

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

THE CONSOLIDATED MATTERS INVOLVING:
PARENT ON BEHALF OF STUDENT, AND WEST COVINA
UNIFIED SCHOOL DISTRICT.

CASE NO. 2025090487

CASE NO. 2025090130

DECISION

February 10, 2026

On August 29, 2025, West Covina Unified School District, called West Covina, filed with the Office of Administrative Hearings, called OAH, a Request for Due Process Hearing naming Student in OAH Case no. 2025090130, called District's Case. On September 12, 2025, Student filed a Request for Due Process Hearing naming West Covina in OAH Case no. 2025090487, called Student's Case. On September 19, 2025, OAH consolidated the cases, ordering that Student's Case was designated as the primary case. On October 24, 2025, the matter was continued for good cause.

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Administrative Law Judge June R. Lehrman heard this matter via videoconference on December 2, 3, 4, 9, 10, 11, 16, 17 and 18, 2025. Ryan Song represented Student. Mother attended all hearing days on Student's behalf. Alefia Mithaiwala represented West Covina. Director of Special Education Lori Williams attended all hearing days on West Covina's behalf.

At the parties' request the matter was continued to January 20, 2026 for written closing briefs. The record was closed, and the matter submitted, on January 20, 2026.

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

STUDENT'S ISSUES

1. Did West Covina's November 15, 2024 IEP deny Student a FAPE by:
 - A. predetermining Student would be offered placement at Bliss Academy, thereby significantly impeding Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student;
 - B. failing to offer Student placement in the least restrictive environment appropriate for Student;
 - C. failing to offer Student appropriate behavioral supports, including a dedicated one-to-one aide;

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- D. failing to offer Student an appropriate behavior intervention plan;
 - E. failing to offer Student appropriate speech and language services;
and
 - F. failing to offer Student appropriate augmentative and alternative communication services?
2. Did West Covina's May 20, 2025 Amendment IEP deny Student a FAPE by:
- A. predetermining Student would be offered placement at Bliss Academy, thereby significantly impeding Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student;
 - B. failing to offer Student placement in the least restrictive environment appropriate for Student;
 - C. failing to offer Student appropriate behavioral supports, including a dedicated one-to-one aide;
 - D. failing to offer Student an appropriate behavior intervention plan;
 - E. failing to offer Student appropriate speech and language services;
and
 - F. failing to offer Student appropriate augmentative and alternative communication services?

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3. Did West Covina's August 29, 2025 Amendment IEP deny Student a FAPE through the filing of Student's due process hearing request on September 12, 2025, by:
 - A. predetermining Student would be offered placement at Bliss Academy, thereby significantly impeding Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student;
 - B. failing to offer Student placement in the least restrictive environment appropriate for Student;
 - C. failing to offer Student appropriate behavioral supports, including a dedicated one-to-one aide;
 - D. failing to offer Student an appropriate behavior intervention plan;
 - E. failing to offer Student appropriate speech and language services;
and
 - F. failing to offer Student appropriate augmentative and alternative communication services?

WEST COVINA'S ISSUE

Did West Covina's May 20, 2025, IEP offer Student a FAPE in the least restrictive environment appropriate for Student?

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JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, or IDEA, 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 IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student had the burden of proof on Student's issues. West Covina had the burden on proof on its issue. 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 10 years old and in fourth grade at the time of hearing. Student resided within West Covina's geographic boundaries at all relevant times. Student was eligible for special education under the primary eligibility category of autism and the secondary category of language or speech disorder.

BACKGROUND

In the 2023-24 school year, Student attended second grade in a West Covina elementary school called West Cove Elementary, under Student's last agreed-upon IEP, dated November 30, 2023. Parents consented to that IEP on November 30, 2023. The 2023 IEP offered placement in a special day class with a one-to-one aide. Student also received group speech and language and occupational therapy services. West Covina offered Student extended school year.

The 2023 IEP contained academic, occupational therapy, speech goals and behavior goals. During second grade, Student exhibited aggressive behaviors including

- biting,
- hitting,
- pulling,
- kicking,
- scratching and
- property destruction.

West Covina took frequency data on Student's maladaptive behaviors that indicated mild to severe behaviors lasting up to 10 minutes per episode. Student exhibited noncompliance on average, 14 times per week. He attempted to elope on

average two times per week and eloped on average three times per week. He dropped to the floor on average eight times per week. He cried and whined on average seven times per week. He bit, on average, once a week, hit and kicked twice a week, and destroyed property on average once every two weeks.

The 2023 IEP behavior goals addressed maintaining personal space, complying with directions, and remaining in designated areas without dropping to the floor.

Behavioral accommodations included the

- use of timers,
- use of first-then language,
- access to a designated break area,
- use of visuals for organization,
- schedules for self-regulation,
- creating clear expectations,
- embedded opportunities for modeling desired behavior, and a
- behavior tracking system.

The 2023 IEP contained a behavior intervention plan that addressed maladaptive behaviors including

- attempting to elope,
- eloping,
- dropping to the floor,

- non-compliance, and
- screaming.

West Covina had not conducted a functional behavior assessment prior to developing the 2023 behavior intervention plan, but took data concerning Student's behaviors. Antecedents to the maladaptive behaviors included not being first in line and transitioning. Other antecedents included being denied access to preferred items or locations, non-preferred academic work, being instructed to wait, and being given corrective feedback. Of the four possible "functions" of the behaviors, West Covina hypothesized that Student sought access to items or locations, escape from non-preferred tasks, and attention.

The 2023 behavior intervention plan included environmental, teaching, reactive, and reinforcement strategies. Some of these included, for example,

- giving clear instructions,
- providing breaks,
- removing dangerous objects,
- giving verbal feedback,
- verbal de-escalation and, if necessary,
- non-violent crisis intervention.

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The third grade, 2024-25 school year began on August 15, 2024. Because West Cove Elementary did not go past second grade, Student moved to a different school, California Elementary, for third grade. There, he attended an autism-focused special day class program. West Covina continued to implement the 2023 IEP and behavior intervention plan.

The autism special day class at California Elementary had a staff to student ratio of about five staff and eight students. The class used applied behavioral analysis techniques, such as providing structure to the school day with clear instructions, with each student having an individual reinforcement system. Staff took daily data concerning each student's behaviors and progress. The class used token economies, and visual schedules and supports for students. It provided small group instruction. It also used manipulatives, priming, and front loading of content. The classroom had an alcove or corner area with pillows and different tactile items, such as squeeze balls to use for sensory relief. This was a separate area within the classroom but was not fully enclosed. In a different area there was a different break space, also not fully enclosed.

Student had a one-to-one aide, however the staff person assigned to him was a different staff person from his second grade aide. Student had access to the general education setting for lunch, recess, and special events. He also received speech and occupational therapy services.

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Student had behavior occurrences on August 16, August 26, September 10, and September 12, 2024. On September 12, 2024, West Covina generated a three-year assessment plan that called for Student to be assessed in

- academic achievement,
- health,
- intellectual development,
- language speech and communication development,
- motor skills,
- social emotional,
- behavioral functioning, and
- adaptive behavior.

Parents consented. West Covina attempted the academic assessment in September, but Student's behaviors interfered. West Covina never completed that assessment. A school nurse conducted health screenings and an interview. West Covina completed the assessments for intellectual development, social emotional and behavioral functioning and adaptive behavior. The language speech and communication development assessment was begun but not completed at this time. The occupational therapy-motor skills assessment was not completed until March 2025, as discussed below.

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Student had further behavior incidents on

- September 13, 18, 23, 27, and 30, 2024;
- October 1, 8, 11, 15, 21, 22, 23, 25, and 28, 2024; and
- November 8, and 13, 2024.

These involved

- kicking,
- scratching,
- eloping,
- grabbing,
- hitting staff in the groin,
- jabbing, and
- property destruction.

Incidents lasted much longer than the 10 minute maximum durations of his episodes during second grade. Most incidents were longer than a half-hour, some over an hour or more. Staff members were unable to calm Student. Extra staff members were called in to assist the adults already in the classroom. Several of the incidents required clearing all other students out of the room, and using hands-on restraints of Student using crisis intervention techniques in which staff had been trained.

West Covina generated emergency reports when using such restraints, on September 30, October 1, October 11, October 23, and October 25, 2024, by which staff documented the particulars of the incidents and the holds or restraints they used.

Due to a clerical error, the September 12, 2024 assessment plan had contained a proposal for assessments in social emotional functioning and behavior, and adaptive behavior, but it had not contained a proposal for a functional behavior assessment. On October 7, 2024, West Covina generated a second assessment plan for a functional behavior assessment, and presented it to Parents several times at or around the October to November 2024 time frame, but Parents did not consent. Therefore, a functional behavior assessment was never performed.

The October 25, 2024 incident involved Student

- throwing rocks,
- scratching staff with sticks,
- swinging backpacks,
- hitting, and
- biting.

Staff attempted to deescalate Student verbally and by directing him to the break areas, to no avail. They then used pads to block and re-direct him, because he climbed onto shelves. West Covina Special Education Coordinator Jessica Olshan put on protective gear, including a Teflon arm band. Student bit so hard it broke her skin through the band.

In late October, due to Student's escalating behavior, and as detailed below, West Covina updated the behavior intervention plan. Parents consented to the updated behavior intervention plan on October 29, 2024.

On November 15, 2024, West Covina convened Student's annual review IEP and offered placement at a nonpublic school, with full time one to one aide services. West Covina also offered group speech and language services for 30 minutes each, 60 sessions a year, or twice a week on average. West Covina also offered group occupational therapy once a week of 30 minutes, weekly. West Covina offered the October 29, 2024 behavior intervention plan to which Parents had just consented.

Student's Issues are analyzed below primarily in Issue order except where necessary to clarify the chronology of events.

ISSUE 1.D: DID WEST COVINA'S NOVEMBER 15, 2024 IEP DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT AN APPROPRIATE BEHAVIOR INTERVENTION PLAN?

The November 15, 2024 IEP incorporated the same behavior intervention plan developed a few weeks before, to which Parents had consented on October 29, 2024. Student contends, and West Covina witnesses conceded, that the plan did not work consistently enough to reduce Student's maladaptive behaviors, which continued to escalate. Student contends that West Covina should have offered or implemented something more effective. Student also contends that the plan was deficient because it was not based on a functional behavior assessment.

West Covina contends it had sufficient information without such an assessment to generate an appropriate behavior intervention plan. West Covina also contends that the plan was appropriate, but that the physical limitations of a comprehensive campus made it ineffective, necessitating that Student be moved to a more restrictive placement.

A FAPE, means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000] (*Endrew*).

If a child's behavior interferes with his or her learning or the learning of others, the IDEA requires that the IEP team "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) Children with disabilities who exhibit serious behavioral challenges are entitled to positive behavioral interventions and supports. (See 20 U.S.C. § 1400(c)(5)(F); Ed. Code § 56520, subd. (b).) IEP teams must consider and include appropriate behavioral goals and objectives and other appropriate services and supports in the IEPs of children whose behavior impedes their own learning or the learning of their peers. A district's failure to develop positive behavior interventions can amount to a denial of FAPE. (See, e.g. *W.A. ex rel. S.A. v.*

Patterson Joint Unified School Dist. (E.D. Cal. July 18, 2011) CV F 10-1317 LJO SMS) 2011 WL 2925393 at *11 [citing *Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-29].)

The Ninth Circuit has, however, held that a functional behavior analysis is only required when a child is removed from a current placement due to behavioral issues. (*Butte School Dist. No. 1 v. C.S.* (9th Cir. 2020) 817 Fed.Appx. 321, 326 (*Butte*) [citing 20 U.S.C. § 1415(k)(1)(D)(ii)].) At the time of the November 15, 2024 IEP, Student had not yet been removed from his placement. Therefore no functional behavior analysis was legally required. (See also *Assistance to States for the Education of Children With Disabilities*, 71 Fed. Reg. 46,683 (August 14, 2006) [commentary to the IDEA's regulations specifically declining to require that behavior interventions be based on a functional behavior assessment]).

Moreover, on October 7, 2024, West Covina had generated an assessment plan for a functional behavior assessment, and presented it to Parents several times at or around the October to November 2024 time frame, but Parents did not consent. Therefore, a functional behavior assessment was never performed. Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(a)(1)(D) & (c)(3); 34 C.F.R. § 300.300(a) & (c); Ed. Code, §§ 56321, 56381, subd. (f).)

Coordinator Olshan developed the behavior intervention plan based on sufficient information. For example, Olshan considered staff observations and daily data collection regarding Student's behaviors, and their intensity, frequency and duration. Olshan is a board certified behavior analyst who trains and oversees the behavior aides in the

district. Olshan trained the aides in applied behavior analysis during a six-day training program with two days of lecture or didactic training, and then hands-on training with students where supervisors observed the staff and gave feedback and debriefing.

West Covina took time-stamped frequency data regarding the behaviors, as well as "ABC" data, meaning the antecedent, behavior and consequence data. They based the behavior intervention plan on the data and on their own observations of Student. According to Olshan and behavior specialist Zineta Dukaj, a formal functional behavior assessment would have relied on that same information, supplemented only by formal instruments such as rating scales filled out by teachers, staff and Parents. Dukaj's duties, like Olshan's, were to supervise, oversee and train behavior aides in the West Covina. Training of West Covina staff included weekly training of the behaviorists and debriefing after each incident. In both Olshan's and Dukaj's opinion, West Covina based its behavior intervention plan on sufficient underlying data even without those formal elements.

In addition, the September 12, 2024 assessment plan Parents had consented to included social emotional functioning and behavior, and adaptive behavior assessments. School psychologist Kelly Petroelje conducted these assessments in September, October and early November and reported on them at the November 15, 2024 IEP team meeting.

Based on West Covina's data collection, Student engaged in refusal, elopement, dropping to the floor, property destruction, and crying or whining. Most concerning were

- aggressive behaviors including pushing, on average six times per week,
- biting on average, two times per week,

- hitting on average, 58 times per week,
- pulling hair on average six times per week,
- kicking on average, 26 times per week,
- scratching on average, 18 times per week, and
- headbutting on average, two times per week.

The intensity of the behaviors ranged from mild to severe.

West Covina hypothesized that the antecedents to the behaviors were when Student's needs were not met immediately, when work was at a level higher than his ability, or when he was frustrated by transitions or demands. The October 29, 2024 behavior intervention plan found that Student reacted to

- not being first in place,
- transitioning,
- being denied access to preferred items,
- demands to do non-preferred academic work,
- being instructed to wait,
- being given corrective feedback, and
- non-preferred or new staff.

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The purpose of a functional behavior assessment is to ascertain the hypothesized function of a behavior, which in Olshan's and Dukaj's opinion West Covina appropriately already had done. West Covina hypothesized that the functions of Student's aggressive or maladaptive behaviors because he wanted access to something or to escape non-preferred tasks, or for attention. Student provided no contrary evidence.

The October 29, 2024 behavior intervention plan proposed numerous and detailed staff reactions, responses and strategies. These included

- evacuating other students from the classroom for the duration of the incident,
- removing sharp objects such as pencils,
- doing breathing exercises,
- redirecting him to the break area within the classroom,
- planned ignoring,
- using visual aids like a "break card" or a "calming card" to try to redirect him, and
- using "controlled bribery."

At the October 29, 2024 IEP team meeting to review the behavior intervention plan, Parents told West Covina that Student needed a lot of space and time. Sometimes he wanted to be in a room or go by himself somewhere. Father opined that holding Student within an enclosed area would increase his behaviors. Parents at home gave Student his own space and allowed him to go outside to the yard to decompress. West Covina team members thought that for safety reasons, Student had to be

supervised at all times. For example, even if there were a spare room available, West Covina could not leave a student in a classroom alone. At all times they must have a credentialed teacher and staff available and in close enough proximity to support him. Father also felt that the staff switch to a different aide had impacted Student. He strongly believed that if the prior aide had remained in that same role as Student's aide, that Student would not have exhibited those behaviors. Mother also recommended giving him access to snacks. At hearing, Mother stated she had shared these techniques with West Covina many times over the years and at the October 29, 2024 IEP team meeting. Mother also suggested Student be allowed to use the gated playground outside the autism classroom.

Olshan incorporated some of Parents' suggestions into the behavior intervention plan. She incorporated Parents' suggestions of giving Student access to snacks, She also added room and space to decompress, but not entirely alone. For safety reasons, staff needed to remain within reasonable reach of Student, for example to prevent him from grabbing something sharp like a pencil or scissors. The staff were instructed when and how to use the classroom's two sensory and break areas to try to calm Student. The multiple layers of intervention detailed how staff should respond to Student's behaviors in the different environments such as the classroom, recess, and the playground.

The October 29, 2024 behavior intervention plan also reduced academic demands on Student. Student's behaviors impeded his access to any educational curriculum. Making academic demands escalated him, so West Covina removed the academic demands. The main goal of the October 29, 2024 behavior intervention plan was simply for Student to sit with a calm body, not necessarily to access instruction. Parents consented to the plan.

"Our concern is whether the IEP and its underlying behavioral analysis was reasonable, not whether it was ideal." (*Butte, supra*, 817 Fed.Appx at p. 326 [citing *Endrew, supra*, 137 S.Ct. at p. 999].) Here, as in *Butte*,

"the record is replete with evidence showing that [] staff and [the] IEP team considered [Student's] problem behaviors and took steps to correct them, including adopting behavioral-intervention plans. And [the IEP] contained measurable annual behavioral goals and specified how these goals would be measured. No more was required [so Student] fails to show how he was denied FAPE due to [the] behavioral programming." (*Ibid.*)

An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. An IEP is "a snapshot, not a retrospective." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 [citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.]) To meet its substantive obligation under the IDEA, a school must offer an IEP "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Endrew, supra*, 580 U.S. at p. 399.) The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. (*Ibid.*) Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. (*Ibid.*) The IDEA cannot and does not promise "'any particular [educational] outcome.'" [Citation omitted.] No law could do that— for any child.'" (*Endrew, supra* at p. 398 [citing *Rowley, supra*, 458 U.S. at 192]; see also Ed Code, § 56345, subd. (c) ["[S]ome pupils may not meet ... the growth projected in the annual goals and objectives ...".]) As Olshan testified, a behavior support plan is not a guarantee that behaviors will not occur. It is intended to minimize risk, and decrease likelihood, but cannot ensure success.

Here, as will be seen in more detail below, the behavior intervention plan was ineffective in many instances. However, because the behavior plan was a reasonable intervention based on the information known at the November 15, 2024 IEP, and because the IDEA does not guarantee results, Student failed to meet his burden to prove that West Covina failed to comply with its responsibilities under the IDEA.

Student argued, and the evidence confirmed, that the behavior intervention plan was not successful. And, there was no explanation for why the severity of Student's behaviors increased so dramatically at California Elementary. Although Student had some behaviors during second grade at his prior elementary school, these were relatively mild and of shorter durations. Mother convincingly testified to Student's overall acceptable behaviors within the family and with his sisters, one of whom was a newborn baby, and in many community settings, parties, outings, on boats, in amusement parks and the like. The family took him everywhere. Student was social with neuro-typical peers and enjoyed playing and socializing with them. Therefore, his behaviors at California Elementary were unexplained, unusual and concerning. Moreover, certain settings even at California Elementary, did not trigger him. His speech pathologist and occupational therapist testified that during their sessions with him, he was well-behaved and cooperative.

There were some troubling aspects to West Covina's evidence that should be acknowledged. Multiple West Covina witnesses at hearing opined that the behavior intervention plan was appropriate but ineffective "on a comprehensive campus" or "in this setting," using those exact words. These witnesses included director Williams, specialist Dukaj, Teacher Taylor Terpstra, Olshan and coordinator Jillian Torres. Their uniformity of that opinion, and especially their use of the exact same words to describe

it, leads to the impression that the witnesses had collaborated to come up with a uniform viewpoint about why they were unable to manage Student's behaviors. This diminished their credibility. Moreover, although a functional behavioral assessment was not legally required, and West Covina was here found to have reasonably complied with its duties, it was certainly troubling that it remained mysterious why Student became so escalated at California Elementary.

Two of West Covina's aides, one of whom was Student's dedicated one-to-one aide at California Elementary, testified about their interactions with Student. Their demeanor on the witness stand can only be described as strange. Many tens of seconds elapsed between the questions and their eventual answers, as if a technical glitch or a sudden mental lapse had occurred. Their inability to answer a question in a timely fashion was so pronounced that after Student's questioning, West Covina simply excused one of these witnesses without asking any questions, as the witness was apparently simply unable to answer. Nevertheless, the weight of the evidence still supported West Covina's contention that it did not deny Student a FAPE by failing in the November 15, 2024 IEP to offer Student an appropriate behavior intervention plan.

West Covina prevailed on Issue 1.d.

ISSUE 1.C: DID WEST COVINA'S NOVEMBER 15, 2024 IEP DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT APPROPRIATE BEHAVIORAL SUPPORTS, INCLUDING A DEDICATED ONE-TO-ONE AIDE?

Student contends that West Covina denied him a FAPE by failing to offer appropriate behavioral supports, including a dedicated one-to-one aide. West Covina contends it offered appropriate supports, including a dedicated one-to-one aide.

In addition to the behavior intervention plan, the November 15, 2024 IEP offered behavior-related goals all aiming to teach Student self-regulation and appropriate class participation. The IEP also offered "intensive individual services" of 360 minutes daily. This service represented a full-time dedicated one to one aide. It also offered "behavior intervention services," or supervision, of 90 minutes a month. As described above, the IEP also offered accommodations for functional behavior supports, including

- timers,
- first-then language,
- access to a designated break area,
- use of visuals for organization,
- clear expectations,
- embedded opportunities for modeling desired behavior, and a
- behavior tracking system.

Student disputes the efficacy of the supports, but presented no evidence of how they were inappropriate or what alternate measures should have been taken. Contrary to the Issue as stated, West Covina did offer and provide Student with a dedicated one to one aide.

West Covina prevailed on Issue 1.c.

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ISSUE 1.A: DID WEST COVINA'S NOVEMBER 15, 2024 IEP DENY STUDENT A FAPE BY PREDETERMINING STUDENT WOULD BE OFFERED PLACEMENT AT BLISS ACADEMY, THEREBY SIGNIFICANTLY IMPEDING PARENTS' OPPORTUNITY TO PARTICIPATE IN THE DECISION-MAKING PROCESS REGARDING THE PROVISION OF A FAPE TO STUDENT?

Student contends that in the November 15, 2024 IEP, West Covina had predetermined that they would offer Student placement at the nonpublic school Bliss Academy, thereby significantly impeding Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. West Covina disputes this and points to its efforts to engage Parents in the decisionmaking process.

Olshan first floated the idea of a nonpublic school placement at the October 29, 2024 IEP meeting regarding the updated behavior intervention plan. West Covina did not offer a new placement at that IEP, because the purpose of that meeting was only to update the plan. However, Olshan already felt that Student was not making meaningful progress in the West Covina setting. If the new behavior plan was not successful, she indicated to Parents that a more restrictive environment might become appropriate.

At the November 15, 2024 annual review IEP, West Covina for the first time offered Student placement at a nonpublic school. Student's behaviors were escalating even after the implementation of the updated behavior intervention plan, including incidents on November 8, and November 13, 2024.

Director Williams did not attend the November 15, 2024 IEP team meeting, but was made aware prior to it that the West Covina members of the team wanted to propose a nonpublic school placement. Williams testified at hearing, that prior to the

November 15, 2024 IEP team meeting, West Covina members of the team had shared with her that they were very concerned about Student's multiple behavior occurrences and aggressive incidents. Despite the rewritten behavior invention plan, staff told Williams they were feeling like they might need to have a more intense conversation about more restrictive placements.

According to Williams, whenever West Covina considered a more restrictive environment, the teams knew they need to bring it up to her. She recalled discussions, prior to the November 15, 2024 IEP team meeting, about a possible nonpublic school and about a different West Covina program offering social-emotional and academic support for students who have emotional disabilities. These conversations included Olshan and another special education coordinator Jillian Torres. Torres at hearing confirmed the conversations occurred. According to both Williams and Torres, whenever a team considered nonpublic school, they always wanted to ensure in advance that a nonpublic school was available. Torres stated at hearing that she would "never want to walk into an IEP team and make a recommendation to a family on something that I can't fulfill."

School officials do not predetermine an IEP simply by meeting to discuss a child's programming in advance of an IEP team meeting. District IEP team members also may form opinions and proposed recommendations before IEP meetings. (See *Assistance to States for the Education of Children With Disabilities* (64 Fed. Reg. 12478-12479, March 12, 1999).)

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The participants at the November 15, 2024 IEP team meeting were

- Mother and Father,
- Terpstra,
- general education teacher Mara Fuentes,
- Torres,
- Olshan,
- Dukaj,
- occupational therapist Annette Arballo, and
- school psychologist Kellee Petroelje.

Each of these West Covina team members testified at hearing that there had been no prior determinations made before the meeting. The evidence was credible and persuasive, that West Covina's concerns were just that, and had not risen to an intractable commitment to any particular course of action.

Parents did not want Student to go to a nonpublic school and they expressed that opinion at the November 15, 2025 IEP team meeting. Mother and Father both testified at hearing that they had expressed their feelings, that it was really important to them for Student to have access to children without disabilities. They told West Covina that they believed that being around neuro-typical kids was important to them, because Student picked up on the behaviors of others around him. Mother did not feel West Covina took her opinion seriously. Mother felt West Covina's reaction was that they were proposing the nonpublic school and they did not see another option being appropriate.

The parents of a child with a disability must be afforded an opportunity to participate in IEP team meetings. (34 C.F.R. § 300.501(a) & (b); Ed. Code, §§ 56500.4, 56341, subd. (b), 56341.5, subds. (a) & (b).)" Among the most important procedural safeguards are those that protect the parents "right to be involved in the development of their child's educational plan." (*Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [a parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

An education agency's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of FAPE. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858-59.) Predetermination occurs "when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives." (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed.Appx. 342 at*2; see also, *S. ex rel G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131 ["A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, then simply presents the IEP to the parent for ratification." (citing *W.G. v. Board Target Range Sch. Dist.* (9th Cir. 1992) 960 F.2d 1479, 1484)].)

Here, the evidence did not support a finding of predetermination. Both Parents attended the November 15, 2024 IEP team meeting and were afforded the opportunity to

- participate,
- contribute,
- dissent,
- express opinions, and
- ask questions.

West Covina members had a clear preference, but no evidence indicated that they had made a final determination about their offer of FAPE prior to the team meeting. The preponderance of the evidence established that West Covina IEP team members discussed the continuum of placement options and actively and repeatedly encouraged Parents to ask questions or state their concerns, which Parents did.

Other than the existence of the nonpublic school option, and West Covina's clear enthusiasm for it, Student offered no evidence that West Covina had made its determination prior to the IEP team meeting, presented only one placement option, or was unwilling to consider other alternatives. The existence of the more restrictive placement option and West Covina's belief in its appropriateness was insufficient evidence that West Covina had already made up its mind and would reject any opposition. In fact, the evidence suggested that West Covina repeatedly sought to engage Parents in determining what was best for Student. Student was not denied a FAPE on these grounds.

Student further contends that only one nonpublic school, called Bliss, was offered and that this was evidence of predetermination. The evidence was clearly to the contrary. At the November 15, 2024 IEP team meeting, Olshan offered to arrange tours and releases of information forms for Parents to consider three possible nonpublic school options. The three options were Beach Cities, Canyon View and Bliss Academy.

In sum, Student did not meet his burden of proving that the offer of a nonpublic school, or specifically Bliss Academy, was predetermined as of the November 15, 2024 IEP team meeting.

West Covina prevailed on Issue 1.A.

ISSUE 1.B: DID WEST COVINA'S NOVEMBER 15, 2024 IEP DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT?

Student contends that the offer of a nonpublic school was not the least restrictive environment appropriate for him. West Covina contends that it was.

Federal and state laws require school districts to provide a program in the least restrictive environment appropriate for each special education student. (Ed. Code, § 56342, subd. (b); 34 C.F.R. § 300.114; *D.R. v. Redondo Beach Unif. Sch. Dist.* (9th Cir. 2022) 56 F.4th 636.) A special education student must be educated with non-disabled peers to the maximum extent appropriate and may be removed from the regular education environment only when the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A) ; 34 C.F.R. § 300.114(a)(2).)

Here, there was no contention that Student could be satisfactorily educated in a regular education environment. However, in the general education context, the Ninth Circuit has balanced four factors, that are nevertheless pertinent to the least restrictive environment analysis:

- the educational benefits of placement full-time in a regular class,
- the non-academic benefits of such placement,
- the effect the student would have on the teacher and children in the regular class, and
- the costs of mainstreaming the student.

(*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050] (*Daniel R.R.*); see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402. If, as here, it is determined that a child cannot be educated in a general education environment, then the analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050.)

There is no question that Student was not accessing the educational benefits of his classroom. Progress reports regarding the academic goals he had been working on, which were from the 2023 IEP, reflected that, in accordance with the October 29, 2024

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behavior intervention plan, academic demands had been removed from his program due to the severity of his behaviors. The 2023 IEP had included three academic goals. These targeted early reading skills of identifying the sounds of letters, and sight-reading consonant-vowel-consonant words. It had also contained an early math skills goal in identifying one-to-one correspondences across objects. Student was making no progress on these at the time of the November 15, 2024 IEP. Therefore, West Covina's proposal for the November 15, 2024 IEP was to delete academic goals entirely and focus on behavioral goals instead.

Nor was Student accessing the non-academic benefits of his placement. Terpstra recalled that at the time of the November 15, 2024 IEP, Student could not be with his peers during unstructured time when he was in one of his aggressive states. So he would sometimes miss recess and lunch. Transitions were difficult for him. When there were assemblies, he would not want to go to them, so he missed out on those as well.

The effect his behavior had on the teacher and the other children was severe. During each of the behavioral incidents listed above, the entire class had to be evacuated for the safety of the students. Student's behaviors could be very aggressive. He would look for things to throw. He would pull things down and try to jab staff with them.

Balancing the academic and non-academic benefits and Student's impact on others in the classroom weighed in only one direction, that he required a more restrictive placement. Neither party addressed cost as a factor.

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It remained to determine whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050 .) The continuum of program options includes, but is not limited to:

- regular education;
- resource specialist programs;
- designated instruction and services;
- special classes;
- non-public, non-sectarian schools;
- state special schools; specially designed instruction in settings other than classrooms;
- itinerant instruction in settings other than classrooms; and
- instruction using telecommunication, instruction in the home or instructions in hospitals or institutions.

(34 C.F.R. § 300.115; Ed. Code, § 56361.)

According to Olshan and Coordinator Torres, a nonpublic school would offer a much higher adult to student ratio than West Covina could provide. There were lead behavior interventionists in every classroom, and behavioral supervisors at every location. This was a level of support West Covina did not provide at any of its school sites. At a nonpublic school, Student might be instructed either one-to-one, or with a

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very small group. Although West Covina provided small group instruction, it could not accommodate teaching Student either alone or with only one or two others, but a nonpublic school could.

Olshan and Torres felt the structure of an elementary school day also impacted Student. For example, West Covina could not change when Student's lunch period was, or when the school day started or ended, but a nonpublic school could. A nonpublic school could also provide more controlled de-escalation areas than the two corners of the classroom West Covina could provide. Transitions, bustle, commotion, many other students milling around, group instruction, set schedules, and lack of defined quiet spaces all led Olshan and Torres to believe that Student's behaviors could not be addressed on a comprehensive campus and required a more controlled environment.

For example, on a comprehensive campus like California Elementary, there were multiple transitions due to a set schedule. Meal times were set. Students were expected to be in the classroom at their seats at certain times. There were multiple other students present in close proximity, creating an "audience" that could affect behavior. Academic instruction also involved demands being placed on a student's attention, including whole group and small group instruction and the transitions in between. All West Covina witnesses, including Olshan, Terpstra, Williams, Dukaj and Torres, agreed that Student's behaviors could not be satisfactorily addressed on a comprehensive campus and required a more restrictive environment. They also opined that Student required the appropriate physical facilities, specifically controlled calming spaces, that were more available at a nonpublic school. Despite the troubling uniformity of the words used to

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express this opinion, it was nevertheless held by all District witnesses. At hearing, Student questioned West Covina's conclusions, but did not present contrary evidence nor expert opinion.

The weight of the evidence established that West Covina's offer of a nonpublic school was the least restrictive environment appropriate for Student. West Covina prevailed on Issue 1.B.

ISSUE 1.E: DID WEST COVINA'S NOVEMBER 15, 2024 IEP DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT APPROPRIATE SPEECH AND LANGUAGE SERVICES?

Student contends that West Covina failed to offer appropriate speech and language services. West Covina contends its offers were appropriate.

At the time of the November 15, 2024 IEP, Student had last been assessed for speech and language in 2021. Although the triennial assessment plan Parents consented to on September 12, 2024 included language, speech and communication development, that assessment was not completed prior to the November 15, 2024 IEP team meeting. A speech pathologist attempted to administer formal testing instruments to Student on October 2, and 9, 2024, but those attempts were unsuccessful. For reasons unexplained at hearing, concerning staff shortages, no further attempt was made to complete a speech and language assessment prior to the November 15, 2024 IEP team meeting. Thus, the November 15, 2024 IEP team did not have current speech and language assessment data.

Nor was any other then-current speech data presented at the November 15, 2024 IEP team meeting or at hearing. No speech pathologist attended the November 15, 2024 IEP team meeting. Student's speech and language present levels were not updated at the meeting and no report about them was made. Student's progress on his last agreed upon speech goals from the prior 2023 IEP had last been updated in June of 2024. The speech language pathologist who worked with Student then did not testify. Angelina Loa, the speech pathologist called as a witness at hearing, did not begin working with Student until February 2025. No witness with knowledge of Student's speech language functioning prior to the November 15, 2024 IEP attended that IEP team meeting, or testified at hearing.

Comparison of the speech goals that had been offered and agreed to the previous year in the 2023 IEP, and the speech goals offered in the November 15, 2024 IEP, revealed that someone must have updated Student's baselines and modified the proposed speech goals. But it was unexplained at hearing who that was, or based on what information. The November 15, 2024 IEP offered group speech language services of 30 minutes each, for 60 sessions for the year, to average two 30-minute group sessions per week. No evidence was offered as to why.

A local educational agency must assess a special education student in all areas of suspected disability including communicative status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).) Here, no

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speech assessment occurred since 2021. The IEP shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal. Code. Regs., tit. 5, § 3040, subd. (b).)

Here, no such linkage was shown. West Covina argued that it was reasonable, because of the absence of the speech pathologist at the November 15, 2024 IEP team meeting, for the coordinators who were present to decide to continue the preexisting speech services at the same level, 60 half hour sessions a year, to average twice a week, in a group setting, until the speech and language assessment could be completed. This argument was tantamount to an admission that the service recommendation was not based on current data.

The lack of any speech assessment, the fact that no speech pathologist appeared at the November 15, 2024 IEP team meeting, and the fact that no linkage was established then, or at hearing, between present levels, goals and services, all amount to procedural violations.

However, in matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following: (a) impeded the right of the child to a FAPE; (b) significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of a FAPE; or (c) caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E);Ed. Code, § 56505, subd.(f).)

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Here, Student failed to meet his burden of showing any such harm. Student continued to receive his preexisting speech services and his preexisting goals. The delayed speech assessment occurred, as will be seen below, in January 2025, less than two months after the November 15, 2025 IEP meeting. Updated goals and services were later offered in May.

Under these circumstances, since there was no deprivation of educational benefit, West Covina prevailed on Issue 1.E despite the procedural violations.

ISSUE 1.F: DID WEST COVINA'S NOVEMBER 15, 2024 IEP DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT APPROPRIATE AUGMENTATIVE AND ALTERNATIVE COMMUNICATION SERVICES?

Student contended that at the time of the November 15, 2024 IEP, Student required augmentative and alternative communication services. West Covina contends these services were not required to offer Student a FAPE.

No evidence established that Student had any need for augmentative and alternative communication services. Student used simple words and phrases to communicate his preferences. He could communicate verbally, use visual icons and respond to signs.

At hearing, many witnesses were questioned about whether Student "shut down" during his behavior episodes. Terpstra confirmed that "shutting down" was a precursor to Student's episodes. He would become non-verbal, and sometimes close his eyes, turn away, elope or go under a table. Student implied through the questioning of witnesses that this meant Student required augmentative and alternative communication devices

to communicate, because his episodes arose out of frustration at not being understood. However, other than the questions, which every West Covina witness disputed, Student presented no evidence of this theory. Parents themselves did not so testify.

Olshan recalled that even when shutting down, Student was able to make himself understood. She did not think he was frustrated because he was not being understood. He could still communicate. He might touch a "break card." He might point to a toy, or say short utterances like "water" or "no talk," indicating he wanted to be left alone. Dukaj also did not believe that Student's communication difficulties contributed to his maladaptive behaviors.

According to Loa, who provided or oversaw speech services to Student from February 2025 onward, his behavior challenges were not due to communication breakdowns. He had not misbehaved in speech sessions with her. He misbehaved even in instances when he was able to functionally communicate verbally to

- express wants, needs, requests,
- give verbal farewells and greetings, and
- say or indicate "no."

Student had made choices such as whether he wanted the blue or the green playdoh. He pointed to preferred items. He sometimes required prompting to use his words or phrases. If Loa had considered communication breakdown to be the source of his misbehaviors, she might have seen a need for a communication device.

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Loa understood augmentative and alternative communication to refer to any alternatives to words, and could include low technology items such as

- visuals,
- gestures,
- pictures,
- choice cards, or
- sign language.

These supports were already offered in Student's classroom and embedded within the autism program and in speech sessions.

Augmentative and alternative communication also included high technology speech-generating devices. In Loa's opinion, such devices were only warranted when a student had no verbal output, which was not the case here. Also, such devices might be inappropriate when, as here, a student had a history of property destruction.

Loa was careful to emphasize her limited contact with Student in speech sessions from February 2025 onward, and not at the time of the November 15, 2024 IEP. However, no witness confirmed Student's theory that he was unable to communicate verbally. Student put on no evidence tending to establish that at the time of the November 15, 2024 IEP, Student required augmentative and alternative communication services.

West Covina prevailed on Issue 1.F.

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EVENTS FROM NOVEMBER 15, 2024 IEP TO THE MAY 20, 2025 IEP AMENDMENT

Parents did not consent to West Covina's November 15, 2024 annual IEP offer. Therefore, the prior year's IEP from November 30, 2023 continued to be implemented, in the autism class at California Elementary, with the October 29, 2024 updated behavior intervention plan to which Parents had consented, and with no work on academic goals.

At first, the October 29, 2024 behavior intervention plan successfully decreased the durations of Student's behavior episodes. But the decrease did not last. Dukaj estimated that the decrease lasted approximately three weeks.

In the rest of calendar year 2024, Student had behavior occurrences on

- November 18 and 19, 2024; and
- December 3, 5, 6, 9, 12, 13, 16, 18, and 19, 2024.

The November 18 and 19 behaviors involved

- biting,
- hitting with closed and opened fists,
- touching staff inappropriately by punching at their vagina, and
- scratching.

He also attempted to pull a pipe out of the wall.

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Student was suspended for three days for the November 19 incident. Student was suspended for two days for the December 9 incident. Each of these suspensions was followed by IEP team meetings. Winter break went from December 23, 2024, to January 3, 2025, with school resuming on Monday January 6, 2025.

At the November 21, 2024, "re-entry" IEP team meeting following the three-day suspension, Olshan reiterated West Covina's view that Student required a nonpublic school placement. She offered Parents tours of three nonpublic schools. She presented to Parent releases of information they would need to sign, such that the nonpublic school options could see Student's records and decide if he would be a good fit.

Special education director Williams attended that meeting and sat next to Parents, wishing to better understand their concerns. Father shared that he did not want Student to be in a school with only severe special education students. Mother shared that they also did not want him to be with only students who had behaviors because he picked up on others' behaviors. She also did not get good feedback from neighbors about the nonpublic school Bliss, and did not find good reviews online.

Versions of events immediately following the November 21, 2024 meeting differ, but the dispute need not be resolved here because its importance is that the communication between the family and West Covina broke down. Williams testified she met with Parents separately from the team, and Parents shared that they thought the teacher, Terpstra, might be the variable that was causing Student's escalations.

Williams disagreed. Terpstra had been one of West Covina's most successful teachers, and had been a classroom aide prior to becoming a teacher. Later, from December 9, 2024, until May 5, 2024, almost the entirety of the 2024-25 school year,

Terpstra was out on maternity leave and Student's behaviors did not improve. Thus, Williams was proven correct in not thinking Terpstra was the variable that caused Student's behaviors to escalate so dramatically from second to third grade.

The team simply thought that Student's emotional needs had evolved. Williams' background was as a school psychologist, and she opined at hearing that emotional status can evolve over time in children, and thus that the team's explanations appeared feasible to her.

Contrary to Williams' intention to reach a better understanding with Parents, the November 21, 2024 meeting had the opposite effect. At hearing, Parents disputed that they met Williams or shared any information with her. From Parents' testimony at hearing, it was clear that the suspension and the November 21, 2024 meeting caused a breakdown of trust and caused Parents to become silent and withdrawn in their further communications with West Covina. Parents testified at hearing that they "found out from other people from past experience that they were trying to handle us." By that time, Parents were looking for a lawyer and so did not want to discuss anything with Williams. Mother felt that Parents were being controlled, handled and forced to do things that they didn't want to do. Parents signed the releases of information for the nonpublic schools, but felt that they were being pressured to do so.

Further behavioral incidents occurred on December 3, 5, 6 and 9. The December 9 incident lasted about an hour. Four staff members were called in to assist. Student hit, kicked, and scratched them. The classroom was evacuated for the safety of the other students. On December 9, West Covina suspended Student for another two days, and held another "re-entry" IEP team meeting on December 11, 2024, again offering a nonpublic school placement and offering to arrange tours for Parents. By this time,

releases of information had been provided to two of the nonpublic schools. West Covina had sent the releases of information and Student's records with referral packets to those schools to see if they would accept Student, and Bliss indicated it would.

This occurred despite the fact that Parents had not yet signed consent to a nonpublic school placement. Olshan explained at hearing that when she gets signed releases from parents, she prepares referral packets to explore whether the schools would accept a student should parents consent.

Further behavioral incidents occurred in 2024 on December 13, 16, 18, 19, and in 2025 on January 21, 28, February 3, 4, 14, 18, 20, March 4, 10, 14, 25, April 4, 18, 29, and May 1, 2025.

Meanwhile, the speech and language assessment that had not yet been conducted in 2024 progressed in January 2025. The September 12, 2024 assessment plan also had included a proposed motor development assessment to be conducted by an occupational therapist, which did not occur until March 2025. West Covina generated an updated multidisciplinary assessment report dated March 11, 2025. Scheduling delays ensued, resulting in an IEP team meeting to review that report occurring on May 20, 2025.

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ISSUES 2.C AND 2.D: DID WEST COVINA'S MAY 20, 2025 IEP DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT AN APPROPRIATE BEHAVIOR INTERVENTION PLAN AND BEHAVIORAL SUPPORTS AND SERVICES, INCLUDING A ONE TO ONE AIDE?

Student contends that the behavior intervention plan and related services offered in the May 20, 2025 IEP were deficient. West Covina contended the behavior plan and services were appropriate.

At the May 20, 2025 IEP, West Covina offered no changes to the October 29, 2024 behavior intervention plan or offer of behavioral aide services. West Covina staff felt they had tried everything that could be offered within a comprehensive campus. West Covina had continued to take behavioral data and continued to offer a one-to-one aide and the same accommodations as had been offered in the November 15, 2024 IEP.

Dukaj updated the behavior goal baselines for the May 20, 2025 IEP. West Covina was proposing the same behavior goals they had proposed in the November 15, 2024 IEP, but Dukaj updated both the baselines and the degree of success the goals aimed for. For example, she proposed a "simple compliance" goal to get Student to comply with any simple instruction within 10 seconds while maintaining a calm body. As of May, his ability to comply with a simple one-step instruction was 32 percent.

Dukaj also updated the "corrective feedback" goal from the November 15, 2024 IEP, to listen to feedback without engaging in a verbal outburst, or make a simple acknowledgement that he heard the feedback and move on with the task. His baseline in November 2024 had been zero percent. Based on West Covina data, in May 2025 he was at 12 percent.

Other goals, similarly updated from November, targeted replacing inappropriate behavior with functionally communicating his needs, keeping his hands to himself, and transitioning without tantrums, and self-regulation. According to Dukaj, Student could tell you he was happy, he could show you mad, he could show you different facial expressions, but when he was presented with stressors, he could not identify how he was feeling and could not engage in an appropriate replacement behavior to his tantrums.

The same analysis applies here as concerned Student's Issues 1.C and 1.D. The behavior intervention plan was based on sufficient information, including observations and daily data collection regarding Student's behaviors, their intensity, frequency and duration. The hypothesized antecedents and functions of Student's behaviors continued to be reasonable. The October 29, 2024 behavior intervention plan's proposed responses and strategies continued to be reasonable. The behavior intervention plan continued to be a reasonable intervention based on the information known at the time.

Student did not present any evidence of what other interventions should have been offered, other than arguing for a functional behavior assessment. Since that was not legally required and because the evidence showed that West Covina relied on sufficient data and analysis without it, that argument was not persuasive. It remained troubling that the triggers for Student's behaviors were not understood, but the weight of the evidence supported West Covina's contention that it did not deny Student a FAPE by failing in the May 20, 2025 IEP to offer Student an appropriate behavior intervention plan. Moreover, West Covina continued to offer Student a one-to-one aide.

West Covina prevailed on Issues 2.C and 2.D.

ISSUE 2.A: DID WEST COVINA'S MAY 20, 2025 IEP DENY STUDENT A FAPE BY PREDETERMINING STUDENT WOULD BE OFFERED PLACEMENT AT BLISS ACADEMY, THEREBY SIGNIFICANTLY IMPEDING PARENTS' OPPORTUNITY TO PARTICIPATE IN THE DECISION-MAKING PROCESS REGARDING THE PROVISION OF A FAPE TO STUDENT?

Student contends that in the May 20, 2025 IEP, West Covina had predetermined that they would offer Student placement at the nonpublic school Bliss Academy, thereby significantly impeding Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. West Covina disputes this and points to its efforts to engage Parents in the decisionmaking process.

At the May 20, 2025 IEP team meeting, West Covina presented the results of the speech and language and occupational therapy assessments and updated Student's present levels, baselines and behavioral goals from the November 15, 2024 IEP. Terpstra added updated academic goals back into the IEP that had been removed in the November 15, 2024 version. Loa proposed new speech and language goals, based on the recent assessment. The occupational therapist proposed a visual motor skills goal. West Covina continued to offer a nonpublic school placement.

Parents attended but were, for the most part, silent. They did not say much, until West Covina discussed the tours of the nonpublic schools. Father expressed that he worked nights and could not tour schools on his schedule. Mother shared that she did not want to go without Father. Dukaj offered to set up a virtual tour of the Bliss campus so that Parents could see the campus at a time that was convenient to them.

At hearing, Mother testified that the May 20, 2025 meeting was a surprise. She apparently did not understand that the late completion of the speech and language and occupational therapy assessments after the November 15, 2024 IEP team meeting, necessitated an amended and updated offer of FAPE. Parents continued to feel that West Covina was strong-arming them into a nonpublic school placement. Mother testified that she told them she was not comfortable with Bliss at the May 20, 2025 meeting, as she had “over and over again” done so before. She did not want to tour the facility and so she did not respond to the attempts to set up tours. She had already told them in the meetings that she had researched Bliss on her own, and talked to people and parents that had their kids there, and she did not want Student there. But, in her opinion, West Covina was not listening to her.

Here, as in Issue 1.A, the evidence did not support a finding of predetermination. Both Parents attended May 20, 2025 IEP team meeting and were afforded the opportunity to participate, contribute, express opinions and ask questions. The evidence suggests that contrary to forcing Parents, West Covina was in fact imploring them to change their minds. And, Student did not meet his burden of proving that the offer of only one nonpublic school, specifically Bliss Academy, was predetermined. West Covina had offered releases of information in order to explore at least three nonpublic schools.

West Covina prevailed on Issue 2.A.

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ISSUE 2.B: DID WEST COVINA'S MAY 20, 2025 IEP DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT?

Student contends that the offer of a nonpublic school was not the least restrictive environment appropriate for him. West Covina contends that it was.

The frequency and duration of Student's behaviors leading up to the May 20, 2025 IEP are detailed above. During the 2024-25 school year, Student's behavior created over 50 occurrences, for many of which the classroom was evacuated for over an hour. Some of Student's behaviors lasted longer, so the class was evacuated for longer periods of time. In some occurrences, Student targeted a specific peer.

There were 10 other students within the classroom and they had to be evacuated. The teacher had to remain in the classroom with the staff at all times, so the teacher had to be creative and evacuated the other students outside with the aides.

Student's behaviors were especially impactful within the autism focus program, which had other students on the spectrum. Some of the other students were nonverbal. All were working on social skills and some found Student's behavior confusing. Other students verbally expressed, asking why were they not in class. The other students were not accessing their curriculum within the classroom at these times. Nor was Student himself. In May 2025, as in November 2024, the weight of the evidence established that West Covina's offer of a nonpublic school did not deny Student the least restrictive environment appropriate for Student.

West Covina prevailed on Issue 2.B.

ISSUE 2.E: DID WEST COVINA'S MAY 20, 2025 IEP DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT APPROPRIATE SPEECH AND LANGUAGE SERVICES?

Student contends that West Covina failed to offer appropriate speech and language services. West Covina contends its offers were appropriate.

Speech pathologist Sarah Campanella assessed Student in January 2025. She administered norm-referenced assessments to measure receptive and expressive vocabulary and word retrieval. Student's vocabulary abilities fell in the "deficient" range. Student's receptive vocabulary abilities fell in the "deficient" range. On a test that inventoried language skills, Student had accomplished 17 of the 31 skills measured. He was "emerging" in 13 of the skills and had not yet developed one of the skills, in the area of responding to prepositional location commands involving objects. His expressive skills were similarly limited, showing accomplishment of 10 skills, emerging in 18 skills, and not yet developed in six skills.

Campanella also investigated Student's articulation and phonology using an oral mechanism examination. His oral mechanism appeared adequate for the production of speech. She also administered standardized articulation tests, and found that Student had difficulty making the sounds of certain letters and had a lisp. Campanella also assessed Student's intelligibility using a language sample. She found him intelligible or understood, at an average rate of 60 percent of the time in known contexts when using connected speech. His overall speech intelligibility was considered to be below average compared to the intelligibility of his same-age peers.

Campanella testified at hearing but her testimony was not informative. Her answers to questions about the standardized instruments she used state they were "formalized measures to determine areas of need," that they "measured acquired skills and communication," that Student "did not perform at his age level," performed "below average" and showed "significant delays." She did not elucidate the meaning of these results, and she left terms such as "deficient" or "below average" undefined. Her assessment report was sketchy and uninformative. Nor did she make any specific services recommendations.

Campanella did not attend the May 20, 2025 IEP team meeting. A different speech pathologist, Angelina Loa, attended that IEP. Loa had joined West Covina in February 2025 and begun providing speech services to Student then, working on the speech goals from the 2023 IEP. Loa was more forthcoming at hearing, and since she was the speech pathologist who interpreted the assessment results at the May 20, 2025 IEP and drafted the proposed goals at issue here, it is her testimony that is deemed reliable. Thus, the assessment and resulting services appear appropriate not because of, but in spite of the deficiencies of Campanella's report and her demeanor at hearing.

At the May 20, 2025 IEP team meeting, Loa presented Campanella's report and discussed Student's present levels. The communication present levels indicated his overall communication abilities were below average for his age. His articulation and phonological skills were below average as well. He had scattered skills in receptive and expressive language, but his overall language skills were below average. His language appeared functional as seen by his ability to request, deny, comment and ask questions to get his needs met. He communicated using a variety of words to formulate simple sentence structures to request, protest, comment, and ask simple questions.

Pragmatically, he initiated interactions with peers or staff by using close body proximity, eye contact, showing or giving items when in a calm state. He appeared to thrive off friendly competition, and engaged in back and forth turn-taking. He had difficulty expressing his opinions or emotional state before entering an escalated state. He was able to recognize emotions in pictures. Loa reviewed these present levels with the family at the May 20, 2025 IEP team meeting.

Loa proposed four speech goals. She updated two of these from the 2023 IEP. As discussed above, these had not been updated since then and had been repeated verbatim in the November 15, 2024 IEP. Loa updated these as of May 2025 with new baselines. These appear appropriate as of the May 20, 2025 IEP. The two preexisting goals concerned articulation and targeted Student's use of "th" sounds and "l" and "r" sounds.

Loa proposed two new goals in expressive and receptive language. The expressive goal aimed for Student to answer "who" questions with 60 percent accuracy when given three to four moderate visual and verbal cues during structured activities across consecutive questions. Loa based this on his demonstration of difficulty with interrogatives, or "who" questions. She was familiar with his needs in this area from her observations and work with him in his speech sessions.

The receptive goals aimed for Student to identify prepositions in pictures from a field of two, for example "on," "under," "in," "behind" with 60 percent accuracy given moderate visual and verbal cues, across three consecutive sessions. Student had demonstrated difficulty in the area of location and prepositions, for example, on and under and behind. An example would be "show me the dog that is on the chair."

Her service recommendations were the same as the previous year, or 1,800 minutes yearly, in a group setting, or an average of two times a week. At hearing, she defended her choice of group sessions as opposed to individual services. Historically, she found that group settings gave Student motivation to come and participate. And in the area of articulation, peer modeling was important for him. Articulation requires repetitive drills which Loa opined might frustrate Student. Student enjoyed competitive games with peers, such as bingo games, where he could work on the same skills.

Loa also defended the service recommendations, which were intended to average approximately two times a week for 30 minutes. She wanted to hit every goal in a session. Within 30 minutes, she would be able to get repeated trials of Student doing four goals. The statement of the minutes as a yearly average would allow West Covina to address any absences or school closures. Based on Loa's testimony, and the absence of any contrary evidence, the speech goals and services were appropriate.

West Covina prevailed on Issue 2.E.

ISSUE 2.F: DID WEST COVINA'S MAY 20, 2025 IEP DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT APPROPRIATE AUGMENTATIVE AND ALTERNATIVE COMMUNICATION SERVICES?

No further evidence was presented concerning Student's needs for augmentative and alternative communication between the November 15, 2024 IEP and the May 20, 2025 IEP. West Covina continued to see no need, and to believe Student was a functional communicator. West Covina witnesses did not think that Student's behaviors resulted

from an inability to make himself understood. Other than asking probing questions, Student offered no evidence to support this theory, either for the November 15, 2024 IEP discussed above, nor in May 2025.

West Covina prevailed on Student's Issue 2.F.

EVENTS FROM THE MAY 20, 2025 IEP AMENDMENT TO THE AUGUST 29, 2025 AMENDMENT

Behavior incidents occurred on May 22, 28, 29 and 30, 2025. The May 30 incident became particularly severe. Olshan arrived during the early stages of the incident with Student exhibiting a sequence of whining, shutting down, and putting his head down, before exploding. Student then scratched multiple staff until they bled. He grabbed at clothing, breasts and genitalia. He was attempting to make himself vomit. He climbed up onto cabinets. He tore off a piece of molding from a cabinet, creating a sharp object and stabbed himself. Olshan was bleeding from her face, neck and chest and had bruises on her chest, and bite marks. Two staff members sought medical attention. Dukaj strained her shoulder significantly. She got an MRI, revealing two discs bulging in her neck, a compressed nerve, and numbness in her fingers. Terpstra had a severe strain to her back and was in a back brace for a while. She had scarring on her lip from Student scratching her there.

Student was suspended for seven days, however because the last day of the 2024-25 regular school year was June 6, 2025, the suspension lasted for the remainder of the regular school year and into the summer extended school year session.

After the suspension, West Covina convened a manifestation determination meeting which occurred on June 16, 2025. There, West Covina determined that Student's behavior had been a manifestation of his disability, but had not resulted from a failure to implement his IEP. The manifestation determination was not at issue in this due process proceeding and was not addressed, but mentioned here solely for context.

At the manifestation determination meeting, West Covina informed Parents that they would be placing Student in a 45-day interim alternative educational setting at Bliss Academy. To do so without parental consent, West Covina invoked certain statutes pertaining to disciplinary placements that were not at issue in this due process hearing, were not addressed. On June 17, 2025, West Covina wrote Parents a prior written notice letter invoking the 45-day interim alternative educational placement.

Because school attendance during summer was not mandatory, Student did not attend Bliss during the summer of 2025 even though he was entitled to extended school year. The first day of the regular 2025-26 school year at Bliss was August 5, 2025. Student began attending Bliss then, pursuant to the 45-day interim alternative educational setting which was still in effect.

At Bliss, Student was in an elementary classroom, that served first through fifth grades, and had 11 students and 14 adults including one teacher. The classroom had a "sensory corner" that had padding on the walls and pillows or mats for students to take breaks there. It was not enclosed but was an area in a corner of the room. In another

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room, outside the classroom, was a separate specific room used for de-escalating students. It was a large room that had padded walls from floor to ceiling and pillows and mats.

On August 29, 2025, while Student was attending Bliss, West Covina convened an amendment "30-day" IEP team meeting to review his progress at that placement.

ISSUES 3.C AND D: DID WEST COVINA'S AUGUST 29, 2025, 2025 IEP DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT AN APPROPRIATE BEHAVIOR INTERVENTION PLAN AND BEHAVIORAL SUPPORTS AND SERVICES INCLUDING A ONE-TO-ONE AIDE?

Student contends that the behavior intervention plan and related services offered in the August 29, 2025 IEP were deficient. West Covina contended the behavior plan and services were appropriate.

The August 29, 2025 IEP team did not recommend any changes to the October 29, 2024 behavior intervention plan, which Bliss had been implementing. At the August 29, 2025 IEP team meeting, Bliss staff attended and reported that Student had been focusing on learning his routine, sitting down and attending to tasks. The Bliss teacher, Theresa Moreno, shared that the classroom environment was appropriate and Student's behaviors had decreased. Behaviors of concern included task avoidance and non-compliance. He was averaging only two aggressions per day, and he had only one behavioral outburst where he was transported to the calm-down room. Music and a darkened environment helped him to de-escalate.

Bliss compiled behavior data from the time Student entered Bliss on or about August 5, 2025, up until the August 29, 2025 IEP team meeting, a period of approximately 30 days. Olshan compared this data to the frequency data of Student's behaviors while he was at California Elementary. She used, as a comparison, a 30-day time frame prior to the May 20, 2025 IEP starting in April 2025. The comparison indicated that while he was at Bliss, he had eloped on average 2.5 times per week as opposed to eight times per week at California Elementary. He had exhibited aggression 12.5 times per week as opposed to 173 times per week while at California Elementary. He had not dropped to the floor, destroyed property, cried or whined, or antagonized peers at all, contrary to prior experience at California Elementary.

At the August 29, 2025 IEP team meeting, no changes were made to the behavior intervention plan. Bliss had been implementing the existing behavior plan and provided Student with a one to one aide. The behavior intervention plan had not been further updated since October 29, 2024, when it was originally proposed, consented to, and implemented. Nor were further behavioral assessments undertaken. However, West Covina continued to take behavior data, as did Bliss starting August 5, 2025 once Student moved there.

Bliss behavior specialist Kate Thomas served as Student's one to one aide since he began attending there on August 5, 2025. The most behaviors Thomas had seen from Student was non-compliance. He would cover his ears with his hands and put his head down or sit on the floor. He did that, on average, about seven times a day. At Bliss, he had had only one or two episodes that required additional staff to de-escalate. No incidents required that he be put into restraints. Upon transition to Bliss, Thomas witnessed Student interacting with peers, playing with peers both outside and inside the

classroom. She took daily behavior data and compared that to his previous episodes. There was a decrease in maladaptive behavior and it trended continuously downward. He had had one or two behavioral outburst tantrums. And that was the last time that Bliss had seen that from Student.

Thomas was implementing the October 29, 2024 behavior intervention plan. At hearing, unprompted, she stated that it was "a very well written BIP," and that she did not change anything. She opined at hearing that due to the Bliss environment and the additional support in the classroom, Bliss was able to accommodate Student when it took him longer to transition to academics. Bliss also had a fully enclosed outdoor playground that was only accessible to the elementary classrooms. Bliss was able to physically give Student space and not interact with him to give him time to self-regulate, when he would go outside and pace around in the playground area with Thomas. Usually it took him about 20 minutes to self-regulate.

Student did not establish that these facts denied him a FAPE. Student did not establish through any evidence that subsequent events necessitated updating the behavior intervention plan. Nor did Student establish through any evidence what changes should have been made.

Student continued to argue that the behavior intervention plan was not based on sufficient assessment data because a functional behavior assessment had never been conducted. However, as discussed above, the behavior intervention plan when offered and consented to on October 29, 2024, was based on sufficient underlying data and information, and Parents had not consented to a functional behavior assessment at that time. West Covina continually updated the data.

By August 29, 2025, Student had been removed from his West Covina placement due to behavioral issues. Although a functional behavior assessment may in some circumstances be required when a child is removed from a current placement due to behavioral issues (*Butte, supra*, 817 Fed.Appx. at p. 326 [citing 20 U.S.C. § 1415(k)(1)(D)(ii)]), Student specifically is not relying here on that procedural requirement. Student had the opportunity to, and did argue in his initial complaint that West Covina “denied Parents the procedural protections guaranteed by IDEA ... [that] trigger requirements for the IEP team to address behavior through functional behavioral assessments” Student subsequently dismissed these expedited issues, which are therefore not at issue now. In short, Student elected to dismiss the contention that West Covina was required as a procedural matter to offer him a functional behavior assessment after he was disciplined. Student’s sole remaining contention is that the behavior intervention plan was not appropriate, which Student did not prove.

West Covina prevailed on Issues 3.C and 3.D.

ISSUE 3.A: DID WEST COVINA’S AUGUST 29, 2025 IEP DENY STUDENT A FAPE BY PREDETERMINING STUDENT WOULD BE OFFERED PLACEMENT AT BLISS ACADEMY, THEREBY SIGNIFICANTLY IMPEDING PARENTS’ OPPORTUNITY TO PARTICIPATE IN THE DECISION-MAKING PROCESS REGARDING THE PROVISION OF A FAPE TO STUDENT?

Student points to West Covina’s repeated offer of a nonpublic school as evidence of predetermination. Student particularly argued that West Covina’s decision to unilaterally place Student at Bliss as a 45-day interim alternative educational setting, evidenced that their minds were made up. West Covina argued that its offers were not predetermined.

Parents attended the August 29, 2025 IEP team meeting, which occurred during the 45-day interim alternative educational placement. Mother recalled Bliss suggesting amendments to a "report." It was not clear which report Mother meant.

Student was placed at Bliss for 45 days only. After the 45 days elapsed, unless Parents consented to that placement, Student would be entitled to return to California Elementary. West Covina strongly recommended at the IEP team meeting that Parents consent to the Bliss placement, which they did not do. Mother recalled Olshan particularly encouraging Parents to sign the paperwork, as if the Bliss placement was now agreed, which it was not. All the other team members nodded in agreement.

At the August 29, 2025 IEP team meeting, the team reviewed the goals Bliss implemented, which were goals from 2023, because Parents had not consented to any IEP's since. They also reviewed the draft goals from the May 20, 2025 IEP and suggested updates.

The evidence did not support a finding of predetermination. Parents were afforded the opportunity to participate in all the IEP team meetings. (34 C.F.R. § 300.501(a) & (b); Ed. Code, §§ 56500.4, 56341, subd. (b), 56341.5, subds. (a) & (b).) There was no denial of parental participation in the IEP process. West Covina did not "independently [develop] an IEP, without meaningful parental participation, then simply [present] the IEP to the parent for ratification." (*S. ex rel G. v. Vashon Island School Dist.*, *supra*, 337 F.3d at 1131 [citing *W.G. v. Board Target Range Sch. Dist.*, *supra*, 960 F.2d at p. 1484].) To the contrary, West Covina was repeatedly imploring Parents to change their minds about the appropriateness of a different placement.

West Covina prevailed on Issue 3.A.

ISSUE 3.B: DID WEST COVINA'S AUGUST 29, 2025 IEP DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT?

Student contends that the offer of a nonpublic school was not the least restrictive environment appropriate for him. West Covina contends that it was.

Mother viewed the Bliss classroom when she dropped him off to start attending on August 5, 2025. The campus had a grassy area for playtime, and a separate arcade or recreational area. There was a little playground in between Student's classroom and another classroom. There were eight or nine students and more adults than kids. Mother felt the space was crowded and overwhelming, and overstimulating in terms of how many bodies were in such a small space. Parents met the teacher and the school behaviorist, who introduced themselves. They said they had a "calming area," which Parents did not observe.

Notwithstanding Mother's perceptions about the physical layout at Bliss, Student did not meet his burden of establishing it was not the least restrictive appropriate environment for Student. Student was socially and academically unsuccessful in his placement at California Elementary's autism special day class program. The program's behavioral interventions did not sufficiently address Student's behavior to allow him to access the curriculum there. Student's behavior problems in that setting had involved significant levels of aggression and injuries. The opinions of the professional educators who worked with or assessed Student, in both the public and the nonpublic school settings, were that his behaviors required a more restrictive setting to address them.

Student's different presentation in the home and community environments does not alter the legal analysis of whether the placement West Covina offered the least restrictive environment that was reasonably calculated to provide Student with educational benefit, and Student presented no persuasive contrary evidence.

West Covina prevailed on Issue 3.B.

ISSUES 3.E AND F: DID WEST COVINA'S AUGUST 29, 2025 IEP DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT APPROPRIATE SPEECH AND LANGUAGE AND AUGMENTATIVE AND ALTERNATIVE COMMUNICATION SERVICES?

Student contends that West Covina failed to offer appropriate speech and language or augmentative and alternative communication services. West Covina contends its offers were appropriate.

At the August 29, 2025 IEP, West Covina offered an augmentative and alternative communication assessment plan at the suggestion of the speech pathologist at Bliss, Sharon McCusker. Student was a verbal communicator but McCusker wanted to explore alternate means.

McCusker shared that Student seemed frustrated with communication and was averse to working on articulation. She wanted to make it easier for him to communicate and request what he needed to be calm and regulated. She suggested that he be assessed for augmentative and alternative communication. Even though she knew that he was able to speak and had language, she wanted to suggest a different way to communicate.

Olshan asked Bliss to provide an assessment plan. Mother, however, shared that they had tried using picture communication in the past, and Student had thrown the pictures and yelled. Mother was concerned he might throw the device.

These events do not establish a denial of FAPE because of any failure to offer Student appropriate speech and language services or appropriate augmentative and alternative communication services. When the suggestion was made by Bliss, West Covina offered that assessment but apparently, Mother disagreed. There was no evidence that McCusker's suggestion, although possibly helpful, was required for FAPE.

West Covina prevailed on Issues 3.E and 3.F.

EVENTS AFTER THE AUGUST 29, 2025 IEP

West Covina filed their complaint in this matter just after the August 29, 2025 IEP team meeting, while Student was still attending Bliss pursuant to the 45-day interim alternative educational setting. Student filed his complaint on September 12, 2025, while Student was still in that 45 day setting.

Subsequent events not contained within the four corners of the parties' complaints were not at issue here, including events on September 24, 2025, when West Covina issued a prior written notice concerning the end of the 45-day placement.

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WEST COVINA'S ISSUE: DID WEST COVINA'S MAY 20, 2025 IEP OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT APPROPRIATE FOR STUDENT?

West Covina contends that the placement and services it offered in the May 20, 2025 IEP offered Student a FAPE in the least restrictive environment, such that it should be implemented although Parents did not consent. As discussed above in Issue 2, Student contends the May 20, 2025 IEP was predetermined, and failed to offer a placement in the least restrictive environment or to offer appropriate behavior or speech assessment and services.

If the public agency determines that the proposed special education program component to which the parent does not consent is necessary to provide a FAPE to the child, the local educational agency shall file a request for a due process hearing. (Ed. Code, § 56346, subd. (f); *I.R. ex rel. E.N. v. Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164.) Since such was the case here, West Covina filed for due process.

At the May 20, 2025 IEP team meeting, West Covina presented the updated multidisciplinary assessment report dated March 11, 2025, that contained the results of the January 2025 speech and language and March 2025 occupational therapy assessments. As discussed above in Issues 2.C and 2.D, West Covina updated Student's behavior goals from the November 15, 2024 IEP. As discussed above in Issues 2.E and 2.F, the May 20, 2025 IEP offered new speech and language goals based on the recent speech assessment. The occupational therapist proposed a visual motor skills goal.

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The May 20, 2025 IEP offered nonpublic school placement with a one-to-one aide, and speech and language and occupational therapy related services.

In order to prevail, a district must first establish that it has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at 206-207.) Second, district must establish that the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) West Covina bore the burden of proof on these issues. As discussed below, West Covina failed to meet its burden of proof.

Student therefore prevails on West Covina's issue.

ACADEMIC PRESENT LEVELS AND GOALS

In the May 25, 2025 IEP, Terpstra added academic goals back into the IEP, since academic goals had been removed in the November 15, 2024 IEP. Academic assessments had not been completed even though the September 12, 2024 assessment plan proposed assessing Student in the area of academics. Terpstra attempted to administer academic assessments, specifically the Woodcock-Johnson Tests of Achievement, and the Brigance Inventory of Early Development, in September 2024. She was able to complete the Woodcock Johnson Test of Oral Language, but her testimony established that this single result did not suffice to determine Student's present academic achievement levels. She was not able to complete the academic assessments because Student's behavior interfered. West Covina never attempted academic assessments again.

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Thus, by the time of the May 20, 2025 IEP on which West Covina relied, Student had not been assessed in academic achievement since, at least, the three years from his last triennial assessment. Nor had he had worked on any academic goals for at least seven months. Student had last actually worked on any academic goals prior to October 29, 2024. In his prior November 2023 IEP, there were three academic goals. These addressed letter sounds, one-to-one correspondence and consonant-vowel-consonant words. These were foundational skills for reading and counting. Student had not met these goals when progress was last reported in June 2024. In the October 29, 2024 behavior intervention plan, academic goals were discontinued. That was the last time West Covina worked on academic goals with Student. They turned their attention to the more pressing behavioral needs.

A local educational agency must assess a special education student in all areas of suspected disability, including, if appropriate, academic performance.

(20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).)

A local educational agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. (20 U.S.C. § 1414(b)(2)(A).) A reassessment shall occur at least once every three years, unless the parent and the local educational agency agree, in writing, that a reassessment is unnecessary. (Ed. Code, § 56381.) A school district's failure to conduct appropriate assessments, or to assess in all areas of suspected disability, may constitute a procedural denial of a FAPE. (*See Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d

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1025, 1031-1032.) The failure to obtain critical assessment information about a student renders the accomplishment of the IDEA's goals -- and the achievement of a FAPE -- impossible. (*N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202, 1210 [quoting *Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 894].) West Covina failed to establish that, in the area of academics, it complied with these requirements.

An IEP is a written document for each child with a disability that includes: a statement of the child's present levels of academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320.) West Covina failed to establish that in the area of academics, the May 20, 2025 complied. The IEP stated a purported academic present level, but it confusingly and without explanation stated "Education Specialist 2024," and the present level was not based on any data presented in evidence. No evidence established who wrote the present level, when it was written, or whether it was accurate when written. Since no academic assessment had occurred, it was clearly not assessment-based. Since Terpstra was on leave in 2024 from December 9 onward, it may have been written by her before she left, or by someone else thereafter. No evidence indicated its accuracy as of the May 20, 2025 IEP.

The IEP shall "show a direct relationship between the present levels of performance [to] the goals and objectives. (Cal. Code. Regs., tit. 5, § 3040.) In the area of academics, West Covina failed to do so. Again, West Covina offered no explanation, or legal analysis of why the May 20, 2025 IEP should be enforced despite the fact that, in the area of

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academics, it failed to show a direct relationship between the present levels of performance to the goals and objectives. Specifically, in the May 20, 2025 IEP, Terpstra recommended adding academic goals back in to the IEP. She felt that

“so many months [had gone by] without academics [and] I was concerned that he wasn't getting the academics that he needed. So when it came to the May IEP and he still wasn't accessing academics, I needed to start pulling those back in for him.”

So, “that’s why I added the language arts and the math goal because these are still areas, unique areas of need for [Student].” Terpstra suggested two new goals in the May 20, 2025 IEP. The first was an English language arts goal for reading foundations. It stated that when given a field of three high-frequency sight word cards, Student would recognize and correctly identify up to 10 words such as “the, and, it, is, in, to, you, he, she, we” with 60 percent accuracy. These goals bore no relationship to the purported present level stated in the IEP from the “Education Specialist 2024.”

Nor did any evidence establish whether or why this goal would be achievable. Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child’s special education program. (34 C.F.R. §§ 300.320(a)(2); *Letter to Butler* (OSERS 1988) 213 IDELR 118.) Terpstra at hearing expressed the opinion that she felt this goal would be achievable in the nonpublic school setting, and she wrote it for that setting but not for her classroom. West Covina presented no data or other evidence to support her opinion.

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Terpstra testified that she took a baseline for this goal as of May 20, 2025, that when given ten such high-frequency words, Student could recognize and identify them with zero percent accuracy. It went unexplained how Student could then be expected to accomplish the 60 percent that goal aimed for. Nor was it explained how Terpstra could have taken a baseline when Student's academics were not being worked on, and if they had been worked on it would not have been on this proposed goal. It would have been the goals from the last consented to November 2023 IEP. And, since Terpstra was on maternity leave from December 9, 2024, until May 5, 2024, her knowledge of Student's functioning as of May 20, 2025, would have been based on, at most, the 12 school days between May 5 and 20, 2025. However well-intentioned, without any assessment data, or demonstrably accurate present levels, Terpstra's 12-day familiarity with Student's then-current functioning cannot suffice to establish that the proposed goal was appropriate.

The second proposed academic goal was in the area of mathematics and stated that when given a number card and using numbers 12-25, Student would demonstrate one to one correspondence with 70 percent accuracy. The IEP, confusingly, stated two different baselines for this skill, one of which stated that Student could accomplish it with 10 percent accuracy and another that stated as of May 20, 2025, he could accomplish it with 22 percent accuracy. Terpstra could not explain these two different baselines.

Since academic goals were not worked on since October 29, 2024, and Student had not been assessed, it is therefore not clear what data or information these two new academic baselines or goals in the May 20, 2025 IEP were based upon.

In light of these facts, West Covina's effort to enforce the May 20, 2025 IEP absent parental consent must fail. If West Covina believed that the law supported a finding of FAPE overall in the May 20, 2025 IEP, such that that IEP should be implemented, even though the academic assessments and goals did not procedurally comply with the IDEA, it did not provide any argument or law to support that belief.

An IEP need not contain every goal from which a student might benefit. (*Capistrano Unified Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, at pp. 1133-34.) Nor does the IDEA require that the IEP team rely on specific kinds of quantitative data. (*Ibid.*) And, inadequate baselines are not necessarily fatal. (See, e.g. *Nunez v. Grossmont Union High School Dist.* (S.D. Cal. September 30, 2019) No. 17-CV2097-L-MDD) 2019 WL 4849172, *6-*7.) However, there is a limit beyond which goals that have no discernible basis in demonstrably accurate present levels are so procedurally deficient as to deny a FAPE.

In *Ravenswood City School Dist. v. J.S.* (N.D. Cal 2009) 870 F. Supp. 2d 780, 790-91, the court upheld an ALJ's determination that an IEP was inadequate because the program and its goals were not predicated upon clear baselines or present levels. Because of the deficient present levels, the IEP goals were not based upon reasoned criteria or the student's current skill levels. The school district in that case argued that the lack of baselines was not a violation because baselines were not a mandatory component of an IEP. But the court was not persuaded, because "[a]n IEP begins by measuring the student's present level of performance -- affectionately known as PLOP -- which provides a benchmark for measuring the student's progress toward the goals stated in the IEP." (*Id.* at p. 790-91 [citing *Settlegoode v. Portland Pub. Schools* (9th Cir. 2004) 371 F.3d 503, 508, n.1].) "Baseline data must be concise and

clearly understandable so that the student's progress can be evaluated." (*Ibid.* [citing *O'Toole v. Olathe Unified School Dist.* (10th Cir. 1998) 144 F.3d 692, 702-703].) As the ALJ had found, the purported baselines were wholly insufficient, did not provide any indication of what, if any, skills the Student had, were too vague to determine what area of need it addressed, and were otherwise simply inadequate.

Because Student's academic achievement had not been assessed within three years, and academic goals were abandoned for a period of time and not recently measured, and the IEP's purported academic present level was unsupported by any evidence, the academic goals in the May 20, 2025 IEP had no discernible foundation. Since in the area of academics, West Covina's May 20, 2025 IEP offer did not comply with the procedures outlined in the IDEA, and in the absence of any argument for overlooking that noncompliance, its attempt to enforce the IEP as a whole must fail.

THE AUGUST 29, 2025 IEP

West Covina specifically seeks to enforce only the May 20, 2025 IEP, despite the fact that its offer of FAPE was significantly amended on August 29, 2025. As outlined above, while Student attended Bliss pursuant to the 45-day interim alternative educational setting, West Covina convened an IEP team meeting to review his progress. At that meeting, the team, including Bliss participants, made changes to the offer of FAPE, both in the goals and services offered. Specifically, for six of the goals, the team suggested modification to the percentages of successful trials Student was aiming for. For one example, a behavioral goal for "simple compliance" had in the May 20, 2025 IEP aimed for 80 percent success and this was, in August, lowered to 60 percent. Five other goals, including the two new academic goals Terpstra had just added in May, also lowered the expectations by various lowered percentages.

In addition, the May 20, 2025 IEP had proposed four speech goals, two in articulation, one in expressive language that aimed for Student to answer "who" questions, and one in receptive language concerning the use of prepositions. The August 29, 2025 IEP wholly abandoned those four speech goals. It recommended discontinuing the two articulation goals. The Bliss speech pathologist proposed two entirely new receptive and expressive language goals, the content of which bore no comparison to the two they replaced.

In addition to changing these proposed goals, the August 29, 2025 IEP also changed the services offered. It reduced the daily minutes of specialized academic instruction from the 360 daily minutes offered in May down to 314 minutes. No evidence established why. It also removed an offer of 90 minutes monthly behavior intervention service because that service was "embedded" in the nonpublic school program.

It went unexplained why West Covina sought to enforce an IEP offer it made in May that was, three months later, modified in these significant respects. Although an IEP is evaluated in light of information available at the time it was developed (*Adams v. State of Oregon, supra*, 195 F.3d 1141, 1149), it would defy logic to order implementation of an IEP offer of FAPE that had already been modified three months later in these significant respects, both in terms of the goals and the services being offered.

For these reasons, West Covina failed to establish that the proposed May 20, 2025 IEP to which Parents did not consent was necessary to provide a FAPE to the child. (Ed. Code, § 56346, subd. (f). West Covina's focus at hearing was on Student's behaviors

and least restrictive environment. However, it bore the burden of proof on the procedural and substantive elements of its FAPE offer, if it proposed to implement that without parental consent.

West Covina failed to meet that burden.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1, SUBSECTION A:

West Covina's November 15, 2024 IEP did not deny Student a FAPE by predetermining Student would be offered placement at Bliss Academy, thereby significantly impeding Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student.

West Covina prevailed on Issue 1, subsection A.

ISSUE 1, SUBSECTION B:

West Covina's November 15, 2024 IEP did not deny Student a FAPE by failing to offer Student placement in the least restrictive environment appropriate for Student.

West Covina prevailed on Issue 1, subsection B.

ISSUE 1, SUBSECTION C:

West Covina's November 15, 2024 IEP did not deny Student a FAPE by failing to offer Student appropriate behavioral supports, including a dedicated one-to-one aide.

West Covina prevailed on Issue 1, subsection C.

ISSUE 1, SUBSECTION D:

West Covina's November 15, 2024 IEP did not deny Student a FAPE by failing to offer Student an appropriate behavior intervention plan.

West Covina prevailed on Issue 1, subsection D.

ISSUE 1, SUBSECTION E:

West Covina's November 15, 2024 IEP did not deny Student a FAPE by failing to offer Student appropriate speech and language services.

West Covina prevailed on Issue 1, subsection E.

ISSUE 1, SUBSECTION F:

West Covina's November 15, 2024 IEP did not deny Student a FAPE by failing to offer Student appropriate augmentative and alternative communication services.

West Covina prevailed on Issue 1, subsection F.

ISSUE 2, SUBSECTION A:

West Covina's May 20, 2025 Amendment IEP did not deny Student a FAPE by predetermining Student would be offered placement at Bliss Academy, thereby significantly impeding Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student.

West Covina prevailed on Issue 2, subsection A.

ISSUE 2, SUBSECTION B:

West Covina's May 20, 2025 Amendment IEP did not deny Student a FAPE by failing to offer Student placement in the least restrictive environment appropriate for Student.

West Covina prevailed on Issue 2, subsection B.

ISSUE 2, SUBSECTION C:

West Covina's May 20, 2025 Amendment IEP did not deny Student a FAPE by failing to offer Student appropriate behavioral supports, including a dedicated one-to-one aide.

West Covina prevailed on Issue 2, subsection C.

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ISSUE 2, SUBSECTION D:

West Covina's May 20, 2025 Amendment IEP did not deny Student a FAPE by failing to offer Student an appropriate behavior intervention plan.

West Covina prevailed on Issue 2, subsection D.

ISSUE 2, SUBSECTION E:

West Covina's May 20, 2025 Amendment IEP did not deny Student a FAPE by failing to offer Student appropriate speech and language services.

West Covina prevailed on Issue 2, subsection E.

ISSUE 2, SUBSECTION F:

West Covina's May 20, 2025 Amendment IEP did not deny Student a FAPE by failing to offer Student appropriate augmentative and alternative communication services,

West Covina prevailed on Issue 2, subsection F.

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ISSUE 3, SUBSECTION A:

West Covina's August 29, 2025 Amendment IEP did not deny Student a FAPE through the filing of Student's due process hearing request on September 12, 2025, by predetermining Student would be offered placement at Bliss Academy, thereby significantly impeding Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student.

West Covina prevailed on Issue 3, subsection A.

ISSUE 3, SUBSECTION B:

West Covina's August 29, 2025 Amendment IEP did not deny Student a FAPE through the filing of Student's due process hearing request on September 12, 2025, by failing to offer Student placement in the least restrictive environment appropriate for Student.

West Covina prevailed on Issue 3, subsection B.

ISSUE 3, SUBSECTION C:

West Covina's August 29, 2025 Amendment IEP did not deny Student FAPE through the filing of Student's due process hearing request on September 12, 2025, by failing to offer Student appropriate behavioral supports, including a dedicated one-to-one aide.

West Covina prevailed on Issue 3, subsection C.

ISSUE 3, SUBSECTION D:

West Covina's August 29, 2025 Amendment IEP did not deny Student a FAPE through the filing of Student's due process hearing request on September 12, 2025, by failing to offer Student an appropriate behavior intervention plan.

West Covina prevailed on Issue 3, subsection D.

ISSUE 3, SUBSECTION E:

West Covina's August 29, 2025 Amendment IEP did not deny Student a FAPE through the filing of Student's due process hearing request on September 12, 2025, by failing to offer Student appropriate speech and language services.

West Covina prevailed on Issue 3, subsection E.

ISSUE 3, SUBSECTION F:

West Covina's August 29, 2025 Amendment IEP did not deny Student a FAPE through the filing of Student's due process hearing request on September 12, 2025, by failing to offer Student appropriate augmentative and alternative communication services.

West Covina prevailed on Issue 3, subsection F.

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WEST COVINA'S ISSUE

West Covina's May 20, 2025, IEP did not offer Student a FAPE in the least restrictive environment appropriate for Student.

Student prevailed on West Covina's Issue.

ORDER

1. West Covina prevailed on all Student's issues. No remedies are ordered as Student did not prevail.
2. Student prevailed on West Covina's issue. West Covina may not implement the May 20, 2025 IEP absent parental consent.

RIGHT TO APPEAL THIS DECISION

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

June Lehrman

Administrative Law Judge

Office of Administrative Hearings