

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

V.

LAS VIRGENES UNIFIED SCHOOL DISTRICT.

CASE NO. 2025090649

DECISION

June 24, 2026

On September 16, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Las Virgenes Unified School District, called Las Virgenes. On October 9, 2025 OAH granted the parties' joint request for continuance and mediation. Administrative Law Judge Daniel Senter heard this matter via videoconference on April 28, and 29, 2026.

Parent, Student's mother, represented Student. Student's father and Student intermittently attended the morning of April 28, 2026. Attorneys Julie Coate and Siobhan Cullen represented Las Virgenes. Kristen Marsilio, director of pupil services, attended all hearing days on Las Virgenes' behalf.

The matter was continued to May 13, 2026, for written closing briefs. The record was closed, and the matter was submitted on May 13, 2026. On May 12, 2026, Student filed a three-page document titled, Student's Letter to the Court Regarding [Student's] Educational Needs. Student's document did not contain a proof of service. Las Virgenes timely filed a written closing brief on May 13, 2026.

On May 19, 2026, OAH issued a notice of receipt of ex parte communication, attaching Student's May 12, 2026 three-page document. On May 27, 2026, Student filed a proof of service. It was unclear if the proof of service was intended for Student's May 12, 2026, three-page document. The proof of service was not filed with the document it purported to serve, and it did not include the date and time of service.

Between the time OAH issued the notice of ex parte communication, and the issuance of this Decision, Las Virgenes did not file any objection to Student's May 12, 2026 document. Las Virgenes did not assert that Student's failure to timely serve the document caused it any prejudice. Student's May 12, 2026 document was attached to the OAH notice of ex parte communication and was made part of the record in this case.

Accordingly, to the extent Student's May 12, 2026 document was intended as Student's closing brief, it was timely filed with OAH, and it was considered in this Decision.

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ISSUES

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

- 1) Did Las Virgenes deny Student a FAPE from September 16, 2023, through the end of the 2023-2024 school year, including extended school year, by:
 - a) Failing to assess Student in all suspected areas of disability, specifically speech and language, assistive technology, and behavior;
 - b) Failing to offer applied behavior analysis services and assistive technology training;
 - c) Failing to offer sufficient speech and language and occupational therapy services; and
 - d) Failing to offer an appropriate placement?
- 2) Did Las Virgenes deny Student a FAPE during the 2024-2025 school year, including extended school year, by:
 - a) Failing to assess Student in all suspected areas of disability, specifically speech and language, assistive technology, and behavior;
 - b) Failing to offer applied behavior analysis services and assistive technology training;

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- c) Failing to offer sufficient speech and language and occupational therapy services; and
 - d) Failing to offer an appropriate placement?
- 3) Did Las Virgenes deny Student a FAPE during the 2025-2026 school year through September 15, 2025, by:
- a) Failing to assess Student in all suspected areas of disability, specifically speech and language, assistive technology, and behavior;
 - b) Failing to offer applied behavior analysis services and assistive technology training;
 - c) Failing to offer sufficient speech and language and occupational therapy services; and
 - d) Failing to offer an appropriate placement?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as the 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 free appropriate public education that emphasizes special education

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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 in this matter. 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 nine years old and in fourth grade at the time of hearing. Student resided within Las Virgenes' geographic boundaries at all relevant times. Student was eligible for special education under the autism category.

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LEGAL FRAMEWORK AND PROCEDURAL POSTURE

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 F.*).

In this case, Student enrolled in Las Virgenes in August 2023. Student's prior school district was Los Angeles Unified School District, and her last Los Angeles IEP before enrolling in Las Virgenes was dated June 5, 2023. On August 24, 2023, Las Virgenes completed a form titled, "30-Day Placement," which placed Student at Round Meadow Elementary School, with special education services. On August 28, 2023, Las Virgenes convened an amendment IEP team meeting, at which Las Virgenes offered Student additional special education services, to which Parent consented.

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Student's special education placement at Round Meadow was the learning center, a special education classroom in which Student's entire academic program was offered. For the purposes of this Decision, Student's special education placement in the learning center, including the services offered by the August 28, 2023 IEP amendment, is called the Round Meadow program.

On September 15, 2023, Las Virgenes convened an IEP team meeting, at which it offered a new placement, the functional academics and behavior program at Lupin Hill Elementary School, called the Lupin program. Kristen Marsilio, Las Virgenes' director of pupil services, credibly established that even though the Lupin program was not expressly named on the offer of FAPE page within the September 15, 2023 IEP, it was the placement offered in Student's September 15, 2023 IEP.

At hearing, Parent initially testified that the September 15, 2023 IEP offered the Lupin program, but later testified that she believed the Round Meadow program had been offered at this IEP team meeting. Parent's testimony regarding the placement offered in the September 15, 2023 IEP was uncertain, as immediately after testifying she believed the Round Meadow program had been offered in this IEP, Parent asked if that was correct. Parent was Student's sole witness at hearing. Throughout the hearing, Parent's testimony about the details of Student's IEPs was vague.

In contrast, Marsilio's testimony about Student's September 15, 2023 IEP was detailed and thorough. Marsilio identified distinctive features of the Lupin program described in the offer of FAPE page of the September 15, 2023 IEP, and confirmed that the Lupin program was named in the IEP notes. Marsilio was Las Virgenes' sole witness at hearing. She worked for Las Virgenes for 26 years and served in various special education roles. She had extensive experience reviewing IEPs. Marsilio observed

Student during the 2023-2024 school year and attended Student's February 2, as continued to February 27, 2024 IEP team meeting in her prior role, as special education coordinator.

In addition to Marsilio's testimony, the least restrictive environment page of the September 15, 2023 IEP confirmed that the Round Meadow program was not offered as of September 15, 2023, as it stated Student, "requires special class not available at home school." Round Meadow was Student's home school, which was not offered. The IEP is to be read as a whole. No requirement exists that necessary information be included in a particular section of the IEP if that information is contained elsewhere. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2); Ed. Code, § 56345, subd. (h).) For these reasons, Marsilio's testimony about the September 15, 2023 IEP was more persuasive than Parent's. Accordingly, Las Virgenes established the Lupin program was offered at the September 15, 2023 IEP team meeting.

Parent did not consent to the September 15, 2023 IEP or accept the offer of the Lupin program. Las Virgenes offered the Lupin program to Student at each subsequent IEP team meeting. At no point did Student accept the Lupin program. Instead, Student continued to attend the Round Meadow program for the remainder of the 2023-2024 school year, as well as from approximately November 2024 through February 2025 during the 2024-2025 school year. Student did not attend school in Las Virgenes after approximately February 2025 during the 2024-2025 school year, nor at any point during the 2025-2026 school year.

Throughout the hearing, Student generally asserted that both the Round Meadow program and the Lupin program were inappropriate. Las Virgenes asserted in its closing brief that both the Round Meadow program and Lupin program placements offered

Student a FAPE. Although both parties made arguments about the appropriateness of the Round Meadow program, it was not necessary to resolve whether the Round Meadow program was appropriate in this case.

As set forth in the PHC order for this case, Student's issues began as of September 16, 2023, two years from the date Student filed her complaint on September 16, 2025. In California, a request for a due process hearing "shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (l); see 20 U.S.C. § 1415(f)(3)(C).) The law contains two express exceptions to the two-year statute of limitations. (20 U.S.C. § 1415(f)(3)(D)(i) & (ii); Ed. Code, § 56505, subd.)

Here, the only IEP that offered the Round Meadow program was dated August 28, 2023, which predated the statutory period, and the Round Meadow program was only offered through September 14, 2023. Although Las Virgenes asserted it continued to implement the August 28, 2023 IEP, neither the appropriateness of that IEP, nor the Round Meadow program it offered, were at issue here. The offer available to Student at the beginning of the statutory period was made by the September 15, 2023 IEP which offered the Lupin program. Even though the September 15, 2023 IEP team meeting was held prior to the start of the statutory period, this IEP is considered in this Decision because it was the offer available to Student as of September 16, 2023. Student did not argue or establish a basis to extend the statute of limitations in this case. As a result, this Decision makes no determination as to the appropriateness of the Round Meadow program or the services offered in connection with it in the August 28, 2023 IEP.

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Finally, Las Virgenes also asserted it was not obligated to file for due process as to its offer of the Lupin program. That was not an issue in this case, and this Decision does not decide whether Las Virgenes was obligated to file for due process as to the Lupin program.

ISSUE 1(a): DID LAS VIRGENES DENY STUDENT A FAPE FROM SEPTEMBER 16, 2023, THROUGH THE END OF THE 2023-2024 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO ASSESS STUDENT IN ALL SUSPECTED AREAS OF DISABILITY, SPECIFICALLY SPEECH AND LANGUAGE, ASSISTIVE TECHNOLOGY, AND BEHAVIOR?

Student contends that Las Virgenes failed to assess Student in the areas of speech and language and behavior during the 2023-2024 school year. Student generally contends her speech and behavioral needs, and the insufficient services Las Virgenes offered in these areas, demonstrated further assessment was warranted. Student further asserts that although Las Virgenes conducted an assistive technology assessment during the 2023-2024 school year, it was not appropriate, and thus, further assessment was warranted.

Las Virgenes counters that it was not obligated to reassess Student in the areas of speech and language and behavior during the 2023-2024 school year. Las Virgenes further asserts that an assistive technology assessment was not warranted, as it conducted an augmentative alternative communication assessment during the 2023-2024 school year that assessed Student in the area of assistive technology.

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A student must be assessed in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) Once a school district is on notice that a child has displayed symptoms of a disability, the district must assess the child to determine the child's educational needs. (*Timothy O. v. Paso Robles Unified School Dist.*, (9th Cir. 2016) 822 F.3d 1105, 1118 - 1120.) Such notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*Id.* at p. 1120, citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796 and *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202.)

For a child who is already eligible for special education, the IDEA provides for reevaluations to be conducted no more frequently than once a year, but at least once every three years, unless the parents and the school district agree that it is unnecessary. (20 U.S.C. §§ 1414(a)(2)(B)(ii), 1414(c)(4); 34 C.F.R. § 300.303(b)(2) (2006); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).) The IDEA uses the term evaluation, while the California Education Code uses the term assessment. The terms are interchangeable. (20 U.S.C. § 1414(a); Ed. Code, § 56302.5.)

In California, a school district is not required to reassess more often than every three years unless one of the following occurs:

- a parent requested reassessment;
- a teacher requested reassessment; or
- a local educational agency determined the educational or related services needs of the child, including improved academic achievement and functional performance, warranted reassessment.

(20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R § 300.303(a)(1) (2006); Ed. Code, § 56381, subd. (a)(1), (2); *M.S. v. Lake Elsinore Unified School District* (9th Cir. 2017) 678 Fed. Appx. 543, 544 (nonpub. opn.).)

Student's last three-year evaluation before enrolling in Las Virgenes was completed by Los Angeles on November 16, 2022. Although Student did not offer this evaluation as evidence at hearing, Parent conceded Student was assessed by Los Angeles during the 2022-2023 school year. The present levels of performance and notes from Student's IEPs corroborated that Student was assessed. The Los Angeles June 5, 2023 IEP present levels of performance indicated Los Angeles was conducting a language and speech assessment, as of November 2022, to determine if Student would benefit from an augmentative alternative communication device. The notes from the Las Virgenes May 1, 2025 IEP referenced a functional behavioral assessment conducted by Los Angeles. At hearing, Parent generally asserted that the 2022-2023 school year assessments resulted in Los Angeles offering Student speech and behavioral services. The Los Angeles, June 5, 2023 IEP confirmed that Student was offered speech and behavioral goals and services. Although these assessments were not offered as evidence at hearing, the evidence established that Student was assessed during the 2022-2023 school year.

Student's next three-year evaluation was due by November 16, 2025. Thus, Las Virgenes was not required to reassess Student until the 2025-2026 school year. In addition, Las Virgenes assessed Student in the area of assistive technology during the 2023-2024 school year. Therefore, the question is whether Las Virgenes was required to reassess Student during the 2023-2024 school year or extended school year. As discussed more fully below, Student did not prove that Las Virgenes denied Student a FAPE by failing to assess Student in speech, behavior, or assistive technology.

NO SPEECH AND LANGUAGE ASSESSMENT WARRANTED

At hearing, Parent asserted that due to Student's significant speech and language needs, Student should have been assessed in the area of speech by Las Virgenes during the 2023-2024 school year. Parent generally contended that Student had an auditory processing disorder, sensory processing disorder, behavioral dysregulation, and significant communication limitations, among other challenges, that impacted Student's speech and other skills. Parent asserted that Student was capable of vocalizing speech, but Student's imitation of speech and progression of speech had regressed when Student started at Round Meadow during the 2023-2024 school year, and continued to regress while attending the Round Meadow program. Parent also generally asserted that Student should have been assessed because Las Virgenes' offer of group speech services, rather than exclusively one-to-one speech services, was insufficient. Student's arguments did not establish that Las Virgenes was required to conduct a speech assessment.

Student failed to offer any evidence that Las Virgenes determined that reassessment in the area of speech was necessary during the 2023-2024 school year, including extended school year. At Student's September 15, 2023, IEP team meeting, Las Virgenes offered Student communication goals and speech services. Student's communication present levels were described in the September 15, 2023, IEP: Student "uses multimodal communication strategies ... eye gaze, grasp, body proxemics and vocalization." The September 15, 2023 IEP notes reflect that Parent agreed with the goals, and she was concerned that Student's speech skills had regressed. However, at hearing, Student failed to establish that anyone from Las Virgenes identified any regression or any needs that warranted reassessment.

Parent did not offer any expert testimony or call any Las Virgenes personnel, such as a speech-language pathologist, to establish Student's speech needs required further assessment. Parent was Student's only witness at hearing, and Parent did not question Marsilio, who was Las Virgenes' only witness, about Student's speech needs during the 2023-2024 school year. The notes from Student's February 2, as continued to February 27, 2024 IEP team meeting provided that the Las Virgenes speech-language pathologist reviewed Student's speech goals at this meeting. None of Student's relevant IEPs from the 2023-2024 school year, dated September 15, 2023, February 2, as continued to February 27, 2024, and April 26, 2024, revealed that any Las Virgenes personnel identified changes in Student's speech needs that warranted speech reassessment.

Moreover, Student did not prove that Parent or any Las Virgenes personnel requested a speech assessment during the 2023-2024 school year or extended school year. The crux of Parent's argument was not that an additional speech assessment was needed, but that Las Virgenes' offer of group speech services, rather than exclusively one-to-one speech services, indicated Las Virgenes failed to assess Student. Whether Las Virgenes failed to offer sufficient speech services was a separate issue addressed in this Decision at 1(c). Parent's argument was insufficient to establish that anyone in Las Virgenes determined Student's speech needs warranted reassessment or that anyone requested reassessment.

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Here, whether Las Virgenes had an obligation to assess would have been triggered if Parent or Las Virgenes requested it, or if Las Virgenes identified that Student's needs required reassessment. Student failed to establish that Las Virgenes had an obligation to conduct a speech and language assessment for any reason during the 2023-2024 school year, including extended school year.

Accordingly, Student failed to meet her burden on this issue.

NO ASSISTIVE TECHNOLOGY ASSESSMENT WARRANTED

At hearing, Parent conceded that Las Virgenes conducted an augmentative and alternative communication assessment that assessed Student in the area of assistive technology during the 2023-2024 school year. However, Parent asserted that further assessment in the area of assistive technology was warranted because the prior assessment was not appropriate.

An assistive technology device means any item, piece of equipment, or product system that is used to increase, maintain, or improve functional capabilities of a child with a disability, but excludes medical devices surgically implanted or replacement of such device. (20 U.S.C. § 1401(1); 34 C.F.R. § 300.5 (2006); Ed. Code, § 56020.5.) A school district is required to provide any assistive technology device that is necessary to provide a FAPE to a child with a disability. (20 U.S.C. § 1412(a)(12)(B)(i); 34 C.F.R. § 300.105 (2017); Ed. Code, § 56341.1, subd. (b)(5).) An IEP team must consider whether a child requires assistive technology devices or services. (20 U.S.C. § 1414(d)(3)(B)(v); 34 C.F.R. § 300.324(a)(2)(v) (2017); Ed. Code, § 56341.1, subd. (b)(5).)

Augmentative and alternative communication does not have its own definition under the IDEA; however, it is covered broadly under the assistive technology statutes above. Augmentative and alternative communication is a subset of assistive technology specifically related to tools and strategies that support or replace spoken communication.

Las Virgenes conducted an augmentative alternative communication needs assessment in March 2024, as documented in the augmentative/alternative communication assessment report, signed May 20, 2024. The IEP notes for the February 2, as continued to February 27, 2024 IEP team meeting indicated that Parent requested an augmentative alternative communication assessment at the February 27, 2024 IEP team meeting. Student produced no evidence that Parent or any Las Virgenes personnel requested an assistive technology assessment prior to February 27, 2024, or that Las Virgenes determined Student's assistive technology needs warranted reassessment prior to February 27, 2024.

Las Virgenes provided Parent with an assessment plan for the augmentative alternative communication assessment, dated February 29, 2024, which Parent signed on March 12, 2024. The assessment was reviewed at the April 26, 2024 IEP team meeting, and the IEP notes indicated that Las Virgenes offered a trial period with an assistive technology device to Student.

Marsilio credibly established that the March 2024 augmentative alternative communication needs assessment assessed Student for assistive technology needs. Parent conceded the assessment assessed Student in the area of assistive technology, but she asserted it was not done appropriately. Parent's argument was not persuasive.

Parent did not offer any expert testimony or call any Las Virgenes personnel, such as the speech-language pathologist/augmentative alternative communication specialist who conducted the March 2024 assessment, to establish Student's needs required reassessment. The notes from the April 26, 2024 IEP team meeting, at which the assessment was reviewed, did not indicate that anyone recommended further assessment in the area of assistive technology. Rather, the IEP signature page of the IEP indicated that Parent signed the IEP with exception, and the only aspect with which Parent agreed was the "AAC Device."

Moreover, following completion of the March 2024 assistive technology assessment, Student did not offer any evidence that Parent or any Las Virgenes personnel requested reassessment in the area of assistive technology during the 2023-2024 school year, including extended school year. The core of Parent's argument at hearing was not that Las Virgenes failed to assess Student in assistive technology, but that the assessment was not legally compliant. However, the issue was whether Las Virgenes denied Student a FAPE by failing to assess in all suspected areas of disability, specifically assistive technology. The evidence established that Student was assessed in the area of assistive technology during the 2023-2024 school year. The legal compliance of the assessment was not at issue. Therefore, this decision makes no determination about the assessment's legal compliance.

For these reasons, Student did not establish that Las Virgenes denied Student a FAPE by failing to assess Student in the area of assistive technology during the 2023-2024 school year, including extended school year.

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NO BEHAVIOR ASSESSMENT WARRANTED

Student failed to establish that Las Virgenes was required to conduct a functional behavioral assessment, or any behavioral assessment, during the 2023-2024 school year, including extended school year.

The legislature intended that children with serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions. (Ed. Code, § 56520, subd. (b)(1).) The term “functional behavior assessment” is not defined by the IDEA or California state law. Though not binding law, the Office of Special Education Programs, called OSEP, offered guidance that a functional behavior assessment reevaluation is necessary to determine

“whether the positive behavioral interventions and supports set out in the current IEP for a particular child with a disability would be effective in enabling the child to make progress toward the child's IEP goals/objectives, or to determine whether the behavioral component of the child's IEP would need to be revised.” (Letter to Sarzynski, 51 IDELR ¶ 193 (OSEP 2008).)

Aside from initial and three-year assessments where a functional behavioral assessment may be warranted, special education law requires school districts to conduct a functional behavioral assessment in an additional circumstance related to the findings of a manifestation determination review. (20 U.S.C. § 1415 (k)(1)(F); 34 C.F.R. § 300.530(f)(1)(i) (2006).)

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Whether Las Virgenes removed Student from her placement due to disciplinary reasons and was therefore required to conduct a manifestation determination review and a functional behavioral assessment was not at issue in this case. Therefore, this Decision does not decide that issue.

Here, Student did not distinguish whether Las Virgenes' failure was to conduct a functional behavioral assessment or, more generally, any type of behavioral assessment. As a result, this Decision analyzes whether either was required. At hearing, Student generally asserted that she should have been assessed in the area of behavior during the 2023-2024 school year, because Student had significant behavioral needs and Las Virgenes offered insufficient behavioral services, specifically a one-to-one behavioral interventionist. Parent generally asserted that Student could experience significant behavioral needs in the classroom, such as eloping, banging her head, and severe meltdowns. In addition, Parent asserted she was frequently asked to pick Student up early from the Round Meadow program, due to Student's behavior.

In the September 15, 2023 IEP, Las Virgenes offered Student a positive behavior intervention plan. The plan identified behaviors, such as inattention, eloping, yelling, crying, and stomping feet, which the plan indicated some occurred several times a day and some at least 10 times a day. In addition, some similar behaviors were included in Student's prior behavior intervention plan from Los Angeles, dated June 5, 2023, such as off task behavior and elopement, which the plan indicated occurred each hour. The notes from Student's September 15, 2023 and February 2, 2024 IEP team meetings provided that Student engaged in some self-injurious behaviors, including biting and hitting her head. The February 2, 2024 IEP notes further provided that Student "has been sent home 7 days for having a rough day behaviorally." At hearing, Las Virgenes

offered Student's 2023-2024 medical profile record that indicated Las Virgenes called Parents about Student's health and behavioral needs, though it did not include seven instances in which Parents were called to pick Student up early either for health or behavior.

Parent's testimony that Student experienced significant behaviors in the Round Meadow program and was sent home multiple times, combined with the information from the Las Virgenes' IEP and medical records, could raise an issue that the Student's positive behavior intervention plan was not working. However, the appropriateness of the behavior plan was not at issue in this hearing, and this Decision makes no findings as to its effectiveness. Even if the plan were ineffective, Student presented no persuasive evidence that reassessment in the area of behavior was necessary in order to effectively address Student's behavioral needs.

Student did not offer any expert witness testimony that Las Virgenes needed to reassess Student in the area of behavior. For example, Student offered no evidence that Las Virgenes needed to reassess Student in order to revise or draft a new behavior intervention plan. Student did not offer Student's prior behavioral assessments conducted by Los Angeles at hearing, including the Los Angeles functional behavioral assessment. Accordingly, Student did not establish that Student's prior behavioral assessments lacked any information needed by Las Virgenes to address Student's behavior in Las Virgenes. That Student's subsequent behavior plan developed by Las Virgenes, dated December 20, 2024, identified additional behaviors, such as biting and head hitting, and added "sensory" as a new function of her behavior, without reassessing Student, supported Las Virgenes' belief that it had sufficient information to develop a behavior plan and did not need to reassess.

For these reasons, Student did not prove Las Virgenes required additional assessment information to identify Student's behavior or understand the purpose or function behind the behavior.

Moreover, Student did not prove Las Virgenes determined it needed to reassess Student in the area of behavior to offer behavioral services or an educational placement. Parent did not offer any testimony from anyone who worked with Student regarding her behavior in the classroom, such as Las Virgenes teachers, paraeducators, behaviorists, or board-certified behavioral analysts at hearing. Accordingly, Student did not establish that Las Virgenes personnel believed that reassessment was needed in order to meet Student's needs. Marsilio's testimony, and the notes from Student's 2023-2024 IEP team meetings beginning with the September 15, 2023 IEP, consistently indicated that the Las Virgenes IEP team believed the Lupin program and its additional behavioral support was appropriate to address Student's behavioral needs.

As to extended school year, Student offered no argument or evidence that Las Virgenes was required to reassess Student in behavior during the 2023-2024 extended school year.

For these reasons, Student did not establish that Las Virgenes was obligated to reassess Student in the area of behavior during the 2023-2024 school year, including extended school year.

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ISSUE 1(b): DID LAS VIRGENES DENY STUDENT A FAPE FROM SEPTEMBER 16, 2023, THROUGH THE END OF THE 2023-2024 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER APPLIED BEHAVIOR ANALYSIS SERVICES AND ASSISTIVE TECHNOLOGY TRAINING?

Student asserts that Las Virgenes failed to offer Student applied behavior analysis services, called ABA. Student also generally contends Las Virgenes failed to offer a sufficient amount of behavioral services because Student was not offered a one-to-one ABA behavioral interventionist. Student further asserts Las Virgenes failed to offer any assistive technology training services. Student contends these services were necessary to receive a FAPE.

Las Virgenes contends that Student did not require a particular methodology of behavioral services, namely, ABA services. Las Virgenes further asserts that it offered Student sufficient and appropriate behavioral services and that Student did not require assistive technology training.

An IEP is a written document for each child with a disability that must comprehensively describe the child's educational needs and the corresponding special education and related services that meet those needs. (*School Comm. of Burlington v. Dep't. of Educ. of Mass.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996](*Burlington*); 20 U.S.C. § 1414(d)(1)(A). The IEP must identify the student's special education and related services and supplementary aids and services, including program modifications or supports. (*Id.* at p. 368; 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(4) (2007); Ed. Code, § 56345, subd. (a)(4).) In California, related services are called "designated instruction and services." (Ed. Code, § 56363, sub. (a).)

In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a)(2017); Ed. Code, § 56341.1, subd. (a).) The IEP must show a direct relationship between the present levels of performance, the goals, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.)

"Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1402(26); 34 C.F.R. § 300.34 (2006); Ed. Code, § 56363, subd. (a). Assistive technology and behavior intervention services are related services. (See 20 U.S.C. § 1401(26); 34 C.F.R. §§ 300.34(a), 300.6, 300.324(a)(2)(i); Ed. Code, § 56363, subd. (b).)

STUDENT DID NOT ESTABLISH LAS VIRGENES FAILED TO OFFER ABA SERVICES

Student did not prove she required ABA services to receive a FAPE. When a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies, including positive behavioral interventions, and supports to address that behavior. (20 U.S.C. § 1414(D)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) & (b) (2017); Ed Code § 56341.1, subd (b)(1).) In California, school districts may, but are not required to, provide services using the ABA methodology. (See Ed. Code § 56525 [authorizing board-certified behavior analysts to conduct functional behavior assessments and provide behavior intervention services, but not requiring local education agencies to utilize those individuals.]

Parent's lay opinion that Student required ABA services was not persuasive. Parent generally asserted at hearing that Student required ABA services, but Parent did not explain why ABA, as opposed to any other methodology, was required. Parent also did not establish that she had specialized training in ABA or was an expert in ABA methodology, and Parent did not offer any expert testimony to support her opinion that Student required ABA services during the 2023-2024 school year or extended school year. Accordingly, Student did not prove that she required behavior services using ABA methodology.

Moreover, the methodology used to implement an IEP is left to the school district's discretion so long as it is designed to meet the student's unique needs, comports with the child's IEP, and is reasonably calculated to provide an educational benefit. (*Rowley, supra*, 458 U.S. at p. 208; *Crofts v. Issaquah School Dist. No. 411* (9th Cir. 2022) 22 F.4th 1048, 1056-57; *R.P. ex rel. C.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1122 ["The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit."].)

However, even assuming Student established she required ABA, the evidence established that Las Virgenes offered behavioral services rooted in the principles of ABA through the Lupin program. In the September 15, 2023 IEP, Las Virgenes offered Student the Lupin program which included embedded behavioral services. The embedded behavioral services in the Lupin program were based on the principles of ABA, as the staff providing the behavioral services were trained in ABA. Accordingly, even assuming Student had established that Student required ABA services, Student did not establish Las Virgenes failed to offer them.

STUDENT DID NOT ESTABLISH LAS VIRGENES FAILED TO OFFER SUFFICIENT BEHAVIORAL SERVICES

Though Student's issue was specific to a failure to offer ABA, even if it is more broadly considered to mean Las Virgenes failed to offer sufficient behavioral services, Student did not meet her burden. At hearing, and in Student's closing brief, Parent generally asserted Student was offered an insufficient amount of behavioral services because Student was not offered the same amount and configuration of behavioral services that Los Angeles offered Student in her prior placement. Parent asserted Los Angeles offered Student a dedicated one-to-one ABA behavioral interventionist, or therapist, and a board-certified behavioral analyst to help keep Student safe and to assist Student in setting and addressing behavioral goals. In addition, Parent asserted that Student's behavioral challenges in the Round Meadow program indicated more services were required in the Lupin program.

Student failed to prove that because Student may have been offered a different amount and configuration of behavioral services in Los Angeles, Student required the same services in the Lupin program. Las Virgenes was not obligated to offer the same services as offered by Los Angeles at Student's September 15, 2023 IEP team meeting. Las Virgenes was obligated to identify Student's educational needs and special education and related services as of Student's September 15, 2023 IEP, and in each subsequent IEP. (*Burlington, supra*, 471 U.S. at p. 368; 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(4)(2007); Ed. Code, § 56345, subd. (a)(4); *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*) [an IEP "is a snapshot, not a retrospective"; it must be evaluated in terms of what was objectively reasonable when the IEP was developed.] (quoting *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036).)

Student also failed to establish that Student's behavioral challenges in the Round Meadow program proved the services offered in the Lupin program were insufficient. As discussed in Issue 1(a), Parent asserted that Student experienced behavioral challenges while attending the Round Meadow program and that Parent was frequently asked to pick Student up early from the program, due to Student's behavior.

That Student experienced challenges in the Round Meadow program was not determinative of whether Las Virgenes offered sufficient behavioral services from September 16, 2023, in the Lupin program. Student offered no persuasive evidence or expert testimony that given the behavioral services offered in the Lupin program, Student's needs would not be met and Student would require additional behavioral services in the Lupin program. Moreover, Parent offered no testimony from Las Virgenes personnel who directly addressed Student's behavioral needs in school, such as a teacher, paraeducator, behaviorist, or board-certified behavioral analyst that Student required additional behavioral services in the Lupin program. Parent also provided no evidence regarding Student's experience receiving the behavioral support offered in the Lupin program, as Student never attended the Lupin program. The evidence established that Las Virgenes offered the Lupin program, which included embedded behavioral services not present in the Round Meadow program, to address Student's behavioral challenges that were evident within the Round Meadow program.

Marsilio credibly explained that the behavioral service model in the Lupin program was generally embedded, rather than one-to-one, and the services in the Lupin program were designed to meet the needs of students with significant needs, such as Student. In the September 15, 2023 IEP, as well as in each subsequent IEP during the school year, dated November 13, 2023, February 2, as continued to February 27, 2024, and April 26, 2024, Las Virgenes offered Student the Lupin program, including embedded behavioral

services, and 400 minutes a month of behavioral intervention services. None of the foregoing IEPs specified whether the behavior intervention services were offered individually or in a small group, except for the April 26, 2024 IEP, which offered them individually. However, as discussed more fully below, Student did not establish that Las Virgenes was required to offer Student behavioral services in a specific setting or for a specific duration of time in the Lupin program. Therefore, the apparent variation in setting in itself did not render Las Virgenes' offer insufficient.

The embedded services in the Lupin program included behavioral services provided by behavioral interventionists and paraeducator IIs, who were supervised by board-certified behavioral analysts. All Las Virgenes paraeducators were trained in ABA, but paraeducator IIs received additional and ongoing training to support students who were globally impacted. There were 10 to 11 paraeducator IIs assigned to work with two classes of about nine to 10 students each in the Lupin program. Each class was led by a credentialed special education teacher. Students in the Lupin program worked with an adult all-day, both in one-to-one and small group settings.

The Lupin program was intended to support Students who were globally impacted, who may be nonverbal or have limited verbal abilities, and who lacked skills needed to independently access a special education classroom at their home school. The umbrella focus of the program was to support students' behavioral needs to enable them to focus on their IEP goals. Marsilio credibly explained that based on the data and observations the Las Virgenes IEP team conducted, including observations in which Marsilio participated, the Las Virgenes IEP team members believed the behavioral services in the Lupin program would sufficiently address Student's needs.

Parent's questioning of Marsilio at hearing, regarding whether the Lupin program's behavioral services were sufficient to meet Student's needs and to keep her safe, did not diminish Marsilio's testimony. Marsilio confirmed that she believed the staffing was sufficient to meet Student's needs and to keep her safe.

As to the 2023-2024 extended school year, Student failed to establish insufficient behavioral services were offered to Student. Student's September 15, 2023 IEP, as well Student's subsequent IEPs dated February 2, as continued to February 27, 2024, and April 26, 2024, offered Student paraeducator support embedded in the extended school year program. In addition, the September 15, 2023 IEP notes indicated that Student was offered 60 minutes a week of behavior intervention for the extended school year program. At hearing, Student did not argue, or offer any evidence to establish, that Student required ABA services during extended school year, or that Las Virgenes' behavioral service offer for the 2023-2024 extended school year was insufficient.

For all these reasons, Student did not establish that Las Virgenes failed to offer ABA services, or sufficient behavioral services, to Student from September 16, 2023, through the 2023-2024 school year, including extended school year.

STUDENT DID NOT PROVE ASSISTIVE TECHNOLOGY TRAINING WAS REQUIRED

Student failed to prove she or Parent required assistive technology training for Student to receive a FAPE. Assistive technology services means any service that directly assists a child with a disability in the selections, acquisition, or use of an assistive technology device, including evaluating the needs of the child. (20 U.S.C. § 1401(2);

34 C.F.R. § 300.6 (2006); Cal. Code Regs., tit. 5, § 3051.19, subd. (a).) Parent training can be a related services to assist a student with exceptional needs to benefit from special education. (Ed. Code, § 56363, subd. (b)(11); 34 C.F.R. § 300.34(c)(8)(i)-(iii)(2006).)

At hearing, Student failed to offer any evidence that Student or Parent required assistive technology training. Las Virgenes conducted an augmentative alternative communication assessment on around March 11, 2024, which assessed Student in the area of assistive technology. The assessment was reviewed at the April 26, 2024 IEP team meeting, and the IEP notes indicated that Las Virgenes offered a trial period with an assistive technology device to Student.

Student did not offer any expert testimony or call any Las Virgenes personnel, such as the speech-language pathologist/augmentative alternative communication specialist who conducted the March 2024 assessment, to establish Student's needs required assistive technology training services. Marsilio credibly testified that the Lupin program offered Student embedded communication support, in combination with Student's speech services, to address Student's technology and communication needs. Parent did not question Marsilio about Student's assistive technology needs and did not offer any evidence that established Student required assistive technology training.

Accordingly, Student failed to meet her burden that Las Virgenes was required to offer assistive technology training for Student or Parent from September 16, 2023, through the 2023-2024 school year, including extended school year.

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ISSUE 1(c): DID LAS VIRGENES DENY STUDENT A FAPE FROM SEPTEMBER 16, 2023, THROUGH THE END OF THE 2023-2024 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER SUFFICIENT SPEECH AND LANGUAGE AND OCCUPATIONAL THERAPY SERVICES?

Student contends Las Virgenes failed to offer sufficient speech and occupational therapy services and that those services should have been offered on an exclusively individual basis. Las Virgenes counters that its offers of speech and language and occupational therapy services were sufficient both in time and configuration.

A student's IEP must show a direct relationship between the present levels of performance, the goals, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.) Speech and language services and occupational therapy services are related services. (See 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(a); Ed. Code, § 56363, subd. (b).)

STUDENT FAILED TO PROVE SHE WAS OFFERED INSUFFICIENT
SPEECH AND LANGUAGE SERVICES

Student failed to prove she needed additional speech services or that such services should have been offered exclusively on an individual basis to receive a FAPE.

Student's IEPs during the 2023-2024 school year, beginning with the September 15, 2023 IEP, offered Student approximately 240 minutes a month of speech and language therapy services. Student's September 15, 2023 IEP offered 240 minutes a month of speech services, whereas the subsequent 2023-2024 IEPs offered 60 minutes a week of speech. While the student information and services page of Student's September 15,

2023 and February 2, 2024 IEPs indicated speech services were offered in a small group, the least restrictive environment page of the September 15, 2023 IEP, and the notes of the February 2, 2024 IEP indicated the service minutes were offered split across individual and small group settings. In contrast, Student's November 13, 2023 and April 26, 2024 IEPs offered speech in a small group, but did not indicate the services were offered on an individual basis. As to extended school year, Student's February 2, and April 26, 2024 IEPs offered Student 30 minutes a week of speech therapy for the 2023-2024 school year, and did not specify a setting.

According to Student's 2023-2024 IEPs, the setting for speech services varied. However, as discussed more fully below, Student did not establish that Las Virgenes was required to offer Student speech services in a specific setting or for a specific duration of time. Therefore, the apparent variation in setting in itself did not render Las Virgenes' offers insufficient.

At hearing, Parent asserted that in Student's prior school in Los Angeles, Student was exclusively offered individual speech services, because they were more effective. Parent generally asserted that due to Student's attention, behavior, and auditory processing challenges, Student was not able to benefit from group speech therapy in her prior school. However, as determined in this Decision, Las Virgenes was not obligated to offer the same services as Los Angeles. Las Virgenes was obligated to identify Student's speech needs and special education and related services as of Student's September 15, 2023 IEP, and in each subsequent IEP. (*Burlington, supra*, 471 U.S. at p. 368. 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(4)(2007); Ed. Code, § 56345, subd. (a)(4).)

Student offered no persuasive evidence that Las Virgenes failed to identify Student's speech needs and offer sufficient services to meet those needs. The evidence established that Las Virgenes identified Student's present levels of performance and offered communication goals and speech services in Student's September 15, 2023 IEP. Las Virgenes offered speech services in each subsequent IEP. Student's speech progress and speech-related goals were reviewed at Student's February 2, 2024 IEP team meeting.

Student failed to offer any expert testimony that Las Virgenes' speech service offers were insufficient. Student did not offer any testimony from anyone who worked with Student in school to address her speech needs, such as a teacher or speech-language pathologist. Student offered no speech data, such as present levels of performance, goal data, or assessment data, that established Student required more speech services offered on an individual basis.

At hearing, Parent offered a two-page letter, dated February 22, 2024, to support her argument that Las Virgenes failed to offer sufficient speech services. Parent contended the letter was written by a speech-language pathologist, Lisa Harwin, who recommended Student receive 45 minutes a day of speech therapy on an individual basis at school.

The Harwin letter was not persuasive. First, Parent failed to establish the letter was provided to Las Virgenes during the 2023-2024 school year, or at any time thereafter. At hearing, Parent asserted she provided the letter to Las Virgenes. Marsilio contended that Las Virgenes had no record of ever receiving the letter. Parent failed to offer any evidence, such as an email or IEP notes, to corroborate Parent's testimony that the letter was provided to Las Virgenes. Lacking any evidence that corroborated Parent's assertion,

and given Marsilio's conflicting testimony that it had not been provided to Las Virgenes, Parent failed to establish that Student's IEP team was provided with the Harwin letter. In addition, no evidence was offered that Harwin attended any Student IEP team meeting.

This is significant, because a determination of whether an IEP offers a student a FAPE must be made in light of information available when the IEP was developed, not in hindsight. (*Adams, supra*, 195 F.3d at p. 1149.) Because Student failed to establish the letter was provided to Las Virgenes during the 2023-2024 school year, or at any time thereafter, Student did not establish Harwin's recommendations were available to Las Virgenes at the time it developed Student's IEPs.

However, even assuming, for the sake of argument, Student provided the letter to Las Virgenes, the letter was not persuasive. The two-page letter did not explain how it was applicable to Las Virgenes' offer of FAPE to Student. Harwin stated in the letter she worked with Student outside of school. Harwin did not establish that she ever: observed Student in school, observed the offered Lupin program, observed Student receiving speech services in Las Virgenes, spoke with Student's speech-language pathologist in Las Virgenes, or considered Student's speech goals and services offered by Las Virgenes. As a result, the letter did not establish Harwin considered any aspects of the services or program Las Virgenes offered Student.

Moreover, the letter failed to indicate how Harwin's purported findings established a basis for her recommendations. Harwin referenced results from working with Student in the letter, however, Harwin did not explain how those results were obtained or what, if any, assessments were administered. In addition, the letter did not establish how or why Student's results referenced in the letter indicated that Student required more speech services on an individual basis. The letter recommended that daily, one-to-one speech

therapy at Student's school would be "beneficial" for Student. Whether a service may be beneficial, does not mean a school district must offer it. An appropriate public education "does not mean the absolutely best or 'potential-maximizing' education for the individual child." (*Los Angeles Unif. School Dist. v. A.O. by and through Owens* (9th Cir. 2024) 92 F.4th 1159, 1172 (*A.O.*) [quoting *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)].)

Further, though the letter was allegedly written by a speech-language pathologist, Harwin did not testify, and Student did not offer Harwin's resume or curriculum vitae as evidence. As a result, neither Harwin's credentials nor her recommendations were corroborated at hearing or subject to cross examination. Student also did not establish Harwin as an expert. The letter was uncorroborated hearsay, and hearsay is not sufficient in itself to support a finding unless it would be admissible over objection in civil actions. (Cal. Code Regs., tit. 5, § 3082 subd. (b).) As a result, the letter was not credible or persuasive.

For all these reasons, Student failed to demonstrate that the speech and language services Las Virgenes offered from September 16, 2023, through the 2023-2024 school year, were insufficient. As to extended school year, Student failed to argue or produce any evidence that Las Virgenes' offer of speech services for the 2023-2024 extended school year was insufficient. Accordingly, Student failed to meet her burden on this issue.

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STUDENT FAILED TO PROVE SHE WAS OFFERED INSUFFICIENT OCCUPATIONAL THERAPY SERVICES

Student failed to prove that she needed additional occupational therapy services or occupational therapy services offered exclusively on an individual basis to receive a FAPE.

Occupational therapy as a related service means services provided by a qualified occupational therapist, and includes: improving, developing, or restoring functions impaired or lost through illness, injury or deprivation; improving ability to perform tasks for independent functioning if functions are impaired or lost; and preventing, through early intervention, initial or further impairment or loss of function. (34 C.F.R. § 300.34 (c)(6) (2006).)

At hearing, Parent contended Las Virgenes should have offered Student occupational therapy services for 45 minutes a day, exclusively on an individual basis. Student's September 15, 2023 IEP offered Student 60 minutes a week of individual occupational therapy, as well as 30 minutes a week of occupational therapy consultation/collaboration services. Student's November 13, 2023 IEP offered 60 minutes a week of occupational therapy in a small group and did not include occupational therapy consultation/collaboration services. Student's February 2, 2024 IEP offered 60 minutes a week of occupational therapy in a small group; however, the notes page indicated the services were offered on an individual basis. No consultation/collaboration occupational therapy services were offered in this IEP. Student's April 26, 2024 IEP offered 60 minutes a week of occupational therapy services in a small group, and also did not offer consultation/collaboration occupational therapy services.

The evidence established that Las Virgenes offered Student 60 minutes a week of occupational therapy services. Though the setting in which occupational therapy was offered may have varied in the 2023-2024 IEPs, Student failed to establish that a specific setting was required. Therefore, the apparent variation in setting did not in itself render the IEP offers insufficient.

At hearing, Parent generally asserted that Student did not benefit from any service offered in a group setting, given Student's significant needs and short attention span. However, Student offered no persuasive evidence that Student's occupational therapy services should have been offered for more time or exclusively on an individual basis. Student offered no expert testimony to establish that Las Virgenes' occupational therapy service offers were insufficient. Student did not offer any testimony from any Las Virgenes personnel who worked with Student to address her occupational therapy needs, such as a teacher or occupational therapist. In addition, Student offered no occupational therapy data or assessments that established that Student required a different amount or configuration of occupational therapy services than what Las Virgenes offered during the 2023-2024 school year.

In addition, Student failed to argue or produce any evidence that consultation/collaboration occupational therapy services were required. Accordingly, Student failed to prove that the apparent absence of such services in Student's IEPs after the September 15, 2023 IEP, during the 2023-2024 school year, rendered Las Virgenes' offers insufficient.

As to extended school year, Student's September 15, 2023 IEP offered Student 30 minutes a week of occupational therapy services on an individual basis for the 2023-2024 extended school year. Student's February 2 and April 26, 2024 IEPs offered

Student 30 minutes a week of occupational therapy services, but did not specify a setting, for extended school year. Student failed to argue or offer any evidence that Las Virgenes' offer of occupational therapy services for the 2023-2024 extended school year, whether individual or small group, was insufficient.

For these reasons, Student did not establish that Las Virgenes failed to offer sufficient occupational therapy services from September 16, 2023, through the 2023-2024 school year, including extended school year. Accordingly, Student failed to meet her burden on this issue.

ISSUE 1(d): DID LAS VIRGENES DENY STUDENT A FAPE FROM SEPTEMBER 16, 2023, THROUGH THE END OF THE 2023-2024 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER AN APPROPRIATE PLACEMENT?

Student generally contends the Lupin program Las Virgenes offered during the 2023-2024 school year was not appropriate for three reasons. First, the Lupin program was too far from Student's home, because it was further away than the Round Meadow program. Second, it served too many students with high needs. Third, it was inadequately staffed and lacked sufficient behavioral supports, namely, a one-to-one behavioral interventionist assigned to Student.

Las Virgenes counters that the Lupin program was appropriate. Las Virgenes asserts that the travel time to Lupin was reasonable and that it offered Student transportation to attend. Las Virgenes further asserts that the Lupin program generally served fewer students than the Round Meadow program, and had appropriate services, supports, and staff to serve Student.

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory, supra*, 811 F.2d at p. 1314.) A school district's offer of special education services must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*; *Endrew F., supra*, 580 U.S. at p. 399). A review of an IEP must consider whether the IEP was reasonable, not whether the court regards it as ideal. (*Endrew F., supra*, at p. 399.) For a child who is not fully integrated in the regular classroom and not able to achieve at grade level, the child's educational program must be appropriately ambitious in light of her circumstances. (*Endrew F., supra*, at p. 402.)

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

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

- in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or the quality of services needed; and
- a child with a disability is not removed from education in an age-appropriate regular classroom solely because of needed modifications to the general education curriculum.

(34 C.F.R. § 300.116; Ed. Code, § 56342.)

The determination of an appropriate educational placement under the IDEA considers whether the placement provides Student with a FAPE in the least restrictive environment. The IDEA requires a school district ensure that children with disabilities are educated alongside their nondisabled peers “[t]o the maximum extent appropriate.” (20 U.S.C. § 1412(a)(5)(A).) School districts may remove a child with a disability from the regular classroom “only when the nature or severity of the student’s disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56040.1; *A.O., supra*, 92 F.4th at p. 1175.) This requirement reflects the IDEA’s strong preference for educating children with disabilities in a regular classroom environment. (*Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834.)

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

- “the educational benefits of placement full-time in a regular class”;
- “the non-academic benefits of such placement”;

- “the effect [the student] had 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.*).

If the IEP team determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent appropriate considering the continuum of placement options. (*Rachel H, supra*, 14 F.3d at 1405, fn. 5, citing *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1050 (*Daniel R.R.*)). Mainstreaming is a term used to describe opportunities for students with disabilities to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.) The continuum of program options includes, but is not limited to:

- regular education;
- resource specialist programs;
- designated instruction and services;
- special classes;
- nonpublic, nonsectarian schools;
- state special schools;
- specially designed instruction in settings other than classrooms;

- itinerant instruction in settings other than classrooms; and
- instruction using telecommunication instruction in the home or instructions in hospitals or institutions.

(Ed. Code, § 56361.)

While the law requires the IEP team to consider the specific school campus a student will attend, including the proximity of that campus to the student's home and what school the student would attend if the student were nondisabled, the law does not require that a school district place a student at the student's neighborhood school if there is no program available there to meet the student's needs. (See, e.g., *McLaughlin v. Holt Public Schools Bd. of Educ.* (6th Cir. 2003) 320 F.3d 663, 672 [least restrictive environment provisions and regulations do not mandate placement in neighborhood school] (*McLaughlin*); *Hudson v. Bloomfield Hills Public Schools* (6th Cir.1997) 108 F.3d 112 [IDEA does not require placement in neighborhood school]; *Urban by Urban v. Jefferson County School Dist.* (10th Cir. 1996) 89 F.3d 720, 727 [IDEA does not give student a right to placement at a neighborhood school]; *Wilson v. Marana Unified School Dist. No. 6 of Pima County* (9th Cir. 1984) 735 F.2d 1178 (*Marana*).) No one factor is determinative in placement, and parental preference cannot be the sole factor in placement decisions. (See, e.g., Letter to Burton (OSERS March 20, 1991); Letter to Bina (OSERS November 5, 1991).)

Student failed to establish that the Lupin program was not appropriate. First, Parent's assertion that the Lupin program was too far from Student's home, given that it was further than the Round Meadow program, did not render the Lupin program inappropriate. Parent asserted it took her 12 to 20 minutes to drive Student to Round Meadow, whereas it took her 26 to 40 minutes to drive Student to Lupin. Marsilio

countered that Lupin was less than two miles from Round Meadow and that it took her five to seven minutes to drive between the schools. Had the two programs been equivalent, Parent's argument about the relative travel time may have been an important factor in determining whether the Lupin program was the least restrictive. However, because the programs were not the same, and because Las Virgenes offered the Lupin program and transportation to attend it, the relative travel time was not a determinative factor in analyzing the appropriateness of the Lupin program.

Las Virgenes was not obligated to place Student at Round Meadow. A school district is not required to place a student at their neighborhood school when Student's IEP team specifies otherwise. (See, e.g., *McLaughlin, supra*, 320 F.3d at p. 672; *Marana, supra*, 735 F.2d at p. 1178 [school district may assign the child to a school 30 minutes away because the teacher certified in the child's disability was assigned there, rather than move the service to the neighborhood school].)

Beginning with Student's September 15, 2023, IEP as well as in each subsequent IEP during the 2023-2024 school year, Las Virgenes offered the Lupin program, as well as transportation services to allow Student to attend the program. The evidence established that Student's IEP team offered the Lupin program because the Las Virgenes' members determined it would appropriately meet Student's needs. The Lupin program was designed to support students who had significant needs, who needed intensive behavioral support, and who lacked skills needed to independently access a special education classroom at their home school. Marsilio, who observed Student during the 2023-2024 school year and attended Student's February 2, as continued to February 27, 2024 IEP meeting, credibly testified that the Las Virgenes IEP team reviewed Student's

needs, data, and present levels of performance, and determined that based on Student's significant behavioral and communication needs, the Lupin program would appropriately meet Student's needs.

Moreover, Las Virgenes was not required to establish an equivalent program to the Lupin program at Round Meadow, or at another school site closer to Parents' home. At hearing, Parent generally questioned Marsilio about why Las Virgenes could not offer a similar program or similar services to those in the Lupin program at Round Meadow. For example, even though Parent asserted that the embedded behavioral services and sensory room offered in the Lupin program were insufficient, Parent generally asserted that Las Virgenes should have offered components of the Lupin program in the Round Meadow program.

Parent's argument was not persuasive. A school district is not required to duplicate each small, resource-intensive program at each neighborhood school or move a program to the neighborhood school rather than assign a student to a non-neighborhood school determined to meet a student's needs. (See, e.g., *Marana, supra*, 735 F.2d at p. 1178; *Barnett by Barnett v. Fairfax County School Bd.* (4th Cir. 1991) 927 F.2d 146, 154 [school not required to duplicate small, resource-intensive program in each neighborhood school]; *Schuldt ex rel. Schuldt v. Mankato Independent School Dist.* No. 77 (8th Cir.1991) 937 F.2d 1357, 1361-63 [school may place student in non-neighborhood school rather than require physical modification of the neighborhood school].) Moreover, the evidence established that Las Virgenes did not have enough students who required the level of support offered by the Lupin program to necessitate

having two such programs housed at two different Las Virgenes' school sites. Because there was only a need for one such program, it was only located at one school, which was Lupin.

Second, Student's assertion that the Lupin program served too many students with high needs, as compared to the Round Meadow program, was not supported by the evidence, nor persuasive that the Lupin program was inappropriate. Parent's argument was based on her observations of the two programs, where she observed about four students in the Round Meadow program and more students with more significant needs in the Lupin program.

The relative size of the programs was not the correct standard to determine the appropriateness of the Lupin program. Instead, the applicable standard was whether the offer was designed to meet Student's unique needs and reasonably calculated to provide Student with some educational benefit in the least restrictive environment. (See *Endrew F.*, *supra*, 580 U.S. at p. 399). However, even if program size is considered, the evidence did not support Parent's argument. Marsilio credibly testified that the Round Meadow program could serve fifteen students at a time, whereas the Lupin program offered to Student served nine or 10 students at once. Because Marsilio oversaw the special education programs in Las Virgenes, her testimony regarding class size was more persuasive than Parent's, which was based on limited observations of the two programs.

Similarly, Student offered no persuasive evidence to support Parent's opinion that the Lupin program was not appropriate because it served Student's with greater needs than did the Round Meadow program. The students attending the Lupin program were more globally impacted by their disabilities than those students who typically attended the Round Meadow program. Parent conceded at hearing that Student had significant

needs, and did not assert Student was not similarly impacted as those students in the Lupin program. Marsilio credibly testified that the Lupin program staff members were trained, qualified, and capable of serving the students who attended the program, including students with needs similar to Student. Further, the Lupin program was designed to meet the students' behavioral needs so that they may focus on developing learning skills, thereby enabling them to more consistently access their education. Indeed, the February 27, 2024 IEP notes reflect that the Lupin program was offered to Student in part to allow Student to work with and socialize with peers with similar needs. Parent's questioning of Marsilio about the Lupin program did not diminish Marsilio's testimony.

Third, Parent's assertion that the Lupin program was inadequately staffed was unpersuasive. Parent's contention was based on her observation of the Lupin program and Student's experience in, what Parent contended was, a similar program in Los Angeles, which Parent believed was unsafe. Based on this experience, and Parent's observation of the Lupin program, she was concerned the Lupin program lacked sufficient staff to keep Student safe.

Parent's assertion was unconvincing. Parent offered no evidence that the prior program in Los Angeles was determined to be inappropriate for Student by OAH or another court, or that the Lupin program was the same as the Los Angeles program. Therefore, Parent's lay opinion about the Los Angeles placement was not persuasive that the Lupin program was inappropriately staffed to meet Student's needs.

Moreover, Parent offered no expert testimony that the Lupin program required more or different staff to appropriately serve Student in the program. The evidence established that the Lupin program had two classrooms, one serving upper grades and

one serving lower grades, each with nine to 10 students, staffed by a credentialed special education teacher, as well as by 10 to 11 paraeducators IIs who were shared between the two classes based on need. The embedded services in the Lupin program included behavioral services provided by behavioral interventionists and paraeducator IIs, who were supervised by board-certified behavioral analysts. Other professional staff who served the Lupin program students included occupational therapists, speech pathologists, physical therapists, and adaptive physical education teachers. Student failed to establish that this staffing was not appropriate to meet Student's needs.

Further, Student's assertion that Lupin staffing was inappropriate because Student was not offered a one-to-one behavioral interventionist in the program was unpersuasive. As discussed in Issue 1(b), Parent asserted Student had been provided a dedicated one-to-one behavior interventionist in Los Angeles, and therefore, should have been offered the same service in the Lupin program. However, as determined in Issue 1(b), Student failed to prove Student required this service in the Lupin program.

When analyzing the least restrictive environment for Student, it was undisputed that a general education placement was not appropriate for Student, as neither party argued for such a placement. Like the Round Meadow program, where Student's entire academic program was offered within the special education setting, the Lupin program offered the same. Because a full-time placement in the general education setting with supports was not offered by Las Virgenes during the 2023-2024 school year, or requested by Parent, a detailed analysis of each of the *Rachel H.* factors is not necessary to determine that full-time general education was not an appropriate placement in this case. Instead, the analysis of whether the Lupin program was the least

restrictive environment requires determining whether Student was mainstreamed to the maximum extent appropriate in light of the continuum of program options. (See *Daniel R.R.*, *supra*, 874 F.2d at p. 1050.)

Student's 2023-2024 IEPs, beginning with the September 15, 2023 IEP, offered the Lupin program, including opportunities to mainstream. Student's September 15, 2023 IEP offered Student 10 percent of time in the general education setting. Student's February 2, 2024 IEP offered 24 percent of time in general education. Student's November 13, 2023 and April 26, 2024 IEPs offered 28 percent of time in general education.

While these IEPs appear to have offered Student varying percentages of time in the general education environment, Student did not argue or establish that Las Virgenes failed to offer sufficient opportunities to mainstream in the Lupin program. Accordingly, this apparent variation in itself did not render Las Virgenes' offers inappropriate.

The evidence established that Student was offered the opportunity to mainstream in the Lupin program. For example, the September 15, 2023 IEP notes described that in the Lupin program, "functional communication and play skills are taught in the small group setting and then integrated onto the playground during snack and recess with their general education peers." The evidence further established that Las Virgenes offered the Lupin program in part to enable Student to gain new skills needed to socialize. For example, the February 27, 2024 IEP notes state that in the Round Meadow program, although Student was taken to lunch to socialize, her behaviors often interfered, and she tended to eat lunch on her own. In contrast, the same IEP notes indicated that in the Lupin program, there were peers with similar needs, so the pairing of social partners and social opportunities would be more appropriate, and Student would have more opportunity to gain necessary social skills.

The core of Parent's argument was not that Student required more opportunities to mainstream in the Lupin program but that Las Virgenes failed to offer more special education services within the Lupin program, as well as that it was too far away. Parent offered no evidence that the Lupin program would not allow her to mainstream to the maximum extent appropriate.

As to the 2023-2024 extended school year placement, Las Virgenes offered Student 240 minutes of specialized academic instruction a day in a special education class for the 2023-2024 extended school year in Student's 2023-2024 IEPs dated September 15, 2023 February 2, as continued to February 27, and April 26, 2024. Parent failed to offer any evidence to establish that Las Virgenes' 2023-2024 extended year program offer was inappropriate.

For all these reasons, Student did not establish that Las Virgenes failed to offer an appropriate placement from September 16, 2023, through the 2024-2025 school year, including extended school year.

ISSUE 2(a): STUDENT DID NOT PROVE LAS VIRGENES DENIED HER A FAPE DURING THE 2024-2025 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO ASSESS IN SPEECH AND LANGUAGE, ASSISTIVE TECHNOLOGY, AND BEHAVIOR

Student contends that Las Virgenes failed to assess Student in the areas of speech and language and behavior during the 2024-2025 school year, because Student had significant needs in these areas and Las Virgenes offered insufficient services, which

indicated further assessment was warranted. Student further asserts that although an assistive technology assessment was conducted during the 2023-2024 school year, it was not appropriate, and thus, further assessment was warranted.

Las Virgenes contends that it was not obligated to assess Student in the areas of speech and language during the 2024-2025 school year because Parent did not request a speech assessment and Las Virgenes did not determine that reassessment was warranted. Las Virgenes further asserts that although it proposed conducting a functional behavioral assessment in January 2025, it did not complete the assessment because Parents did not allow the assessment to proceed. Las Virgenes further asserts that it was not obligated to conduct an assistive technology assessment during the 2024-2025 school year because Student had been assessed in this area the prior year and reassessment was not warranted.

Parent withdrew Student from Las Virgenes on or around the beginning of the 2024-2025 school year. Student re-enrolled in Las Virgenes in November 2024, and attended the Round Meadow program through approximately February 2025. Student did not attend the Lupin program at any point during the 2024-2025 school year or extended school year.

NO SPEECH AND LANGUAGE ASSESSMENT WARRANTED

Student did not establish that Las Virgenes failed to assess in the area of speech and language during the 2024-2025 school year or extended school year. Student failed to present any evidence that Las Virgenes identified needs warranting speech and

language reassessment during this time. The December 20, 2024 IEP included speech goals and services. The IEP team meeting notes indicated Student's progress on goals was reviewed but not that anyone determined reassessment in speech was necessary.

Student also failed to offer any evidence that Parent or any Las Virgenes personnel requested a speech and language assessment during the 2024-2025 school year or extended school year. Similar to the prior year, Parent's argument that Las Virgenes' alleged offer of insufficient speech services indicated assessment was warranted was misplaced and unpersuasive. The sufficiency of Student's speech services is addressed in Issues 1(c), 2(c), and 3(c). The crux of Parent's argument remained that Student was offered insufficient speech services, not that Student required additional assessment in the area of speech and language. Student did not meet her burden that Las Virgenes denied her a FAPE by failing to conduct a speech assessment during the 2024-2025 school year, including extended school year.

NO ASSISTIVE TECHNOLOGY ASSESSMENT WARRANTED

Student did not establish that Las Virgenes failed to assess in the area of assistive technology during the 2024-2025 school year, including extended school year. As determined in Issue 1(a), Las Virgenes assessed Student in the area of assistive technology during the 2023-2024 school year. Student failed to present any evidence that Las Virgenes determined reassessment was warranted during the 2024-2025 school year or that anyone requested reassessment. Instead, Parent asserted that the prior assistive technology assessment was not valid. However, as determined in Issue 1(a), the appropriateness of the assessment was not an issue, and this Decision does not

decide the legal compliance of the assessment. For these reasons, Student did not meet her burden that Las Virgenes denied Student a FAPE by failing to assess in the area of assistive technology during the 2024-2025 school year, including extended school year.

NO BEHAVIOR ASSESSMENT WARRANTED

Student also did not establish that Las Virgenes failed to assess in the area of behavior during the 2024-2025 school year or extended school year. The evidence established that Las Virgenes offered to conduct a functional behavioral assessment pursuant to an assessment plan dated January 22, 2025. Parent signed the assessment plan on March 24, 2024. Marsilio credibly testified that Las Virgenes emailed Parent on April 1, and April 8, 2025, to arrange a time to conduct the functional behavioral assessment, but Parent did not make Student available for the assessment. On April 28, and again on June 8, 2025, Las Virgenes emailed Parent prior written notices stating that Las Virgenes had not been able to conduct the functional behavioral assessment because Student had not been made available for the assessment.

Parent's testimony did not refute or diminish Marsilio's testimony that Las Virgenes attempted to assess Student in the area of functional behavior but Parents did not make Student available for the assessment. Although Parent asserted she did not remember receiving the prior written notices from Las Virgenes, she conceded she knew that Las Virgenes was attempting to assess Student. Parent asserted that she wanted the assessment done as quickly as possible, but she was advised by her attorney that the assessment would be done the following year. Parent vaguely asserted at hearing that because there was no agreement as to Student's IEP in the spring of 2025, and because Parent wanted to continue discussing options, "we could not get into the

assessments.” Parent did not clarify what she meant by this statement. Regardless, Parent did not contend that she made Student available for the behavior assessment during the 2024-2025 school year or extended school year.

The evidence established that despite Las Virgenes’ repeated efforts to conduct the functional behavioral assessment, Student was not made available for the assessment during the 2024-2025 school year, including extended school year. The absence of a completed functional behavioral assessment during this school year was not a result of Las Virgenes’ failure to attempt to assess.

Accordingly, Student did not meet her burden that Las Virgenes denied Student a FAPE by failing to assess in the area of behavior during the 2024-2025 school year, including extended school year.

ISSUE 2(b): STUDENT DID NOT PROVE LAS VIRGENES DENIED HER A FAPE DURING THE 2024-2025 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER APPLIED BEHAVIOR ANALYSIS SERVICES AND ASSISTIVE TECHNOLOGY TRAINING

Student asserts that Las Virgenes failed to offer Student ABA services during the 2024-2025 school year. Student further contends Las Virgenes failed to offer sufficient behavioral services because Las Virgenes did not offer Student a two-to-one, or one-to-one, behavior intervention service ratio during the 2024-2025 school year. Finally, Student generally contends Las Virgenes failed to offer assistive technology training.

Las Virgenes counters that Student failed to establish that Student required a particular methodology or amount of behavioral services. Las Virgenes further asserts that Student did not require assistive technology training to receive a FAPE.

Similar to the prior year, Student failed to establish that Student required ABA services, or any particular methodology of behavioral services during the 2024-2025 school year or extended school year. Student offered no expert testimony to establish Student required ABA services. Accordingly, Student did not prove that she required services using ABA methodology.

Even though Student did not prove she required ABA services to receive a FAPE, Las Virgenes offered behavioral services based in the principles of ABA through the Lupin program. As established in Issue 1(b), the staff providing the embedded behavior support in the Lupin program were trained in ABA.

STUDENT DID NOT ESTABLISH LAS VIRGENES FAILED TO OFFER SUFFICIENT BEHAVIORAL SERVICES

Although Student's issue was specific to a failure to offer ABA services during the 2024-2025 school year, even if Student's issue is more broadly considered to mean Las Virgenes failed to offer sufficient behavioral services, Student did not meet her burden. Parent generally asserted that Student required more behavioral services within the Lupin program via a two-to-one, or a one-to-one, behavioral interventionist ratio during the 2024-2025 school year. The IEP and FAPE offer available to Student upon Student's re-enrollment in Las Virgenes on or around November 2024, was the April 26, 2024 IEP. This IEP offered the Lupin program, including 400 minutes of behavior intervention services a month, as well as embedded behavioral services, established

in Issue 1(b). Las Virgenes again offered the Lupin program at Student's December 20, 2024 IEP team meeting. This IEP did not expressly offer behavior intervention services on the student information and services page.

The evidence established that the absence of behavior intervention services listed on the service page of Student's December 20, 2024 IEP did not mean Student was not offered behavioral intervention services in the Lupin program. Marsilio credibly testified that the Lupin program services, which included behavior intervention services, were described in the FAPE box on the least restrictive environment page rather than the services page, because the services were provided throughout the day as an embedded component of the program, rather than a service offered for a particular period of time.

Parent did not question Marsilio about the absence of behavioral intervention services on the service page in the December 20, 2024 IEP. Moreover, Parent did not argue that Las Virgenes offered Student fewer or different behavioral services in the December 20, 2024 IEP than the April 26, 2024 IEP. The core of Parent's argument was that Student should have been offered a two-to-one or one-to-one behavior interventionist. Further, Parent offered no evidence to diminish Marsilio's testimony that the December 20, 2024 IEP offered behavior intervention services. Accordingly, the apparent absence of behavior intervention services listed on the service page of the December 20, 2024 IEP did not in itself render the behavior services insufficient.

In support of Parent's argument, that Student should have been offered a two-to-one or one-to-one behavioral interventionist during the 2024-2025 school year, Parent presented a report titled "Initial ABA Assessment and Recommendation Report," from Easter Seals, dated February 24, 2025. Parent asserted the Easter Seals report

established that Student required a ratio of two-to-one direct ABA behavior intervention for 25 hours a week in school, meaning two ABA behavior interventionists assigned at once to Student.

The Easter Seals report was not persuasive. First, Parent failed to establish that she provided the Easter Seals report to Las Virgenes during the 2024-2025 school year. At hearing, Parent asserted she requested two-to-one behavior therapy at IEP team meetings during the 2024-2025 school year, but Parent offered no evidence that established the Easter Seals report was provided to Las Virgenes. This is significant because a determination of whether an IEP offers a student a FAPE must be made in light of information available when the IEP was developed, not in hindsight. (*Adams, supra*, at p. 1149.) Because Parent failed to prove the report was provided to Student's IEP team, Parent's claim that the Las Virgenes IEP team should have offered a two-to-one behavioral intervention ratio at Student's IEP meetings during the 2024-2025 school year, based on recommendations in the Easter Seals report, was unsupported.

Second, even assuming the Easter Seals report was provided to Las Virgenes during the 2024-2025 school year, Student failed to prove the report's recommendations applied to Las Virgenes' offer of FAPE. At hearing, Parent conceded the report's recommendations applied to "after school hours." The report also provided that Student was transitioning to a "home-school model" and Student spent "most of the day in her home setting, where problem behavior ... occurs." The report did not indicate that Student was assessed or observed while attending school in Las Virgenes, or that it considered Student's level of behavioral services offered in the Lupin program in making its recommendations.

Moreover, the report's author did not testify, so the report's contents were not corroborated, nor was the author subject to cross-examination, or offered as, or determined to be, an expert. The report was uncorroborated hearsay, and hearsay is not sufficient in itself to support a finding unless it would be admissible over objection in civil actions. (Cal. Code Regs., tit. 5, § 3082 subd. (b).) For these reasons, Student failed to establish the report's recommendations were credible or applicable to the behavior services Las Virgenes offered during the 2024-2025 school year, or extended school year.

In addition, at hearing, Parent generally asserted that the behavioral services offered during the 2024-2025 school year in the Lupin program were insufficient for the same reasons as the prior year, namely, that Student was offered more services in Los Angeles and was experiencing behavioral challenges in the Round Meadow program. As to the Round Meadow program, Parent asserted that an email from Student's teacher in the Round Meadow program during the 2024-2025 school year documented Student's challenging behaviors, such as dysregulation, bathroom issues, biting, and Student hitting her head on the wall. Although Student's teacher in the Round Meadow program was not called to testify to verify the email, some similar behaviors were noted in Student's December 20, 2024 IEP.

Regardless, the appropriateness of the Round Meadow program offered in the August 28, 2023 IEP, was not at issue in this case. Student failed to offer any persuasive evidence that the Lupin program behavioral services were insufficient during the 2024-2025 school year. Accordingly, for the same reasons Student's arguments were determined unpersuasive for the prior year, they were unpersuasive for the 2024-2025 school year.

As to the 2024-2025 extended school year, the December 20, 2024 IEP offered embedded paraprofessional support for extended school year. Parent did not argue or produce any evidence that the 2024-2025 extended school year behavioral services were inappropriate. For all these reasons, Student did not establish that Las Virgenes denied Student a FAPE by failing to offer ABA services, or sufficient behavioral services, during the 2024-2025 school year, including extended school year.

STUDENT DID NOT PROVE ASSISTIVE TECHNOLOGY TRAINING WAS REQUIRED

As to assistive technology training services, Student did not establish that Las Virgenes was required to offer such services during the 2024-2025 school year. As found in Issue 1(b), Student failed to establish that Student or Parent required assistive technology training during the 2023-2024 school year. Student failed to offer any additional evidence that Student or Parent required assistive technology training during the 2024-2025 school year or extended school year.

Accordingly, Student failed to establish that Las Virgenes denied Student a FAPE by failing to offer assistive technology training services during the 2024-2025 school year, including extended school year.

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ISSUE 2(c): STUDENT DID NOT PROVE LAS VIRGENES DENIED HER A FAPE DURING THE 2024-2025 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER SUFFICIENT SPEECH AND LANGUAGE AND OCCUPATIONAL THERAPY SERVICES

Student asserts that Las Virgenes failed to offer sufficient speech and language and occupational therapy services, both in time and configuration, as those services should have been offered daily on an individual basis during the 2024-2025 school year. Las Virgenes counters that it was not required to offer more speech or occupational therapy services, or to offer them exclusively on an individual basis.

The IEP and FAPE offer available to Student when Student re-enrolled in Las Virgenes on or around November 2024, was the April 26, 2024, IEP. This IEP offered both occupational therapy and speech and language services for 60 minutes a week in a small group. Student's subsequent IEP, dated December 20, 2024, continued to offer speech therapy for 60 minutes a week in a small group. The December 20, 2024, IEP also offered Student 60 minutes of occupational therapy a week on an individual basis and 30 minutes a month of occupational therapy consultation/collaboration.

Parent generally asserted that Las Virgenes' speech and occupational therapy offers were insufficient for the same reasons as the prior year, namely, that Las Virgenes should have offered more service minutes and on an individual basis because Student had significant needs in these areas and because individual services were found ineffective in Los Angeles. Student failed to offer any additional evidence that Student required more speech or occupational therapy services, or that such services were

required on an individual basis, during the 2024-2025 school year. Accordingly, for the same reasons Student's arguments were determined unpersuasive for the prior year, they were not persuasive for the 2024-2025 school year.

Parent also did not establish consultation/collaboration occupational therapy services were required. Therefore, even though the evidence indicated that Las Virgenes' offer of occupational therapy services changed during the 2024-2025 school year with the addition of consultation services, Student failed to prove that such services should have been offered differently. For these reasons, Student did not meet her burden that Las Virgenes denied Student a FAPE by failing to offer sufficient speech and language and occupational therapy services during the 2024-2025 school year.

As to extended school year, Student did not prove that Las Virgenes failed to offer sufficient speech and occupational therapy services for the 2024-2025 extended school year. The December 20, 2024, IEP offered 30 minutes a week of individual occupational therapy services for extended school year, but did not include speech and language services in the list of services offered for the 2024-2025 extended school year. Student was offered speech services for the prior extended school year, pursuant to the April 26, 2024, IEP. However, at hearing, Student did not argue that such services were not offered or that Student required them for the 2024-2025 extended school year.

Even if speech extended school year services were not offered for the 2024-2025 extended school year, Student failed to establish that in the absence of such services, Student would experience regression, when coupled with limited recoupment capacity. (See Cal. Code Regs., tit. 5, § 3043 [extended school year services shall be provided where an "interruption of the child's educational programming may cause regression, when coupled with limited recoupment capacity ..."].) Moreover, Student did not offer any

legal authority to establish that once extended school year services are offered, the same extended school year services must be offered the following school year. (Contra, *Bonsall Unified School District v. Parents* (2017) OAH Case Nos. 2016080681, 2016070664 [“The fact that District had previously offered extended school year attendance, or that it offered extended school year again for summer 2016, which was based on Student’s needs at that time, is not dispositive of whether Student required summer school in order to receive a FAPE [for extended school year 2015].”].)

Student did not offer any evidence that established Las Virgenes’ offer of extended school year services during the 2024-2025 school year was insufficient. For these reasons, Student did not prove that Las Virgenes denied Student a FAPE by failing to offer sufficient speech and language services or occupational therapy services during the 2024-2025 extended school year.

ISSUE 2(d): STUDENT DID NOT PROVE LAS VIRGENES DENIED HER A FAPE DURING THE 2024-2025 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO OFFER AN APPROPRIATE PLACEMENT

Student generally contends the Lupin program Las Virgenes offered during the 2024-2025 school year was not appropriate for the same reasons as the 2023-2024 school year, namely, it was too far away, served too many students with high needs, and was inadequately staffed, including that it lacked a dedicated behavior interventionist for Student. Las Virgenes counters that the Lupin program was appropriate because it was a reasonable distance from Student’s home, generally served fewer students than the Round Meadow program, and had appropriate services, supports, and staff to serve Student.

The IEPs and FAPE offers available to Student during the 2024-2025 school year, dated April 26, and December 20, 2024, offered the Lupin program. Student did not accept the offer of the Lupin program. Instead, Student attended the Round Meadow program from approximately November 2024 through February 2025, before disenrolling from Las Virgenes.

At hearing, Parent asserted that during the 2024-2025 school year Student's teacher in the Round Meadow program was not qualified. Parent also asserted her family was discriminated against in connection with Student attending the Round Meadow program. As determined in the Legal Framework and Procedural Posture section of this Decision, Las Virgenes' offer of the Round Meadow program was not an issue in this case. Thus, no findings are made about the appropriateness of the Round Meadow program. Likewise, discrimination was not an issue in this case, and OAH does not have jurisdiction over claims under section 504 of the Rehabilitation Act or the Americans with Disabilities Act, such as discrimination. Accordingly, this Decision makes no findings regarding Student's discrimination claim.

As to the Lupin program, Parent asserted that it remained inappropriate for the 2024-2025 school year for the same reasons Parent asserted it was inappropriate the prior year. Parent also contended it was inappropriate because Student was not offered additional services in the program, including increased speech, occupational therapy, and behavioral services. Student failed to establish the Lupin program was inappropriate during the 2023-2024 school year or that Student required additional services as part of the Lupin program. Parent failed to offer any additional persuasive evidence that the Lupin program was inappropriate during the 2024-2025 school year or that Student

required additional services in the program. Accordingly, Student did not prove Las Virgenes denied Student a FAPE during the 2024-2025 school year by failing to offer an appropriate placement.

As to the extended school year, Student's December 20, 2024, IEP offered Student 240 minutes daily of specialized academic instruction in a special education class for the 2024-2025 extended school year. At hearing, Student did not provide any evidence that the extended school year offer was inappropriate for the 2024-2025 extended school year.

Student did not meet her burden on this issue.

ISSUE 3(a): STUDENT DID NOT PROVE LAS VIRGENES DENIED HER A FAPE DURING THE 2025-2026 SCHOOL YEAR THROUGH SEPTEMBER 15, 2025, BY FAILING TO ASSESS IN SPEECH AND LANGUAGE, ASSISTIVE TECHNOLOGY, AND BEHAVIOR

Student generally contends that Las Virgenes failed to assess Student in the areas of speech and behavior during the 2025-2026 school year, for the same reasons as the prior years, namely, Student had significant needs in these areas and Las Virgenes offered insufficient services, which indicated further assessment was warranted. Student further asserts that although an assistive technology assessment was conducted during the 2023-2024 school year, it was not appropriate.

Las Virgenes contends it did not fail to assess Student during the 2025-2026 school year through September 15, 2025, because it provided Parent with an assessment plan on September 9, 2025, for Student's three-year evaluation, which proposed a speech

and language assessment and included a notation that a functional behavioral assessment was underway. Las Virgenes further asserts that it was not obligated to conduct an assistive technology assessment during the 2025-2026 school year because Student had been assessed in this area the prior year and reassessment was not warranted.

Student did not establish that Las Virgenes was obligated to assess Student during the 2025-2026 school year through September 15, 2025. Student's three-year reassessment was not due until November 16, 2025. Moreover, Student was not enrolled in Las Virgenes during the 2025-2026 school year through September 15, 2025. Accordingly, Las Virgenes personnel did not serve Student during this time, and Las Virgenes did not identify any reasons to recommend an assessment prior to the September 9, 2025, assessment plan.

Las Virgenes provided an assessment plan to Parent dated September 9, 2025, as part of Student's proposed three-year evaluation. The assessment plan proposed assessments in the areas of social/emotional behavior and speech and language, among other areas not at issue in this case. The assessment plan noted there were pending functional behavioral and occupational therapy assessments. Student presented no evidence that Parent or any Las Virgenes personnel requested a speech assessment prior to September 9, 2025. Thus, Student did not establish Las Virgenes was required to reassess Student in speech prior to the three-year evaluation.

Student did not specify whether her claim was specific to a functional behavior assessment or behavior generally. Even if Student's claim were specific to functional behavior, the absence of a complete functional behavioral assessment was not due to Las Virgenes' failure to attempt to conduct the assessment. As found in Issue 2(a), Parent

signed an assessment plan to conduct a functional behavioral assessment on March 24, 2024, but Parent did not make Student available for the assessment. Though the Las Virgenes multidisciplinary assessment report, dated December 9, 2025, was outside the statutory period and its appropriateness was not at issue in this case, it further indicated that Las Virgenes attempted to complete observations of Student for the functional behavioral assessment, but those attempts were unsuccessful. Likewise, the September 4, 2025 IEP notes support the finding that Las Virgenes attempted to complete the functional behavioral assessment. At hearing, Student did not offer any evidence that Parent made Student available to complete the functional behavioral assessment.

In addition, as determined in Issue1(a), Las Virgenes assessed Student in the area of assistive technology during the 2023-2024 school year. Student offered no evidence that Las Virgenes determined Student required reassessment in this area or that Parent or anyone else requested an assistive technology assessment during the 2025-2026 school year. Though Parent asserted the prior assistive technology assessment was not appropriate, this Decision does not decide the legal compliance of that assessment, as that was not an issue in this case.

For all these reasons, Student did not prove she was denied a FAPE due to a failure to assess Student in the areas of speech and language, behavior, and assistive technology during the 2025-2026 school year through September 15, 2025.

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ISSUE 3(b): STUDENT DID NOT PROVE LAS VIRGENES DENIED HER A FAPE DURING THE 2025-2026 SCHOOL YEAR THROUGH SEPTEMBER 15, 2025, BY FAILING TO OFFER APPLIED BEHAVIOR ANALYSIS SERVICES AND ASSISTIVE TECHNOLOGY TRAINING

Student generally asserts that Las Virgenes failed to offer Student ABA services, as well as sufficient behavioral services because Las Virgenes did not offer Student a two-to-one, or one-to-one, behavior intervention service ratio during the 2025-2026 school year. Student contends Las Virgenes failed to offer assistive technology training.

Las Virgenes counters that Student failed to establish that Student required a particular methodology or amount of behavioral services. Las Virgenes further asserts that Student did not require assistive technology training to receive a FAPE.

The 2025-2026 school year started August 20, 2025. The IEP and FAPE offer available to Student during the 2025-2026 school year, through September 15, 2025, was the December 20, 2024 IEP. Continuation IEP meetings to the December 20, 2024 IEP meeting were dated February 4, 2025, May 1, 2025, and September 4, 2025. IEP meeting notes for these continuation meetings were attached to the December 20, 2024 IEP.

The December 20, 2024 IEP offered the Lupin program, including the Lupin program embedded behavioral services. Student generally asserted that Las Virgenes failed to offer ABA services and sufficient behavioral services during the 2025-2026 school year for the same reasons as Student asserted for the 2023-2024 and 2024-2025 school years. Student failed to offer any additional evidence to establish that Las Virgenes was required to offer ABA services or that its behavioral service offer was insufficient during the 2025-2026 school year. Accordingly, for the same reasons

determined in Issues 1(b) and 2(b), Student did not prove that Las Virgenes failed to offer ABA services or sufficient behavioral services during the 2025-2026 school year, through September 15, 2025.

Similarly, Student generally asserted that Las Virgenes failed to offer assistive technology training services for the same reasons as Student asserted for the 2023-2024 and 2024-2025 school years. Student did not meet her burden on this issue in the prior school years, and Student failed to offer any additional evidence that Las Virgenes was required to offer this service during the 2025-2026 school year.

Accordingly, Student failed to establish Las Virgenes denied her a FAPE due to a failure to offer assistive technology training services during the 2025-2026 school year, through September 15, 2025.

ISSUE 3(c): STUDENT DID NOT PROVE LAS VIRGENES DENIED HER A FAPE DURING THE 2025-2026 SCHOOL YEAR THROUGH SEPTEMBER 15, 2025, BY FAILING TO OFFER SUFFICIENT SPEECH AND LANGUAGE AND OCCUPATIONAL THERAPY SERVICES

Student generally asserts that Las Virgenes failed to offer sufficient speech and language and occupational therapy services, both in time and configuration, as those services should have been offered daily on an individual basis during the 2025-2026 school year. Las Virgenes counters that it was not required to offer more speech or occupational therapy services, or to offer them exclusively on an individual basis.

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The December 20, 2024 IEP offered Student 60 minutes of speech and language services a week in a small group, 60 minutes of occupational therapy a week on an individual basis, and 30 minutes a month of occupational therapy consultation/collaboration. Parent asserted Las Virgenes' offers of speech and occupational therapy services were insufficient during the 2025-2026 school year for the same reasons they were insufficient for the 2023-2024 and 2024-2025 school years. Student did not meet her burden on these issues for the prior years, and Student offered no additional evidence that these offers were insufficient for the 2025-2026 school year.

Accordingly, for the same reasons determined in Issues 1(c) and 2(c), Student did not prove she was denied a FAPE due to a failure to offer sufficient speech and occupational therapy services during the 2025-2026 school year, through September 15, 2025.

ISSUE 3(d): STUDENT DID NOT PROVE LAS VIRGENES DENIED HER A FAPE DURING THE 2025-2026 SCHOOL YEAR THROUGH SEPTEMBER 15, 2025, BY FAILING TO OFFER AN APPROPRIATE PLACEMENT

Student generally contends the Lupin program offered by Las Virgenes was not appropriate for the same reasons as the prior years, namely, it was too far away, served too many students with high needs, and was inadequately staffed, including that it lacked a dedicated behavior interventionist for Student. Las Virgenes counters that the Lupin program was appropriate because it was a reasonable distance from Student's home, generally served fewer students than the Round Meadow program, and had appropriate services, supports, and staff to serve Student.

The December 20, 2024 IEP, offered the Lupin program to Student from the beginning of the 2025-2026 school year through September 15, 2025. Student did not attend school within Las Virgenes during the 2025-2026 school year.

At hearing, Parent asserted that the Lupin program remained inappropriate for the 2025-2026 school year for the same reasons Parent asserted it was inappropriate for the 2023-2024 and 2024-2025 school years. Student failed to establish the Lupin program was inappropriate during the prior years, and Student failed to offer any additional evidence that the Lupin program was inappropriate during the 2025-2026 school year.

Accordingly, for the same reasons as determined in Issues 1(d) and 2(d), Student did not prove she was denied a FAPE due to a failure to offer an appropriate placement during the 2025-2026 school year through September 15, 2025.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1(a):

Student did not prove Las Virgenes denied Student a FAPE by failing to assess Student in speech and language, assistive technology, and behavior from September 16, 2023, through the end of the 2023-2024 school year, including extended school year.

Las Virgenes prevailed on Issue 1(a).

ISSUE 1(b):

Student did not prove Las Virgenes denied Student a FAPE by failing to offer applied behavior analysis services and assistive technology training from September 16, 2023, through the end of the 2023-2024 school year, including extended school year.

Las Virgenes prevailed on Issue 1(b).

ISSUE 1(c):

Student did not prove Las Virgenes denied Student a FAPE by failing to offer sufficient speech and language and occupational therapy services from September 16, 2023, through the end of the 2023-2024 school year, including extended school year.

Las Virgenes prevailed on Issue 1(c).

ISSUE 1(d):

Student did not prove Las Virgenes denied Student a FAPE by failing to offer an appropriate placement from September 16, 2023, through the end of the 2023-2024 school year, including extended school year.

Las Virgenes prevailed on Issue 1(d).

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ISSUE 2(a):

Student did not prove Las Virgenes denied Student a FAPE by failing to assess Student in speech and language, assistive technology, and behavior during the 2024-2025 school year, including extended school year.

Las Virgenes prevailed on Issue 2(a).

ISSUE 2(b):

Student did not prove Las Virgenes denied Student a FAPE by failing to offer applied behavior analysis services and assistive technology training during the 2024-2025 school year, including extended school year.

Las Virgenes prevailed on Issue 2(b).

ISSUE 2(c):

Student did not prove Las Virgenes denied Student a FAPE by failing to offer sufficient speech and language and occupational therapy services during the 2024-2025 school year, including extended school year.

Las Virgenes prevailed on Issue 2(c).

ISSUE 2(d):

Student did not prove Las Virgenes denied Student a FAPE by failing to offer an appropriate placement during the 2024-2025 school year, including extended school year.

Las Virgenes prevailed on Issue 2(d).

ISSUE 3(a):

Student did not prove Las Virgenes denied Student a FAPE by failing to assess Student in speech and language, assistive technology, and behavior during the 2025-2026 school year through September 15, 2025.

Las Virgenes prevailed on Issue 3(a).

ISSUE 3(b):

Student did not prove Las Virgenes denied Student a FAPE by failing to offer applied behavior analysis services and assistive technology training during the 2025-2026 school year through September 15, 2025.

Las Virgenes prevailed on Issue 3(b).

ISSUE 3(c):

Student did not prove Las Virgenes denied Student a FAPE by failing to offer sufficient speech and language and occupational therapy services during the 2025-2026 school year through September 15, 2025.

Las Virgenes prevailed on Issue 3(c).

ISSUE 3(d):

Student did not prove Las Virgenes denied Student a FAPE by failing to offer an appropriate placement during the 2025-2026 school year through September 15, 2025.

Las Virgenes prevailed on Issue 3(d).

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.

Daniel Senter

Administrative Law Judge

Office of Administrative Hearings