 30 seconds. Progress reports from October 2023 showed Student made good progress on Goals 5 and 6, and the final progress report in January 2024 showed

Student met both goals. Dias testified to working with Student on those goals until Parent consented to the February 13, 2024 IEP. From the start of the 2023-2024 school year through March 20, 2024, Palo Alto staff implemented the February 14, 2023 English language development goals.

Student contends that because Student's AAC device had up to 12 icons on a screen, Palo Alto staff could not have been working on Goal 5 to make a choice from two visual options. However, Goal 5 was not limited to visual choices on an AAC device and could include physical objects or pictures. Student's AAC device had a variety of screens for different classes and situations, and evidence of the TD Snap program's capacity for 12 icons fell short of establishing that Palo Alto staff was unable to configure a page for two icons to work on Goal 5. In addition, an email chain between AAC specialist Warren and Parent in January 2024 expressly referenced pages of Student's AAC device having only two icons and Warren inquiring about whether the number of icons were limited due to Student's vision or mobility. Student's assertion that Student's AAC device did not allow implementation of Goal 5 was not supported by the evidence.

After Parent consented to the February 13, 2024 IEP, Student had two new goals that supported English language development. Goal 4 was a self-care goal for Student to complete four steps of a six-step hand washing routine, and Goal 5 was a functional academics goal to match objects of the same color in response to a verbal direction in English. The testimony of Dias and Ramirez and progress reports dated May 31, 2024, described Student's progress on those goals and established that Palo Alto was implementing the February 13, 2024 English language development goals.

Student contends that her English language development and other goals could not have been implemented during the first semester of the 2023-2024 school year because Hong had not even been aware of Student's goals before February 2024. However, Dias and the other special education teachers were responsible for implementing Student's goals in support of English language development, and Hong's shortcomings do not establish that Dias and the other teachers with special education credentials were not satisfactorily implementing those goals.

The weight of the evidence did not establish that Palo Alto failed to implement annual goals that supported English language development during the 2023-2024 school year.

SUB-ISSUE 2d – 2023-2024 SPEECH AND AAC GOALS IMPLEMENTATION

The February 14, 2023 IEP contained three communication goals. Goal 1 was for Student to use multimodal communication to communicate her wants and needs from a field of three. Goal 2 was for Student to identify concrete common items from a field of two, and included but did not require use of an AAC device. Goal 3 was for Student to articulate five single-syllable words. The testimony of Lo, Ramirez, and Warren, and the progress reports on Goals 1, 2, and 3 from October 2023 and January 2024, established that Palo Alto staff was working on the February 14, 2023 communication goals until Parent consented to the February 13, 2024 IEP.

The testimony of Lo, Ramirez, and Warren and the progress reports from March 22, 2024, and May 31, 2024, clearly demonstrated that after March 20, 2024, Palo Alto staff worked with Student on the three new goals from the February 13, 2024 IEP.

The new Goal 6 was for Student to identify her classmates. Goal 7 was for Student to use multimodal communication to greet others and advocate her wants and needs. Goal 8 was for Student to articulate four single-syllable words. The March 22, 2024 progress report indicated Goals 6, 7, and 8 had been recently introduced, and the May 31, 2024 progress report specified Student's progress on communication Goals 6, 7, and 8. This evidence established that Palo Alto staff implemented the February 13, 2024 communication goals after Parent consented on March 20, 2024.

The weight of the evidence did not establish that Palo Alto materially failed to implement annual communication goals during the 2023-2024 school year.

SUB-ISSUE 2d – 2023-2024 FUNCTIONAL ACADEMICS GOAL IMPLEMENTATION

For the first half of the 2023-2024 school year, the February 14, 2023 IEP was in effect with two functional academic goals. Goal 4 was for Student to identify important people on her AAC device with no more than three prompts, and Goal 5 was to make a choice given two visual options with no more than two prompts. The testimony of Dias and Ramirez, and the progress reports from October 2023 and January 2024, established that Palo Alto staff worked on those goals until Parent consented to the February 13, 2024 IEP.

After March 20, 2024, the February 13, 2024 IEP was in effect, with one functional academics Goal 5 for Student to match two of the same-colored objects from a field of three. The March 22, 2024 progress report indicated that Goal 5 was recently introduced, and the May 31, 2024 progress report specified Student's progress on Goal 5. The testimony of Dias and Ramirez, and the progress reports from March 22

and May 31, 2024, clearly demonstrated that Palo Alto staff was working with Student on the one new functional academics goal from the February 13, 2024 IEP after Parent consented to that IEP.

The weight of the evidence did not establish that Palo Alto materially failed to implement the functional academic goals during the 2023-2024 school year.

SUB-ISSUE 2d – 2023-2024 TRANSITION GOALS IMPLEMENTATION

The February 14, 2023 IEP in effect at the beginning of the 2022-2023 school year did not contain a transition goal, but it did contain motor skills Goal 8 for Student to improve participation in her educational setting by setting up or cleaning two to three items during Futures Café or another designated job with verbal and gestural prompts and minimal physical assistance. The testimony of Dias and Ramirez, and the progress reports from October 2023 and January 2024, showed that Palo Alto staff worked with Student on her post-secondary transition plan goals and annual Goal 8, which also supported the employment goal in Student's post-secondary transition plan, until Parent consented to the February 13, 2024 IEP.

The February 13, 2024 IEP contained a vocational/transition Goal 2 for Student to complete a two- to three-step vocational activity with visual support. Goal 2 was specifically linked to and supported Student's education and training, employment, and independent living goals in the February 13, 2024 IEP's post-secondary transition plan. The March 22, 2024 progress report by Dias indicated that Goal 2 was recently introduced. The May 31, 2024 progress report specified Student's progress on

vocational/transition Goal 2 from the February 13, 2024 IEP. The testimony of Dias and Ramirez, and the March 22 and May 31, 2024 progress reports established that Palo Alto staff implemented Goal 2 and the post-secondary transition plan goals of the February 13, 2024 IEP after Parent consented to that IEP.

The weight of the evidence did not establish that Palo Alto materially failed to implement Student's transition goals during the 2023-2024 school year.

In conclusion for Issue 2d, Student did not prove by a preponderance of the evidence that Palo Alto denied her a FAPE during the 2023-2024 school year by materially failing to implement goals in the areas of English language development, speech and AAC, functional academics, and transition.

Palo Alto prevailed on Issue 2d.

ISSUE 2e: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO IMPLEMENT THE FOLLOWING SERVICES: ENGLISH LANGUAGE DEVELOPMENT, SPEECH AND AUGMENTATIVE AND ALTERNATIVE COMMUNICATION, FUNCTIONAL ACADEMICS, AND TRANSITION?

Student contends she was denied a FAPE because Palo Alto failed to implement Student's services during the 2023-2024 school year. She contends there were long periods without an AAC device or speech services, the Futures teachers were not qualified or not working with Student, and Student spent too much time walking. Palo Alto contends that it implemented all services offered in Student's IEPs.

SUB-ISSUE 2e – 2023-2024 ENGLISH LANGUAGE DEVELOPMENT SERVICES IMPLEMENTATION

At the beginning of the 2023-2024 school year, Student had two goals from the February 14, 2023 IEP that supported English language development standards. They were functional academics Goal 5 for Student to make a choice given two visual options, and self-care Goal 6 for Student to respond to a speaker within 30 seconds. The testimony of Dias and Ramirez established that Student worked on those goals during specialized academic instruction and throughout the school day. Progress reports from October 2023 and January 2024 showed Student made good progress in the first quarter and had met both goals by January 2024. Student's progress on the February 14, 2023 IEP's Goals 5 and 6 was compelling evidence that Palo Alto implemented the specialized academic instruction that supported the English language development incorporated into those two goals.

After Parent consented to the February 13, 2024 IEP, Student had two new goals that supported English language development. Self-care Goal 4 was for Student to complete four steps of a six-step hand washing routine with verbal prompts in English, and functional academics Goal 5 was to match objects of the same color from a group of three in response to a verbal direction in English. Dias and Ramirez testified that Student worked on these goals and Student made progress on them over the last two months of the 2023-2024 school year, which was corroborated by the contemporaneously documented progress on Goals 4 and 5 in the May 31, 2024 year-end progress report. This was persuasive evidence that the specialized academic instruction offered to enable Student to make progress on Student's annual goals was implemented.

Student speculates that her services may not have been implemented by Park, her first teacher at Gunn during the 2023-2024 school year. Student reaches this conclusion by reasoning that Park may have been replaced in early December 2023 for inappropriate conduct towards Student. The hearing in this matter took place a year after Park was replaced, and it is a reasonable inference that if Student had been a subject of alleged wrongful conduct, Parents would have known about it or been contacted about it by December 2024. Student offered no more than inadmissible speculation and innuendo in support of that argument.

Student's failure to make an offer of proof of any failure by Park to implement Student's February 14, 2023 IEP was discussed in more detail in the December 18, 2024 Order Overruling Student's Objection to Striking a Portion of the Record and Finding Student's Offer of Proof Insufficient, and that discussion is not repeated here. Student's innuendo and speculation was insufficient to establish that Park did not implement Student's February 14, 2023 IEP services. The fact that Student was reported to be making good progress on Goals 5 and 6 in October 2023, and had met those goals by January 2024, a month after Park was replaced, was substantial evidence that Park and Palo Alto staff were implementing the specialized academic instruction offered to enable Student to make progress on those goals.

Student contends that Hong, a substitute teacher without a special education credential, was unqualified to implement the services in Student's IEPs from December 2023 through the end of the 2023-2024 school year. Student did not call an expert in State educational credentialing to explain California law regarding who can teach a class, with what credentials, under what circumstances, and with what support and oversight. In addition, there is no private right of action under the IDEA for failure of a teacher to meet applicable credentialing requirements. (20 U.S.C. § 1412(a)(14)(E).)

Hong's lack of a special education credential, by itself, was insufficient to establish that Student's IEP services were not implemented, particularly as three credentialed special education teachers were teaching the Futures class with Hong.

The progress reports showing Student met her February 14, 2023 goals in support of English language development, and the May 31, 2024 progress report showing that, in only two months, Student made good progress on the February 13, 2024 goals supporting English language development, were compelling evidence that Dias, Hong, and the other special education teachers who replaced Park implemented the specialized academic instruction services offered to support Student's English language development goals.

Lastly, Student contends that Palo Alto did not provide her with a Korean tutor from the English Learners department during the 2023-2024 school year, and Student was unable to access her education without Korean interpretation of instruction. As found earlier in this Decision, Student did not understand or respond to Korean interpretation of instruction any better than she understood and responded to English instruction. As Student's progress on the goals supporting English language development shows, Student did not need Korean interpretation of instruction to access specialized academic instruction or other services during the 2023-2024 school year.

The weight of the evidence did not establish that during the 2023-2024 school year, Palo Alto materially failed to implement the specialized academic instruction offered to support Student's English language development goals.

SUB-ISSUE 2e – 2023-2024 SPEECH AND AAC SERVICES IMPLEMENTATION

At the beginning of the 2023-2024 school year, Student was at Paly High for less than a month, from August 9 through September 1, 2023, before transferring to Gunn on September 5, 2023. There was some confusion and delay involved in the transfer, and once approved, a period of time while records and specialized equipment for Student, including her chair, wheelchair, gait belt, and AAC device, were transferred to Gunn. In addition, service providers at Gunn had to incorporate Student's speech therapy, occupational therapy, adapted physical education, physical therapist consult, AAC specialist consult into already established schedules, and Gunn had to arrange two additional aides for Park's classroom.

Student had not received speech services at Paly High prior to her transfer to Gunn, but Student only submitted service logs for Gunn into evidence and did not establish that Paly High failed to make speech services available as offered in the February 14, 2023 IEP. It is just as likely that Student was absent for speech services, as she was only at Paly High for four weeks, a total of 17 days, and was tardy or absent so often she missed six periods of art, nine periods of academic enrichment, nine periods of functional academics, and 28 periods of vocational training.

Student's direct weekly speech therapy with speech-language pathologist Lo began as soon as Student arrived at Gunn, although Student's sporadic attendance during scheduled speech services resulted in many missed sessions for the first half of the 2023-2024 school year. AAC specialist Warren began consulting with Park and staff working with Student on October 6, 2023. Student did not show that she received less than all AAC consultation minutes offered in her IEPs during the 2023-2024 school year.

Lo's speech logs were more problematic. Lo regularly provided speech services, or was available when Student was absent, on Tuesdays and Thursdays, and provided extra minutes to make up for any days she was not available. Lo testified that Student had received all speech services required by her IEPs during the 2023-2024 school year. However, her total minutes of speech services logged for the 34 full weeks from September 5, 2023, through the end of the 2023-2024 school year, were 1,895, or 145 minutes short of the 2,040 Student was entitled to under the February 14, 2023, and February 13, 2024 IEPs. This calculation excludes Lo's time attending IEP team meetings, which Lo testified she did not count as Student's direct service minutes, and an entry for August 2023 when Student was neither at Gunn nor receiving group speech services. It does not exclude time logged when Student did not appear for services or when Lo pushed-in speech services during classroom activities. The 2023-2024 service log shows that Lo did not deliver just under five 30-minute sessions.

The missing time is unexplained. Neither party directed Lo to the hour shortage in the log or asked her to explain the discrepancy. Lo may have accidentally calculated IEP team meeting minutes into her service total. When Lo was unavailable, Student's speech sessions may have been covered by a speech-language pathologist based at another school who recorded his or her time in the service logs of another school. However, five unaccounted for speech sessions is a significant educational loss for a student with severe communication deficits.

The insufficient hours in the Gunn service log, without explanation, establish that it is more likely than not that Lo failed to provide Student with five 30-minute sessions, which was a material failure to implement Student's speech services during the 2023-2024

school year. As a remedy, Palo Alto will be ordered to provide three hours of speech and language services by a qualified speech-language pathologist employed by Palo Alto or a certified nonpublic agency.

Student contends that Palo Alto was obligated to rearrange the days, hours, classrooms, and students Lo served at Gunn to accommodate Student's absences. Student argues that her private therapies were medical in nature, and Student should not be expected to prioritize education over her health. However, Student cites no law requiring Palo Alto to rearrange Student's schedule to accommodate medical appointments, or to make up educational services or instructional time missed due to Parent pulling Student out of school during school hours. Palo Alto was not required to rearrange Student's speech therapy schedule, or make up missed sessions or classes, due to medical appointments scheduled at Parent's convenience.

Student contends that the delay of approximately one month to transfer Student's AAC device from Paly High to Gunn deprived her of the full range of specialized instructional services offered in the February 14, 2023 IEP, as neither her teachers nor her aides could implement services requiring Student have access to an AAC device during that time.

Student was a multimodal communicator. All of Student's February 14, 2023 goals but one could be worked on without an AAC device. Communication Goal 1 to communicate a want or need from a field of three, and Goal 2 to identify common items from a field of two were multimodal. Goal 3 was an articulation goal and did not involve an AAC device. Functional academics and English language development Goal 5 was to make a choice given two visual options, and did not require an AAC device. Self-care and independent living Goal 6 was for Student to respond to a speaker within

30 seconds, and expressly could be met with an eye gaze or a wave. Motor skills Goals 7 and 8 to catch a bounced ball and set up or clean up two to three items as part of a vocational task did not require an AAC device.

Functional academics Goal 4 required Student to identify images of important people on her AAC device, but that did not mean Student could not work on the goal while her AAC device was being located, transferred, or temporarily unavailable. Pictures of important people identified with multimodal communication, such as eye gaze, pointing, touching a picture, using a two-choice switch, or temporarily using a lower tech device or iPad able to display photos would prime Student for identifying those same people on her AAC device. These means of identifying people on a temporary basis would not be a perfect implementation of Goal 4, but neither would it be a material failure to implement specialized academic instruction in support of one functional academics goal.

Student transferred to Gunn on September 5, 2023, and her AAC device was located at Paly High on October 10, 2023. There were various times during the 2023-2024 school year that Student forgot to bring her AAC device to school, Student's AAC device went missing at Gunn, or Student's AAC device needed charging, maintenance, or to be given to Warren for programming. Evidence that Gunn staff were occasionally attempting to find Student's AAC device did not establish that Palo Alto materially failed to implement Student's speech services or AAC consultation services.

Lastly, Student contends that her speech services and specialized academic instruction were not properly implemented because Warren did not coordinate with Parent on use of the AAC device. This contention was puzzling. Warren frequently

communicated with Parent about the AAC device, particularly vocabulary. By email on January 18, 2024, Parent expressly told Warren to do what Warren wanted with the AAC device at school.

As mentioned earlier, Warren accidentally discovered in March 2024 that Parent was reprogramming Student's school-issued AAC device without telling anyone. Warren asked Parent to coordinate with her before making changes to the AAC device and tried to arrange to meet with Parent and train her how the school used the AAC device, which Parent declined. Warren and Lo made themselves available to meet with Murrell twice in April 2024 as part of Murrell's AAC evaluation, and Warren frequently reached out to Murrell for vocabulary words. The evidence did not establish that Palo Alto failed to implement AAC services during the 2023-2024 school year because Parent was excluded from the AAC development process.

The weight of the evidence established that Palo Alto materially failed to implement four 30-minute speech sessions, but implemented all AAC services, during the 2023-2024 school year.

SUB-ISSUE 2e – 2023-2024 FUNCTIONAL ACADEMICS SERVICES IMPLEMENTATION

Student contends she did not receive her specialized academic instruction in support of functional academics goals because the aides let Student walk outside of the classroom too much. Palo Alto disagrees.

Student was frequently outside the Futures classroom to use the bathroom, to regulate herself for better attention to classroom tasks, for vocational training, for community outings, for arts and culinary arts classes, and for adapted physical education.

After Parent consented to implementation of the February 13, 2024 IEP, Student's self-care and English language development goal was for Student to complete at least four of six steps for handwashing with no more than five verbal prompts. Practice on this skill after using the bathroom increased the amount of time Student was out of the classroom for toileting.

Student also contends that she did not receive services in support of functional academics during the 2023-2024 school year because Student's aides were not available or did not provide the offered intensive individualized services. However, the weight of the evidence did not show that the aides assigned to Student were unavailable or did not implement their services.

Student's aides were assigned to her primarily for safety and toileting. Student's complaint alleges that her aides during the 2023-2024 school year did not timely change her diapers, but at hearing Student withdrew all claims related to toileting. In fact, the evidence established that aides Ramirez and Ms. H not only took exceptional care of Student during the school day, they reinforced Student's use of her AAC device to ask to go to the bathroom in English, and succeeded in helping Student learn to urinate in the toilet for the first time in 18 years.

Hong testified that when he was first assigned to the Futures classroom in December 2023, some of the aides spent time on their cell phones instead of helping students and maneuvered among themselves to be busy when Student needed a diaper change or to use the bathroom. Such testimony falls far short of establishing that Student did not receive all offered services in support of functional academics.

In support of Student's argument that she did not always have the aide support offered in the February 14, 2023 IEP, Student references a document of daily entries Hong created about gaps in aide coverage for Futures classroom students, including Student. But that document demonstrated just the opposite of Student's contention. It was a grid kept open by Dias on her laptop every morning after she and Hong were assigned to the Futures classroom in which Hong reported potential gaps in aide coverage at the beginning of the day so that Dias could arrange replacement aides. Hong was vehement in his testimony that Student was never without two aides, and that he would temporarily cover for an aide if necessary.

Hong's testimony was interesting. He was unfamiliar with IDEA requirements and was not a credentialed special education teacher. He took inordinate pride in how he organized the Futures classroom, his daily aide log being one example. He referred to his increased responsibilities over the classroom during the 2023-2024 school year as promotions, although his actual position did not change. He described things in black and white without nuance, for example, someone who was not doing their job as he perceived it was "doing nothing" or improperly carrying out their duties. Hong was not responsible for Student's specialized academic instruction and did not supervise the aides. Nonetheless, he had strong opinions on how things should have been done, albeit without the knowledge and understanding of Dias and the other special education teachers in the Futures classroom.

To Hong's credit, he was compassionate and cared about his students. He immediately recognized that Student needed the most assistance and support and asked Dias to assign Ramirez and Ms. H to Student because they were the hardest working aides. Hong provided a consistent classroom presence for the Futures students

after Park left and through the daily rotation of special education teachers. However, his testimony fell short of showing that the other classroom aides, special education teachers, or service providers working with Student did not implement Student's IEP services as required by the February 14, 2023 or February 13, 2024 IEPs.

The weight of the evidence did not establish that during the 2023-2024 school year, Palo Alto materially failed to implement the functional academics services offered.

SUB-ISSUE 2e – 2023-2024 TRANSITION SERVICES IMPLEMENTATION

The February 14, 2023 IEP did not contain a transition goal, but it did contain motor skills Goal 8 for Student to improve participation in her educational setting by setting up or cleaning two to three items during Futures Café or another designated job with verbal and gestural prompts and minimal physical assistance. The February 14, 2023 IEP offered 900 minutes per week of specialized academic instruction in support of Goal 8, and 30 minutes per week of job coaching, 10 minutes per month of transition skills targeting daily living skills, and 60 minutes per year of transition services targeting vocational training in support of the February 14, 2023 transition plan post-secondary goals. The testimony of Dias and Ramirez, and the progress reports from October 2023 and January 2024, showed that Palo Alto staff implemented specialized academic services, job coaching, and transition services to work with Student on Goal 8 during the vocational training blocks, particularly during work at the Futures Café, until Parent consented to the February 13, 2024 IEP.

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The February 13, 2024 IEP contained a vocational/transition Goal 2 for Student to complete a two- to three-step vocational activity with visual support. The May 31, 2024 progress report indicated Student was making steady progress on Goal 2, with 65 percent accuracy in two of three trials with visual modeling and minimal prompts. Student's progress on vocational/transition Goal 2 was persuasive evidence that Palo Alto implemented specialized academic instruction during vocational training to work on this skill. The testimony of Dias and Ramirez, and the March 22 and May 31, 2024 progress reports established that Palo Alto staff implemented transition services as offered in the February 13, 2024 IEP after Parent consented to that IEP.

The February 13, 2024 IEP also offered transition services at the same level as the February 14, 2023 IEP to support Student's post-secondary goals in transitioning to an adult day program, volunteer employment, and independent living. Dias provided Student with the transition services offered in the post-secondary transition plans in the February 14, 2023, and February 13, 2024 IEPs.

Student contends that she did not receive transition services because she did not attend transition specialist Khoury's vocational workshops during the 2023-2024 school year. However, Dias convincingly opined that Student's cognitive deficits and developmental level prevented Student from obtaining educational or vocational benefit from those workshops.

The weight of the evidence did not establish that during the 2023-2024 school year, Palo Alto materially failed to implement the offered transition services.

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In summary for Issue 2e, Student did not prove by a preponderance of the evidence that Student denied her a FAPE during the 2023-2024 school year by materially failing to implement services in the areas of English language development, AAC, functional academics, and transition. Student proved that Palo Alto materially failed to implement four 30-minute sessions of speech services.

Student and Palo Alto each partially prevailed on Issue 2e.

ISSUE 2f: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO GIVE PARENTS A PRIOR WRITTEN NOTICE REGARDING LACK OF IMPLEMENTATION OF ANY OF THE GOALS AND SERVICES OFFERED?

As discussed in section "Issue 2d" and section "Issue 2e," above, Palo Alto implemented Student's goals and services from the February 14, 2023, and February 13, 2024 IEPs, with the exception of two and one-half hours of speech services. Accordingly, Palo Alto was required to give Parents prior written notice of lack of implementation of five of Student's 30-minute speech sessions during the 2023-2024 school year.

Student proved by a preponderance of the evidence that Palo Alto denied her a FAPE during the 2023-2024 school year by failing to give Parents prior written notice regarding lack of implementation of five 30-minute sessions of speech services. Student did not prove by a preponderance of the evidence that Palo Alto denied her a FAPE during the 2023-2024 school year by failing to give Parents prior written notice regarding lack of implementation of any goals or any other services offered.

Student and Palo Alto each partially prevailed on Issue 2f.

ISSUE 2g: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO CONVENE AN IEP TEAM MEETING IN RESPONSE TO STUDENT'S LACK OF EXPECTED PROGRESS?

As discussed throughout the above sections on issues 2a, 2b, 2c, 2d, and 2e, the evidence was overwhelming that during the 2023-2024 school year Student made appropriate progress in light of her circumstances. Student's progress was slow and steady throughout the 2023-2024 school year, consistent with the impacts of her disabilities and despite the adverse impact of chronic absenteeism on her education as a whole. Palo Alto was not required to convene an IEP team meeting in response to a lack of expected progress during the 2023-2024 school year.

Student failed to prove by a preponderance of the evidence that Palo Alto denied her a FAPE by failing to convene an IEP team meeting in response to a lack of expected progress.

Palo Alto prevailed on Issue 2g.

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ISSUE 3a: DID PALO ALTO DENY STUDENT A FAPE FROM THE BEGINNING OF THE 2024-2025 SCHOOL YEAR THROUGH OCTOBER 9, 2024, BY FAILING TO REFELCT MEASURABLE BASELINES OR ACCURATE PRESENT LEVELS OF PERFORMANCE FOR GOALS OFFERED?

Palo Alto did not hold an IEP team meeting from the beginning of the 2024-2025 school year through the date of Student's amended complaint on October 9, 2024. Accordingly, Palo Alto did not report on present levels of performance or baselines for an offer of goals or service, and did not offer new goals or services.

Student could have, but did not, bring a claim that Palo Alto should have convened an IEP team meeting during the 2024-2025 school year prior to October 9, 2024, in response to a lack of progress, just as Student raised such claims for the 2022-2023 and 2023-2024 school years.

Student filed objections to the issues as worded in the prehearing conference order. Student also withdrew some issues and clarified others during the due process hearing. Yet, Student only raised claims for the 2024-2025 school year related to offers of goals or services, without a claim that Palo Alto convened, or should have convened, an IEP team meeting to make an offer of goals and services.

Student contends that if Palo Alto had written short-term objectives for the annual goals in the February 13, 2024 IEP, it would have been required to convene an IEP team meeting during the 2024-2025 school year for lack of anticipated progress if Student did not meet each of those short-term objectives by the end of the 2023-2024 school year. Student's reasoning is faulty.

There is no requirement that a school district must convene an IEP team meeting\ every time a student misses an objective or is not on target to meet a goal. First, both the IDEA and California law require yearly review of an IEP's annual goals, not the short-term objectives listed to achieve those annual goals. Second, the California legislature mandated review for lack of progress, without reference to whether short-term objectives were met, and the legislature is presumed to have meant exactly what it said. (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1081.) Third, the IDEA does not contemplate that all annual goals will be achieved. It expressly provides that one of the purposes of the annual IEP review is to determine whether annual goals are being achieved and revise the IEP to address any lack of expected progress toward those goals at the annual IEP. (34 C.F.R. § 300.324(b)(1)(ii)(A).) The California legislature expressly recognized that not all Students will meet their goals. (Ed. Code, § 56345, subd. (b)(2).)

Palo Alto was not required to convene an IEP team meeting for annual review of Student's progress on goals until February 13, 2025. Student presented no evidence that she was not making expected progress or not on target to meet the annual goals in the February 13, 2024 IEP from the beginning of the 2024-2025 school year through October 9, 2024. The first quarter of the 2024-2025 school year did not end, and progress reports on annual goals were not even due, until October 11, 2025, after Student's complaint was filed. Accordingly, Palo Alto did not, and had no obligation to, convene an IEP team meeting during the 2024-2025 school year before October 9, 2024.

As Palo Alto was not required to, and did not, convene an IEP team meeting during the 2024-2025 school year prior to October 9, 2024, it was not required to, and did not, offer any goals during the 2024-2025 school year prior to October 9, 2024 requiring a report of present levels of performance or incorporated baselines.

Student did not prove by a preponderance of the evidence that Palo Alto denied Student a FAPE from the beginning of the 2024-2025 school year through October 9, 2024, by failing to reflect measurable baselines or accurate present levels of performance for goals offered.

Palo Alto prevailed on Issue 3a.

ISSUE 3b: DID PALO ALTO DENY STUDENT A FAPE FROM THE BEGINNING OF THE 2024-2025 SCHOOL YEAR THROUGH OCTOBER 9, 2024, BY FAILING TO OFFER APPROPRIATE GOALS IN THE FOLLOWING AREAS: ENGLISH LANGUAGE DEVELOPMENT, SPEECH AND AUGMENTATIVE AND ALTERNATIVE COMMUNICATION, FUNCTIONAL ACADEMICS, BEHAVIOR, AND TRANSITION?

For the reasons stated in Issue 3a, Palo Alto was not required to, and did not, convene an IEP team meeting from the beginning of the 2024-2025 school year through October 9, 2024.

Notably, Student did not raise a claim that Palo Alto failed to implement, as opposed to offer, the February 13, 2024 IEP goals and services during the 2024-2025 school year.

Accordingly, Student did not prove by a preponderance of the evidence that Palo Alto denied her a FAPE from the beginning of the 2024-2025 school year through October 9, 2024, by failing to offer appropriate goals in English language development, speech and AAC, functional academics, behavior, and transition.

Palo Alto prevailed on Issue 3b.

ISSUE 3c: DID PALO ALTO DENY STUDENT A FAPE FROM THE BEGINNING OF THE 2024-2025 SCHOOL YEAR THROUGH OCTOBER 9, 2024, BY FAILING TO OFFER APPROPRIATE SERVICES IN THE FOLLOWING AREAS: ENGLISH LANGUAGE DEVELOPMENT, SPEECH AND AUGMENTATIVE AND ALTERNATIVE COMMUNICATION, FUNCTIONAL ACADEMICS, AND TRANSITION?

For the reasons stated in Section "Issue 3a," above, Palo Alto was not required to, and did not, convene an IEP team meeting from the beginning of the 2024-2025 school year through October 9, 2024.

Accordingly, Student did not prove by a preponderance of the evidence that Palo Alto denied her a FAPE from the beginning of the 2024-2025 school year through October 9, 2024, by failing to offer appropriate services in English language development, speech and AAC, functional academics, behavior, and transition.

Palo Alto prevailed on Issue 3c.

CONCLUSIONS AND PREVAILING PARTY

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

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ISSUE 1a:

Palo Alto did not deny Student a FAPE during the 2022-2023 school year by failing to assess Student in her native language for the January 2023 multidisciplinary assessment.

Palo Alto prevailed on Issue 1a.

ISSUE 1b:

Palo Alto did not deny Student a FAPE during the 2022-2023 school year by failing to reflect measurable baselines or accurate present levels of performance for goals offered.

Palo Alto prevailed on Issue 1b.

ISSUE 1c:

Palo Alto did not deny Student a FAPE during the 2022-2023 school year by failing to offer appropriate goals in the areas of English language development, speech and augmentative and alternative communication, functional academics, behavior, and transition.

Palo Alto prevailed on Issue 1c.

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ISSUE 1d:

Palo Alto did not deny Student a FAPE during the 2022-2023 school year by failing to offer appropriate services in the areas of English language development, speech and augmentative and alternative communication, functional academics, and transition.

Palo Alto prevailed on Issue 1d.

ISSUE 1e:

Palo Alto did not deny Student a FAPE during the 2022-2023 school year by failing to implement goals in English language development, speech and augmentative and alternative communication, functional academics, and transition.

Palo Alto prevailed on Issue 1e.

ISSUE 1f:

Palo Alto did not deny Student a FAPE during the 2022-2023 school year by failing to implement services in English language development, speech and augmentative and alternative communication, functional academics, and transition.

Palo Alto prevailed on Issue 1f.

ISSUE 1g:

Palo Alto did not deny Student a FAPE during the 2022-2023 school year by failing to give Parents a prior written notice regarding Palo Alto's lack of implementation of any of the goals and services offered.

Palo Alto prevailed on Issue 1g.

ISSUE 1h:

Palo Alto did not deny Student a FAPE during the 2022-2023 school year by failing to convene an IEP team meeting in response to Student's lack of expected progress.

Palo Alto prevailed on Issue 1h.

ISSUE 2a:

Palo Alto did not deny Student a FAPE during the 2023-2024 school year by failing to reflect measurable baselines or accurate present levels of performance for goals offered.

Palo Alto prevailed on Issue 2a.

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ISSUE 2b:

Palo Alto did not deny Student a FAPE during the 2023-2024 school year by failing to offer appropriate goals in the areas of English language development, speech and augmentative and alternative communication, functional academics, behavior, and transition.

Palo Alto prevailed on Issue 2b.

ISSUE 2c:

Palo Alto did not deny Student a FAPE during the 2023-2024 school year by failing to offer appropriate services in the areas of English language development, speech and augmentative and alternative communication, functional academics, and transition.

Palo Alto prevailed on Issue 2c.

ISSUE 2d:

Palo Alto did not deny Student a FAPE during the 2023-2024 school year by failing to implement goals in English language development, speech and augmentative and alternative communication, functional academics, and transition.

Palo Alto prevailed on Issue 2d.

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ISSUE 2e:

Palo Alto did not deny Student a FAPE during the 2023-2024 school year by failing to implement services in English language development, augmentative and alternative communication, functional academics, and transition. Palo Alto did deny Student a FAPE during the 2023-2024 school year by failing to implement five 30-minute sessions of speech services.

Student and Palo Alto both partially prevailed on Issue 2e.

ISSUE 2f:

Palo Alto denied Student a FAPE during the 2023-2024 school year by failing to give Parents a prior written notice regarding Palo Alto's lack of implementation of five 30-minutes sessions of speech services. Palo Alto did not deny Student a FAPE during the 2023-2024 school year by failing to give Parents a prior written notice regarding Palo Alto's lack of implementation of any of the goals and any other services offered.

Student and Palo Alto each partially prevailed on Issue 2f.

ISSUE 2g:

Palo Alto did not deny Student a FAPE during the 2023-2024 school year by failing to convene an IEP team meeting in response to Student's lack of expected progress.

Palo Alto prevailed on Issue 2g.

ISSUE 3a:

Palo Alto did not deny Student a FAPE from the beginning of the 2024-2025 school year through October 9, 2024, by failing to reflect measurable baselines or accurate present levels of performance for goals offered.

Palo Alto prevailed on Issue 3a.

ISSUE 3b:

Palo Alto did not deny Student a FAPE from the beginning of the 2024-2025 school year through October 9, 2024, by failing to offer appropriate goals in the areas of English language development, speech and augmentative and alternative communication, functional academics, behavior, and transition.

Palo Alto prevailed on Issue 3b.

ISSUE 3c:

Palo Alto did not deny Student a FAPE from the beginning of the 2024-2025 school year through October 9, 2024, by failing to offer appropriate services in the areas of English language development, speech and augmentative and alternative communication, functional academics, and transition.

Palo Alto prevailed on Issue 3c.

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REMEDIES

Student partially prevailed on Issues 2e and 2f, because Palo Alto denied her a FAPE by materially failing to implement Student's speech services during the 2023-2024 school year and by failing to give Parents prior written notice of the missed sessions.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996].) This broad equitable authority extends to an administrative law judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. V. T.A.* (2009) 557 U.S. 230, 244, n. 11.)

School districts may be ordered to provide compensatory education or additional services to students who have been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496. (*Puyallup*).) These are equitable remedies that courts may employ to craft appropriate relief for a party. (*Ibid.*) An award of compensatory education need not provide a day-for-day compensation. (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.)

Here, Student did not receive five 30-minute sessions of speech services, rounded up to three hours, during the 2023-2024 school year. Student's progress in speech and language development was already adversely impacted by her cognitive and

communication deficits, and because she was chronically absent from school. Because of this, even the smallest loss of educational services required for a FAPE can have a significant impact on Student's progress.

The conduct of Parent in regularly pulling Student out of school when Student should be receiving speech services likely caused as much, if not more, detriment to Student's progress than Palo Alto's failure to provide two and one-half hours of speech services. For that reason, Palo Alto will be ordered to make up speech service minutes not delivered during the 2023-2024 school year, rounded up to three hours, without an order for additional compensatory services. Parents are primarily responsible for Student's missed speech services during the 2023-2024 school year and any resultant loss of educational benefit.

The compensatory services will not be provided by Murrell, as she provides medical, not educational services, and failed to convince the undersigned ALJ that she was providing Student with any significant educational services.

ORDER

1. Palo Alto will provide Student with three hours of compensatory speech in the form of direct one-to-one compensatory speech and language services with a licensed speech-language pathologist. This award does not include reimbursement to Parent for transportation to and from compensatory speech and language services.
2. Palo Alto must provide or fund the compensatory speech and language services through its own staff, Special Education Local Plan Area contractors, or a certified nonpublic agency, at Parents'

discretion, except these services must not be provided by Sarina Murrell or any speech-language pathologist working at or associated with Airplane Spoon. Student has one year from the date of this Order to use the services, and any unused services will be forfeited.

RIGHT TO APPEAL THIS DECISION

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

ALEXA HOHENSEE

Administrative Law Judge

Office of Administrative Hearings