

California Association of Health and Education Linked Professions
Joint Powers Authority (CAHELP JPA)
DESERT/MOUNTAIN CHARTER SELPA EXECUTIVE COUNCIL MEETING
January 16, 2020 – 10:00 a.m.
Desert Mountain Educational Service Center, 17800 Highway 18, Apple Valley CA 92307

AGENDA

1.0 TELECONFERENCE LOCATIONS

Ballington Academy for the Arts & Sciences, 1525 West Main Street, El Centro, CA 92243

2.0 CALL TO ORDER

3.0 ROLL CALL

4.0 PUBLIC PARTICIPATION

Citizens are encouraged to participate in the deliberation of the Desert/Mountain Charter SELPA Executive Council. Several opportunities are available during the meeting for the Council to receive oral communication regarding the presentations of any items listed on the agenda. Please ask for recognition either before a presentation or after the presentation has been completed. Please complete and submit a “Registration Card to Address the Desert/Mountain Charter SELPA Executive Council” to the Recording Secretary and adhere to the provisions described therein.

5.0 ADOPTION OF THE AGENDA

5.1 **BE IT RESOLVED** that the January 16, 2020 Desert/Mountain Charter SELPA Executive Council Meeting Agenda be approved as presented.

6.0 INFORMATION/ACTION

6.1 Desert/Mountain Charter SELPA Forms D/M 154 SLD (ACTION)

Forms used in the operations of special education programs within the Desert/Mountain Charter SELPA are developed, reviewed and revised throughout the year upon the recommendation of the Program Team. Forms are modified as necessary in order to support the operations of special education programs in an efficient, effective and legally compliant manner. Suggested revisions to SELPA Forms are submitted to the D/M Charter SELPA Steering Committee for consideration and approval.

6.1.1 **BE IT RESOLVED** that Desert/Mountain Charter SELPA Form D/M 154 SLD be approved as presented.

6.2 Desert/Mountain SELPA and Desert/Mountain Charter SELPA Compliance Monitoring Guide Final Draft (ACTION)

The Desert/Mountain SELPA and Desert/Mountain Charter SELPA Compliance Manual has been developed to assist LEAs within the Desert/Mountain Charter SELPA. The manual will be reviewed and revised throughout the year upon the recommendation of the California Department of Education (CDE). The manual will be modified as necessary in order to support the operations

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of special education programs in an efficient, effective and legally compliant manner. Suggested revisions to the Desert/Mountain SELPA and Desert/Mountain Charter SELPA Compliance Manual are submitted to the D/M Charter SELPA Steering Committee for consideration and approval.

6.2.1 **BE IT RESOLVED** that the Desert/Mountain SELPA and Desert/Mountain Charter SELPA Compliance Monitoring Guide Final Draft be approved as presented.

6.3 Revised CAHELP Strategic Plan for Web Accessibility (**ACTION**)

The CAHELP Strategic Plan for Web Accessibility ensures the CAHELP JPA websites have accessible content. The strategic plan is occasionally updated to reflect changes in the Web Content Accessibility Guidelines (WCAG).

6.3.1 **BE IT RESOLVED** that the Revised CAHELP Strategic Plan for Web Accessibility be approved as presented.

6.4 IEP Addendum to Add Desert/Mountain Children’s Center Children’s Intensive Services (CIS) (**ACTION**)

Desert/Mountain Children’s Center (DMCC) Director seeks approval for an addendum to be used to add Children’s Intensive Services (CIS) services to a child’s IEP.

6.4.1 **BE IT RESOLVED** that an addendum can be used to add Desert/Mountain Children’s Center Children’s Intensive Services (CIS) to a child’s IEP be approved as presented.

7.0 CONSENT ITEMS

It is recommended that the Desert/Mountain Charter SELPA Executive Council consider approving several Agenda items as a Consent list. Consent Items are routine in nature and can be enacted in one motion without further discussion. Consent items may be called up by any Committee Member at the meeting for clarification, discussion, or change.

7.1 **BE IT RESOLVED** that the following Consent Items be approved as presented:

7.1.1 Approve the October 23, 2019 Desert/Mountain Charter SELPA Executive Council Meeting Minutes.

8.0 CHIEF EXECUTIVE OFFICER AND STAFF REPORTS

8.1 Legislative Updates

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Kami Murphy will present the latest in State and Federal law related to students with disabilities and school law.

8.2 Charter SELPA Local Plan Rewrite

Kami Murphy will present the timeline for the Charter SELPA Local Plan rewrite and the public hearings to support community input to the plan.

8.3 Professional Learning Summary

Kami Murphy will present the D/M Charter SELPA Professional Learning Summary.

8.4 Resolution Support Services Summary

Kathleen Peters will present the D/M Charter SELPA Resolution Support Services Summary.

8.5 Charter School Attendance Concerns

Kathleen Peters will present information regarding charter school attendance concerns.

8.6 Prevention and Intervention Update

Kami Murphy will present a Prevention and Intervention update.

8.7 Compliance Updates

Peggy Dunn will present an update on compliance items from the California Department of Education (CDE).

9.0 FINANCE COMMITTEE REPORTS

9.1 Low Incidence Fund Status

Marina Gallegos will present the status of the Low Incidence Fund.

10.0 INFORMATION ITEMS

11.0 DESERT/MOUNTAIN CHARTER SELPA EXECUTIVE COUNCIL MEMBERS COMMENTS / REPORTS

12.0 CEO COMMENTS

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13.0 MATTERS BROUGHT BY CITIZENS

This is the time during the agenda when the Desert/Mountain Charter SELPA Executive Council is again prepared to receive the comments of the public regarding items on this agenda or any school related special education issue.

When coming to the podium, citizens are requested to give their name and limit their remarks to three minutes.

Persons wishing to make complaints against Desert/Mountain Charter SELPA Executive Council personnel must have filed an appropriate complaint form prior to the meeting.

When the Desert/Mountain Charter SELPA Executive Council goes into Closed Session, there will be no further opportunity for citizens to address the Council on items under consideration.

14.0 ADJOURNMENT

The next regular meeting of the Desert/Mountain Charter SELPA Executive Council will be held on Thursday, April 16, 2020, at 10:00 a.m., at the Desert Mountain Educational Service Center, Aster/Cactus Room, 17800 Highway 18, Apple Valley, CA 92307.

Individuals requiring special accommodations for disabilities are requested to contact Jamie Adkins at (760) 955-3555, at least seven days prior to the date of this meeting.



Specific Learning Disability (SLD)

STUDENT INFORMATION

Student Name: _____ Date of Birth: _____ Gender: Male Female
 School Site: _____ Teacher Name: _____
 District of Attendance: _____ District of Residence: _____
 Parent/Guardian: _____
 Home Phone: _____ Work Phone: _____ Other Phone: _____
 Street Address: _____ City: _____ State: _____ Zip Code: _____
 Mailing Address: _____ City: _____ State: _____ Zip Code: _____

STATEMENT OF ELIGIBILITY DETERMINATION (REQUIRED BY 34 C.F.R. § 300.311)

Indicate whether or not a specific learning disability exists and state the sources of information considered in making the determination of SLD eligibility.
 Yes No (*explain*)

State the relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning:

Date of observation: _____ Individual conducting observation: _____

List the educationally relevant medical findings, if any:

SLD RATIONALE (CHECK THE APPROPRIATE METHOD)

1. Response to Intervention (RTI) Method (*Complete items a through h below*)

The assessment team has documented a disorder in the following

- a. area(s):
- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Attention | <input type="checkbox"/> Visual Processing | <input type="checkbox"/> Phonological Processing | <input type="checkbox"/> Auditory Processing |
| <input type="checkbox"/> Sensory Motor | <input type="checkbox"/> Cognitive (<i>including association, conceptualization, and expression</i>) | | |
- b. The student does not achieve adequately for the student's age-level or meet State-approved grade-level standards in one or more of the following areas when provided with age-appropriate learning experiences and instruction: (*Please check each area as applicable*)
- | | | | |
|---|---|--|---|
| <input type="checkbox"/> Oral Expression | <input type="checkbox"/> Written Expression | <input type="checkbox"/> Listening Comprehension | <input type="checkbox"/> Reading Comprehension |
| <input type="checkbox"/> Basic Reading Skills | <input type="checkbox"/> Math Calculation | <input type="checkbox"/> Math Problem Solving | <input type="checkbox"/> Reading Fluency Skills |
- c. The student does not make sufficient progress to meet age-level or State-approved grade-level standards in one or more of the areas identified above when using a process based on the student's response to scientific, research-based intervention.
- d. The identified deficit in rate of learning or achievement or both is not primarily the result of visual, hearing or motor impairment; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.
- e. As part of, or prior to a referral for special education and related services, the student did not make adequate progress within an appropriate period of time in which:
- | |
|--|
| <input type="checkbox"/> The student was provided appropriate instruction in general education settings delivered by qualified personnel; AND |
| <input type="checkbox"/> The student's parents were provided with data-based documentation of repeated assessments of achievements at reasonable intervals, reflecting formal assessment of the student's progress during instruction. |
- f. Refer to the multi-disciplinary report dated _____ for additional information. This report documents the assessment team conclusions. If the report does not reflect the conclusions of a team member, the team member must submit a separate statement presenting his/her conclusions.
- g. The parent has been notified about the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided.

Specific Learning Disability (SLD)

Student Name: _____ **Date of Birth:** _____

h. List the strategies for increasing the student's rate of learning:

2. Severe Discrepancy Method (Complete items a through e below)

- a. The assessment team has documented a disorder in the following area(s):
- Attention Visual Processing Phonological Processing Auditory Processing
- Sensory Motor Cognitive (including association, conceptualization, and expression)
- b. The IEP team finds that a severe discrepancy exists between cognitive ability and achievement in the following area(s):
- Oral Expression Written Expression Listening Comprehension Reading Comprehension
- Basic Reading Skills Math Calculation Math Problem Solving Reading Fluency Skills
- c. The documented discrepancy cannot be corrected through other regular or categorical services offered through the general instructional program.
- d. The discrepancy is not primarily a result of visual, hearing or motor impairment; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.
- e. Refer to the multi-disciplinary report dated _____ for additional information. This report documents the assessment team conclusions. If the report does not reflect the conclusions of a team member, the team member must submit a separate statement presenting his/her conclusions.

3. Severe Discrepancy Alternative Means (Complete items a through f below)

- a. The IEP team determined that standardized tests are invalid, and the discrepancy shall be measured by alternative means, as specified in the assessment plan dated _____. Documentation of a severe discrepancy is included in a multi-disciplinary report dated _____.
- b. The assessment team has documented a disorder in the following area(s):
- Attention Visual Processing Phonological Processing Auditory Processing
- Sensory Motor Cognitive (including association, conceptualization, and expression)
- c. The IEP team finds that a severe discrepancy exists between cognitive ability and achievement in the following area(s):
- Oral Expression Written Expression Listening Comprehension Reading Comprehension
- Basic Reading Skills Math Calculation Math Problem Solving Reading Fluency Skills
- d. The IEP team determined that standardized tests do not reveal a severe discrepancy. A severe discrepancy has been documented by alternative means, as summarized in the multi-disciplinary report dated _____. This report documents the assessment team conclusions. If the report does not reflect the conclusion of a team member, the team member must submit a separate statement presenting his/her conclusions.
- e. The documented discrepancy cannot be corrected through other regular or categorical services offered within the general instructional program.
- f. The discrepancy is not primarily a result of visual, hearing or motor impairment; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.

4. Pattern of Strengths and Weaknesses (PSW) (Complete items a through h below)

- a. Has the student achieved adequately to meet grade level standards in one or more of the following areas, when provided with differentiated instruction and intervention(s) appropriate for the student's age and/or grade level. Yes No
- Reading Comprehension Reading Fluency Basic Reading Skills Mathematics Reasoning/Problem Solving
- Oral Expression Written Expression Listening Comprehension Mathematics Calculation
- b. Norm-referenced academic assessments indicating academic achievement deficit(s):

Academic Achievement Deficit Area	Test / Subtest	Standard Score	Percentile Rank

If the standardized academic testing scores do not substantiate an achievement deficit, explain the evidence that supports the team's rationale that an academic deficit exists.

- c. The academic achievement deficit(s) found above are substantiated by a minimum of three of the following academic data sources:
- Grade level assessments Grades Work Samples Progress Monitoring Progress towards goals (triennials) N/A

Specific Learning Disability (SLD)

Student Name: _____ **Date of Birth:** _____

- d. The academic deficit(s) found above are substantiated by observations of the student. Yes No N/A
- e. The student demonstrates a pattern of cognitive strengths and weakness(es) relative to the student’s age or grade. Yes No
- f. Psychological processing measures (including rating scales) indicating an otherwise typical cognitive ability profile:

Processing Area	Test / Subtest	Standard Score / T-score	Percentile Rank

- g. Psychological processing measures (including rating scales) indicating processing weakness(es):

Processing Area	Test / Subtest	Standard Score / T-score	Percentile Rank

- h. Research supports a link between the academic achievement deficit(s) and the processing weakness(es). Yes No N/A

If the research within does not indicate a link between the academic achievement deficits and the processing weakness(es), but the team still believes the student is eligible under the classification of SLD, please explain the team’s rationale for linking the processing weakness(es) and academic deficits.

SLD EXCLUSIONARY FACTORS

Applies to all methods. If any of the following are checked “Yes”, the student may not be identified as having a specific learning disability:

- Lack of progress is due primarily to limited school experience or poor school attendance. Yes No
- Lack of progress is due primarily to environmental or cultural differences or economic factors. Yes No
- Lack of progress is due primarily to intellectual disabilities or emotional disturbance. Yes No
- Lack of progress is due primarily to a visual, hearing, or motor disability. Yes No
- Lack of progress is due primarily to limited English proficiency. Yes No
- Lack of progress can be corrected through other regular or categorical services offered within the regular instructional program. Yes No
- Lack of progress is due to a lack of appropriate instruction. Yes No

The IEP Team concludes that the student meets the eligibility requirements for Special Education under the classification of Specific Learning Disability. Yes No

THE FOLLOWING INDIVIDUALS CERTIFY THAT THE ABOVE DETERMINATION OF ELIGIBILITY FOR SLD REFLECTS THE MEMBER’S CONCLUSION:

LEA Representative	Date	Speech-Language Pathologist	Date
Special Education Teacher	Date	Psychologist	Date
General Education Teacher	Date	Parent/Guardian/Surrogate	Date
Nurse	Date	Other/Title	Date

ATTACHED IS A SEPARATE STATEMENT PRESENTING A DISSENTING MEMBER’S CONCLUSION AS TO WHY HIS/HER ASSESSMENT DIFFERS FROM THE ABOVE REPORT.

34 CFR 300.311(b) - Specific documentation for the eligibility determination. Each group member must certify in writing whether the report reflects the member’s conclusion. If it does not reflect the member’s conclusion, the group member must submit a separate statement presenting the member’s conclusion.

CA Ed Code § 56327(b). The personnel who assess the pupil shall prepare a written report, or reports, as appropriate, of the results of each assessment. The report shall include, but not be limited to, all of the following... (b) The basis for making the determination.

**Desert/Mountain Special Education
Local Plan Area (SELPA) and
Desert/Mountain Charter SELPA**

**COMPLIANCE
MONITORING
GUIDE**

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INTRODUCTION

The purpose of the Desert/Mountain SELPA and Desert/Mountain Charter SELPA Compliance Guide is to assist our district and charter school members gain a better understanding of special education compliance, as well as provide strategies to assist in maintaining accountability and compliance. In addition to this guide the Desert/Mountain SELPA provides a myriad of trainings and one-on-one assistance to support our members in working towards and maintaining compliance.

Federal and state laws require the California Department of Education (CDE) to monitor implementation of categorical programs operated by local educational agencies (LEAs). LEAs are responsible for creating and maintaining programs which meet minimal fiscal programmatic requirements.

School districts, direct-funded charter schools, and county offices that receive funding for certain programs may be chosen for a review by the state. The purpose of the review is to ensure that funding is used as required by law. At the end of each review, the state will complete a report that details any findings of non-compliance and informs the school, district, or county office how to correct the findings.

The California Department of Education (CDE) works to provide a coordinated and transparent monitoring process. Within the CDE, the Federal Program Monitoring (FPM) office has been designated to supervise the FPM reviews, which take place either in person or electronically.

To further assist in the compliance process, there are Focused Monitoring and Technical Assistance (FMTA) Consultants. The FMTA consultants are assigned geographically and by quality assurance activity to align with the eleven California County Superintendents Educational Services Association (CCSESA) regions.

The FMTAs are responsible for coordinating all monitoring and technical assistance activities for LEAs and Special Education Local Plan Areas (SELPAs) in their assigned counties, providing information, and facilitating access to technical assistance related to program monitoring and program implementation.

OVERVIEW OF CALIFORNIA'S SYSTEM OF SUPPORT

The goal for support at all levels is to assist LEAs and their schools to meet the needs of each student served, with a focus on building capacity to sustain improvement and effectively address inequities in student opportunities and outcomes. This means that the outcomes for this work include improvement on Dashboard indicators from year to year and on progress monitoring on interim measurements that LEAs collect locally and throughout the year.

The statute describes using the California School Dashboard as a tool to determine whether LEAs need additional assistance:

- **Support for all LEAs and Schools (Level 1):** Various state and local agencies provide an array of resources and voluntary assistance that all LEAs may use to improve student performance.
- **Differentiated Assistance (Level 2):** County offices of education must offer differentiated assistance to school districts if any group meets the criteria for two or more Local Control Funding Formula (LCFF) priorities (52071(b), 5207.5 (b)).
- **Intensive Intervention (Level 3):** As the accountability system moves forward, the Superintendent of Public Instruction, with approval of the State Board of Education, may intervene in a school district if three or more student groups (for all the student groups if there are less than three) met the criteria for two or more LCFF priorities in three out of four consecutive school years (EC 52072, 52072.5).
- Charter school authorizers must offer differentiated assistance to a charter school and may refer the charter school to the California Collaborative for Educational Excellence, if three or more student groups (or all the student groups if there are less than three student groups) met the criteria for one or more state or school priority identified in the charter for three out of four consecutive school years (EC 47607.3).

INDIVIDUALS WITH DISABILITIES ACT 2004 (IDEA)

The Individuals with Disabilities Education Act (IDEA) made many changes in how state educational agencies (SEAs) and local education agencies (LEAs) must now address disproportionality in special education. In the area of disproportionality, SEAs are required to do the following:

- California Annual Performance Reports, which are a series of reports by the California Department of Special Education Division (SED) that disseminate educational data to improve the quality of education for all students, with an emphasis on students with disabilities.
- The Annual Performance Report (APR) describes the state's progress or slippage in meeting the measurable and rigorous targets established in the State Performance Plan (SPP); and any revisions to the State's targets, improvement activities or resources in the SPP and justifications for the revisions.
- The Annual Performance Report is located on the GRADS 360 Web application maintained by the Office of Special Education Programs.
- Monitor compliance by examining various data sets.
- Provide for the review and revision (if appropriate) of policies, procedures, and practices used in identification or placement of children with disabilities in LEAs.
- Identify LEAs with significant disproportionate representation and require them to use 15 percent of IDEA Part B funds for coordinated early intervening services.
- Require LEAs who are identified as significantly disproportionate to report on: (1) the number of students receiving CEIS every year for which the LEA uses IDEA funds for CEIS; and (2) the number of students who received early intervening services, and who subsequently receive special education and related services within two years after receiving CEIS.

EVERY STUDENT SUCCEEDS ACT (ESSA)

The Every Student Succeeds Act (ESSA) was signed by President Obama on December 10, 2015. This bipartisan measure reauthorizes the 50-year-old Elementary and Secondary Education Act (ESEA), the nation's national education law and longstanding commitment to equal opportunity for all students.

The law builds on key areas of progress in recent years, made possible by the efforts of educators, communities, parents, and students across the country.

For example, today, high school graduation rates are at all-time highs. Dropout rates are at historic lows and more students are going to college than ever before. These achievements provide a firm foundation for further work to expand educational opportunity and improve student outcomes under ESSA.

The previous version of the law, the No Child Left Behind (NCLB) Act, was enacted in 2002. NCLB represented a significant step forward for our nation's children in many respects, particularly as it shined a light on where students were making progress and where they needed additional support, regardless of race, income, zip code, disability, home language, or background. The law was scheduled for revision in 2007, and, over time, NCLB's prescriptive requirements became increasingly unworkable for schools and educators. Recognizing this fact, in 2010, the Obama administration joined a call from educators and families to create a better law that focused on the clear goal of fully preparing all students for success in college and careers.

ESSA Highlights

ESSA includes provisions that will help to ensure success for students and schools. Below are just a few. The law:

- Advances equity by upholding critical protections for America's students who are disadvantaged and have high needs.
- Requires—for the first time—that all students in America be taught to high academic standards that will prepare them to succeed in college and careers.
- Ensures that vital information is provided to educators, families, students, and communities through annual statewide assessments that measure students' progress toward those high standards.

- Helps to support and grow local innovations—including evidence-based and place-based interventions developed by local leaders and educators—consistent with our Investing in Innovation and Promise Neighborhoods.
- Sustains and expands historic investments in increasing access to high-quality preschool.
- Maintains an expectation that there will be accountability and action to effect positive change in our lowest-performing schools, where groups of students are not making progress, and where graduation rates are low over extended periods of time.

DATA IDENTIFIED NON-COMPLIANT (DINC)

Background

The Office of Special Education Programs (OSEP) of the U.S. Department of Education requires that states must examine data it receives through its data collections to determine if the data demonstrates noncompliance with the requirements of the Individuals with Disabilities Education Act (IDEA). If noncompliance is identified, the state must make a finding of noncompliance and require the local educational agency (LEA) to make corrections using federally-specified procedures.

In order to carry out these requirements, the California Department of Education (CDE) Special Education Division (SED) reviews and analyzes student-level data submitted to monitor compliance with state and federal requirements. Specifically, the data is analyzed in relationship to three compliance indicators from the California State Performance Plan (SPP):

- **Indicator 11 (Eligibility Evaluation):** One hundred percent of children were evaluated within 60 days of receiving parental consent for initial evaluation.
- **Indicator 12 (Part C to B Transition):** One hundred percent of children referred by Part C prior to age three, who are found eligible for Part B, have an Individualized Education Program (IEP) developed and implemented by their third birthdays.
- **Indicator 13 (Secondary Transition Goals/Services):** One hundred percent of youth aged 16 and above have an IEP that includes the eight required measurable elements of secondary transition planning.

In addition, data is analyzed for compliance with the state and federal timeframe requirements for:

- Annual IEP meeting (once a year) - **Overdue Annuals (without delay reason results in DINC)**
- Triennial re-evaluation to determine the student's continued eligibility (every three years) - **Overdue Triennials (without delay reason results in DINC)**

Corrective actions for each of the noncompliant indicator findings is specified below:

Corrective Actions Table	
	Student Non-Compliant Finding Corrective Action
60 Day	If the IEP has not yet been completed, the LEA must convene the IEP team to develop the IEP and update the student data record. If the IEP was late, but has been completed, the LEA must update the student data record.
Part C to B	If the IEP has not yet been completed, the LEA must convene the IEP team to ensure that the student transitioning from early intervention services under Part C has an IEP developed and implemented, updating the student data record. If the IEP was late, but has been completed, the LEA must update the student data record.
IEP	For the student whose annual review was late and has still not been completed, the LEA must convene the IEP team to review and revise the IEP and update the student data record. If the IEP was late, but has been completed, the LEA must update the student data record.

DINC Notification Process:

The CDE notifies LEAs by submitting a list of students of noncompliance and in the specific areas. LEAs are then required to respond using the CDE Portal, informing the CDE that the IEP has been completed (Annuals/Triennials/Transition) or the LEA informs the CDE of their plan to maintain and monitor timelines to ensure IEP Compliance.

TIPS TO AVOID CORRECTION WITH DATA IDENTIFIED NONCOMPLIANT (DINC)

- Make sure that all students are evaluated within 60 days of the date that parents signed the consent.
- Monitor all students who were qualified for part C and are now eligible for part B, hold IEP's for these identified students prior to the child's third birthday.
- Know the students who will be turning 16 and ensure that in the prior IEP that there was a developed transition plan with measurable goals in preparation for their transition process.
- Consult the Desert/Mountain SELPA for any questions and assistance.
- Plan in advance.
- Should the LEA miss the required timeline, the LEA should reschedule the IEP meeting and utilize the CDE approved delay reasons:
 - Legal Proceedings
 - Parent Contacted, did not attend
 - School Emergency
 - Temporary School Closure
 - Timely IEP, Another IEP held after timely (eg. part 1, part 2-no show pending)
 - Transfer (late from another LEA, due immediately from another LEA)

DISPROPORTIONALITY (DISPRO)

“...the genesis of disproportionate representation is located beyond the borders of special education and requires a solid understanding of the intersection of culture, learning, disability, and the socio-historical constitution of educational processes and outcomes. Two issues are associated with the persistence of culturally and linguistically diverse overrepresentation in special education, namely the issues related to understanding the complexity of this problem and also difficulties associated with the use of research knowledge to address it. Ultimately, what is needed is the transformation and improvement of educational systems in culturally responsive ways.” -The EDGE Magazine

Disproportionality is the “overrepresentation” of a particular racial or ethnic group in one of four areas:

- Special education in general;
- Special education within a specific disability category;
- Disciplinary action, and;
- More restrictive educational environments

Disproportionality placement is determined by the following:

- Students with disabilities by race and ethnicity spending less than 40 percent of their academic time in general education.
- Students with disabilities by race and ethnicity in:
 - Separate Schools (only used if entire school is student with disabilities only)
 - Hospital or homebound
 - Residential facilities

The following are the critical values and beliefs used to support districts and select resources:

- All students are learners.

- Educators must provide all students effective opportunities to learn the California academic content standards based on the Common Core State Standards.
- Educators must be more responsive to race, gender, and national origin, in order to reduce disparities among and between groups in academic achievement.
- Effective educator practice is driven by an understanding of content knowledge, evidenced-based instructional practices, and a commitment to all students and their families.
- Effective educators require continuous professional growth.
- Local school districts and their communities are key stakeholders to engage in critical conversations about culturally-responsive educational systems.
- Disproportionality can no longer be viewed solely as a special education issue.
- Disproportionality is an outcome of policies, practices, and beliefs.
- Disproportionate representation is a complex phenomenon.

In order for LEAs to address disproportionality, the adoption of these critical values and beliefs should be embraced.

TIPS TO AVOID DISPROPORTIONALITY

First of all, it is important to be mindful that disproportionality becomes the early warning system to Significant Disproportionality.

- Understand Disproportionality and the ramifications of this status and address early
- Have systems in place to ensure Least Restrictive Environments
- Recognize who is being suspended by keeping track of race/ethnicity
- Have systems in place to ensure behavior interventions and supports
- Conduct teacher training (e.g. classroom management)
- Ensure a positive school culture
- Input reason(s) in the IEP for late annuals when a delay is beyond the LEAs control
- Input reason(s) in the IEP for late triennials when a delay is beyond the LEA's control
- The use of Multi-Tiered Systems of Support (MTSS)
- The use of Response to Intervention (RTI)
- Employ drop-out prevention efforts
- Implement culturally responsive practices
- Promote a just and equitable system that consistently increases access to opportunities for all students
- Participate in ongoing professional development through the Desert/Mountain SELPA

- Review reports from the electronic IEP system and/or student management system on an ongoing basis
- Upload all supporting documents to the electronic IEP system

SIGNIFICANT DISPROPORTIONALITY (SIG DIS)

Each year, under Title 34, Code of Federal Regulations, Section 300.646 of the Individuals with Disabilities Education Act (IDEA), the California Department of Education (CDE) is responsible for collecting and examining data to determine if *significant disproportionality* is occurring in local educational agencies (LEAs) in the state.

Significant disproportionality results when a LEA remains in disproportionate status for three years, without significant growth towards moving out of disproportionality.

Significant disproportionality is the determination that a LEA has significant overrepresentation based on race and ethnicity overall, by disability, by placement in a particular educational setting, or by disciplinary actions.

A LEA is considered to have significant disproportionality if it meets the following:

- Overrepresentation in one or more areas of disproportionality
- In the same area
- Within the same population
- For three consecutive years

When a LEA is identified as significantly disproportionate, the following requirements must ensue:

- LEAs are required to develop a CCEIS plan
- LEAs set-aside 15 percent of IDEA funds
- LEAs are required to submit Quarterly Progress Reports to the Desert/Mountain SELPA and then to CDE
- Must contract a minimum of 10 hours with a CDE Approved TA Facilitator, per indicator

New Significant Disproportionate Regulations

- Established a standard methodology states must use to determine whether significant disproportionality based on race and ethnicity is occurring in the state and in its LEAs.
- Clarified that states must address significant disproportionality in the incidences, duration, and type of disciplinary actions, including suspensions and expulsions, using the same statutory remedies required to address significant disproportionality in the identification and placement of children with disabilities.
- Clarified requirements for the review and revision of policies, practices, and procedures when significant disproportionality is found.
- Require that LEAs identify and address the factors contributing to significant disproportionality as part of Comprehensive Coordinated Early Intervening Services (CCEIS) and allow these services for children from age 3 through grade 12, with and without disabilities.

Determining Significant Disproportionality

In determining whether significant disproportionality exists in a state or LEA, the state must set a:

- (A) Reasonable risk ratio threshold;
- (B) Reasonable minimum cell size;
- (C) Reasonable minimum n-size; and
- (D) Standard for measuring reasonable progress (optional)

- Categories Identification (seven measures)
- Settings (two measures)
- Discipline (five measures)

Identification (seven measures)The identification of children ages 3 through 21 as children with the following impairments:

- (A) Intellectual disabilities;

- (B) Specific Learning disabilities;
- (C) Emotional Disturbance;
- (D) Speech Language impairment;
- (E) Other health impairments; and
- (F) Autism

Settings (two measures)

1. For children with disabilities ages six through twenty-one, inside a regular class less than 40 percent of the day
2. For children with disabilities ages six through twenty-one, inside separate schools and residential facilities, not including homebound, hospital settings, correctional facilities, or private schools

Discipline (five measures)

1. For children with disabilities ages three through twenty-one, out-of-school suspensions and expulsions of 10 days or fewer;
2. For children with disabilities ages three through twenty-one, out-of-school suspensions and expulsions for more than 10 days;
3. For children with disabilities ages three through twenty-one, in-school suspensions of 10 days or fewer;
4. For children with disabilities ages three through twenty-one, in-school suspensions of more than 10 days; and
5. For children with disabilities ages three through twenty-one, disciplinary removals in total, including in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative education setting, and removals by a hearing officer.

TIPS TO AVOID SIGNIFICANT DISPROPORTIONALITY

- Be proactive in addressing disproportionality
- Closely monitor disproportionality data at all sites
- Understand the timeline (three years) of being disproportionate leads to significant disproportionate status
- Develop a comprehensive action plan to address disproportionate data in a timely manner
- Examine suspension data regularly
- Adopt/utilize other means of correction to reduce suspensions
- Use multi-tiered systems of support (MTSS)
- Dropout prevention monitored by CALPADS
- Review reports from electronic IEP system and/or student management system on an ongoing basis
- Upload all supporting documents to the electronic IEP system

Coordinated Early Intervening Services Programmatic Improvement Process

As a result of a district being significant disproportionate, a requirement is that the Coordinated Early Intervening Process begins. The goal is then to get out of significant disproportionality with assistance that comes from what is referred to as the State's Performance Plan Technical Assistance Project.

The overall purpose of the project is to provide a system of technical assistance for local educational agencies (LEAs) working to address performance and compliance problems relating to disproportionality and significant disproportionality.

Once identified as significant disproportionate, CDE recommends that all LEAs contact State Performance Plan Technical Assistance Project (SPP-TAP) staff for

assistance with the Programmatic Improvement Process. More information can be found on the SPP-TAP Website.

This guidance is based upon the promising practices for improvement detailed in the national disproportionality literature and the federal guidance documents from the U.S. Department of Education (ED).

LEAs that have significant disproportionality engage in a process for systems change designed to provide LEAs and school improvement teams with the knowledge and technical expertise to develop a thorough understanding of problems, issues, and concerns in their schools, and what needs to be done to address disproportionality.

The completion of the Significantly Disproportionate- Comprehensive Coordinated Early Intervening Services (CD-CCEIS) Programmatic Improvement Process involves the following four phases and activities:

Phase One - Getting Started

Activity One: Identify and convene leadership team and stakeholder groups, including the Desert/Mountain SELPA

Activity Two: Contact the SPP-TAP Project at the Napa County Office of Education

Activity Three: Choose a facilitator

Activity Four: Gather relevant data

Phase Two - Data and Root Causes Analysis

Activity One: Complete a LEA initiative inventory

Activity Two: Complete a Programmatic Self-Assessment

Activity Three: Conduct reflective data analysis

Activity Four: Determine root cause(s) based on data

Phase Three - Plan for Improvement

Activity One: Select an area of focus

Activity Two: Develop a programmatic improvement action plan

Phase Four - Implementing, Evaluating, and Sustaining

Phase four of the Programmatic Improvement Process involves implementing, evaluating, and sustaining the changes initiated through the Programmatic Improvement Action Plan.

Activity One: Implement the Programmatic Improvement Action Plan

Activity Two: Evaluate its effectiveness

Activity Three: Build supports and plan for sustainability

PERFORMANCE INDICATOR REVIEW (PIR)

The Performance Indicator Review (PIR) is a component of the Annual Submission Process (ASP). The PIR is part of the Special Education Division's (SED) overall quality assurance process. It is designed to meet, along with other processes, the requirements of a system of general supervision required by Title 34, Code of Federal Regulations, Section 300.600.

PIR plans are required from LEAs when one or more performance indicators have not been met to a degree that monitoring activities are required. All LEAs participate in PIR selection. LEAs are required to develop a plan of correction to address the special education state indicators in order to achieve compliance.

Effective July 2019, the annual submission process requires that LEAs submit data through CALPADS; this data is monitored by CDE to determine if LEAs are compliant or in need of monitoring activities.

Annual Performance Report

The Annual Performance Report (APR) is driven by requirements of the ED and the Office of Special Education Programs (OSEP).

The APR consists of 17 indicators:

- Compliance (5)
- Performance (11)
- Both (1)

Targets for compliance indicators are set by OSEP at either 0 or 100 percent. Targets for performance indicators are set in collaboration with various stakeholder groups and have been re-benched for 2013-14 through 2019-20.

LEA Selection for Performance Indicator Review

- Indicator 1: Graduation Four-Year Rate
- Indicator 2: Dropout Four-Year Rate

- Indicator 3: Statewide Assessments
- Indicator 4: Suspension and Expulsion
- Indicator 5: Least Restrictive Environment
- Indicator 8: Parent Involvement
- Indicator 14: Post-School Outcomes
- Child Find (not fully active yet)*

CHILD FIND

Local educational agencies (LEAs) in California have an “affirmative, ongoing duty to identify, locate, and evaluate” all children and youth with disabilities, regardless of the severity of the disability. The mandate of the Individuals with Disabilities Act is called “Child Find” (34 CFR 300.111).

Child Find, while not fully active yet, will be one of the indicators for future Performance Indicator Reviews.

AT A GLANCE

- Child find is a legal requirement that schools find all children who have disabilities and who may be entitled to special education services.
-
- Child find covers every child from birth through age 21.
 - The school must evaluate any child that it knows, or suspects may have a disability.

KEY TAKEAWAYS

- Every child from birth to age 21 is covered, including infants, toddlers, and children who are homeschooled or in private school.
-
- Child find does not require schools to agree to evaluate every child.
 - If a school refuses to evaluate a child, parents may challenge that decision.

PIR Selection/Calculations

Calculations are based on the Dashboard information. Calculations refer to the percentage of students enrolled in special education in an Local Education Agency (LEA). Statistical calculations are performed on LEAs (excluding outliers) and those found to be two standard deviations below the mean are identified (3.43%).

CDE looks at the data for LEAs to determine if they are selected based on not meeting established APR targets.

APR Targets Met	Dashboard
<ul style="list-style-type: none"> • Dropout Rate (Indicator 2) • Statewide Assessments Participation (Indicator 3) • Least Restrictive Environment (Indicator 5) • Parent Involvement (Indicator 8) • Post-School Outcomes (Indicator 14) 	<ul style="list-style-type: none"> • Graduation Rate (Indicator 1) • Statewide Assessments (Indicator 3) • Overall Discipline (Indicator 4)

PIR NOTIFICATION

LEAs and the Desert/Mountain SELPA are notified by letter in which CDE identifies unmet indicators. Additionally, the following are sent to LEAs:

- Plan requirements
- Data explanation
- Sample activities
- Forms to complete

A General Overview of PIR Activities

- LEA submits the signed Assurances Form to the Desert/Mountain SELPA

- LEA submits an Improvement Plan to the Desert/Mountain SELPA (only for LEAs who have unmet indicators)
- The Desert/Mountain SELPA reviews the plans for the required components
- The Desert/Mountain SELPA submits all plans to CDE via email

SELPA's Role in the PIR Process

In addition to the Desert/Mountain SELPA reviewing plans for the required components and submitting plans on behalf of districts, we also assume an active role in helping LEAs to understand the calculation of SPPIs and the implications of failure to meet the targets established for LEAs in California.

The Desert/Mountain SELPA assists LEAs in:

- Identifying and correcting noncompliant policies, procedures, and practices
- Identifying new strategies and activities that would contribute to a LEA's improvement
- Locating resources
- Collecting and reviewing all LEA plans to ensure that all required components are included
- Submitting LEAs' performance improvement plans to CDE

TIPS TO AVOID PERFORMANCE INDICATOR REVIEW (PIR)

- Implement practices and effective strategies for dropout reduction
- Utilize the California Career Resource Network (CALCRN)
- Ensure access and equity
- Support educators to identify and meet the needs of students with disabilities
- Support educators to identify and meet the needs of students with low literacy levels
- Support educators to identify and meet the needs of students with low math performance levels
- Implement practices and effective strategies for participation in statewide assessments
- Implement ongoing practices for students with disabilities who require modifications and/or accommodations

COMPREHENSIVE REVIEW (COMP REVIEW)

A Comprehensive Review (CR) occurs when an LEA is deemed non-compliant in several state indicators and improvement fails to change after multiple years. This is the most severe noncompliance status based on specific data, which requires assistance and substantial interventions.

The Special Education Indicators involved with comprehensive review, are as follows:

- Indicator 1: Graduation 4 – Year Rate**
- Indicator 2: Dropout 4 Year Rate (<11.72%)**
- Indicator 3: Statewide Assessment**
 % Participated (ELA>95%, Math>95%)
 ELA Proficiency
 Math Proficiency
- Indicator 4: Suspension/Expulsion**
 Overall (<2.76%)
 Race/Ethnic
- Indicator 5: LRE**
 Inside of regular class 80% or more of day (>51.2%)
 Inside of regular class less that 40% of day (<22.6%)
- Indicator 6: Preschool LRE**
 Regular Program (>43.8%)
 Separate (<32.4)
- Indicator 7: Preschool Assessments**
- Indicator 8: Parent Involvement**
- Indicator 9: Racial/Ethnic Disproportionality**
- Indicator 10: Disability Disproportionality (varies by disability)**
- Indicator 11: Eligibility Evaluation (100%)**
- Indicator 12: Part C to B Transition (100%) SELPA calculation**
- Indicator 13: Secondary Transition Goals/Services (100%)**
- Indicator 14: Post School**
 Higher Education (>56.3%)
 Higher Education or Competitively Employed (>76.4%)
 Any Post-Secondary Goals/Services (>85.0%)
- Indicator 15: Resolution Session**
- Indicator 16: Mediation**
- Indicator 17: State Systemic Improvement Plan**

Timely Corrections
Timely and Complete Reporting
Audit Findings

The purpose of a CR is as follows:

- To provide effective general supervision to LEAs in accordance with the obligations imposed on the California Department of Education (CDE) under the Individuals with Disabilities Act (IDEA), in accordance with the State Performance Plan (SPP), and as required by Title 34 Code of Federal Regulations Section 300.600.
- To ensure LEAs, county offices of education (COE), and Special Education Local Plan Areas (SELPAs) are providing appropriate supervision and monitoring to special education programs and services.
- To provide information to the CDE regarding key compliance questions leading to positive results for students.

LEAs are selected for participation in a CR based on their performance relative to SPP targets and include compliance and performance indicators. Specifically, the selection is based on scale scores applied to a LEA's Annual Performance Review (APR) measures which are the same indicators at the LEA level as are used for the SPP.

A LEA's APR measures can be found at <http://www.cde.ca.gov/sp/se/leadatarpts.asp>. The scale works as follows:

4. The LEA met the target and the performance stayed the same or improved from the prior year
3. The LEA met the target and the performance did not stay the same or did not improve from the prior year
2. The LEA did not meet the target, but the performance stayed the same or improved from the prior year
1. The LEA did not meet the target and the performance did not stay the same and did not improve for the prior year

0. Unable to score the LEA due to the unavailability of data for the current or prior year

In addition, selection included non-indicator elements such as complaint noncompliance and timely submission of documents and data to the CDE. Scores for all elements were added together and the sum of scores are divided by the total number of valid indicators and elements. If a LEA's overall score was less than 70%, the LEA is selected for a CR.

As a part of the CDE's responsibility for supervision and monitoring of LEAs for compliance with the IDEA, the CR process may include any, or all, of the following monitoring activities:

1. Review of selected pupil records, individualized education programs (IEPs), infant records, and individualized family services plans (IFSPs) to determine educational benefit (school-age student records only), compliance, service provision, and accuracy of data reported to the CDE.
2. Interviews and follow-up discussions with parents or guardians, general and special education teachers, and other school personnel.
3. Interviews with LEA administrators regarding noncompliance identified in record reviews and through data analysis.
4. General parent/guardian input about special education programs and services collected from parent surveys. Parent training and information. Centers and Family Empowerment Centers serving families within the LEA's boundaries.
5. Review of local policies, procedures, and the SELPA for compliance with IDEA.
6. Fiscal review.

The parent input component of the CR uses three sources of parent input:

1. Input from the local parent training and information center.
2. Input from the local Community Advisory Committee.

3. Input from parents of students with an IEP in the LEA.

In order to facilitate gaining input from parents of current students with an IEP within the LEA, the CDE may request that the LEA provide a list of students' names and the mailing addresses of their parents or guardians by a specified date.

In order to facilitate parent input, the LEA may also choose to provide parents with the website of the parent survey at: www.seedsofpartnership.org/monitoringsurvey.

The CDE usually completes a review of a sample of student records using a desk audit process. This process requires the CDE's Special Education Division (SED) to remotely access the LEA-based documentation, including but not limited to:

- Student IEPs
- Assessment plans and reports
- Meetings and other notifications to parents

The CDE and LEA will coordinate the best way to gain electronic access to student records. The most practical way to permit electronic access to the LEA's computer-based IEP system (e.g., Special Education Information System), is for the LEA to authorize the CDE's SED to have temporary, read-only, student specific access to the LEA's electronic IEP system. This method eliminates the need to compile and physically transfer sensitive student information. Each LEA will need to provide instructions and any other information (e.g., username, password) for completing the evaluation. The LEA will work with the CDE to determine the duration for this review.

Results of the record reviews will be analyzed by the CDE to determine additional activities necessary for the CR process. LEA staff will be contacted to determine the schedule and details for any activities taking place at the LEA, including technical assistance. Activities that involve the CDE being on-site will require preplanning on the part of the LEA, specific information will be provided by the CDE consultant leading the CR team.

The CR team is comprised of CDE Consultants, CDE Field Colleagues, SELPA Directors, and COE Superintendents and/or staff. CR team members will partner with the LEA to complete the review activities, as determined appropriate by CDE.

PUPIL COUNT

Pupil Count is a tracking requirement of student data collection by the California Department of Education from all Local Education Agencies (LEAs). Pupil Count, depending on the time of year, will consist of a student demographic file, student services file, and transition file. These files are provided through the Desert/Mountain SELPA's electronic IEP system, WebIEP. Secured student information is sent electronically through the California Longitudinal Pupil CALPADS utility provided through WebIEP so that LEAs can provide the data on a bi-monthly basis. Pupil Count is used for various tracking purposes and compliance reviews.

The reporting process with LEAs is two-fold. Part of the student information will come from the LEA's Student Information System (SIS) and the other through the Electronic IEP System (WebIEP for Desert/Mountain and Desert/Mountain Charter SELPA). The new CALPADS student profile files consists of student enrollment information, demographic information, English language acquisition status, and student program. The CALPADS discipline file consists of student incidents, student incident results, and student offenses. CALPADS special education files consists of the special education program, student services, and post-school outcomes.

The data collection windows have changed starting with the 2019-20 school year. The Fall one window will be between October and December, the Fall two window will be between December and January, and end-of -year (EOY) will be between May and August. These windows are subject to change regarding exact dates, but LEAs will be notified by the CDE. Pupil count will now have a two-prong certification process with the first layer of certification being completed by the LEA and the second layer of certification being completed by the SELPA.

CALIFORNIA SCHOOL DASHBOARD

The California school dashboard is a powerful online tool to help local educational agencies (LEAs) identify strengths and weaknesses and pinpoint student groups that may be struggling. It reports performance and progress on both state and local measures.

California's accountability system is based on multiple measures that assess how LEAs and schools are meeting the needs of their students. Performance on these measures is reported on the California School Dashboard.

The dashboard contains reports that display the performance of LEAs, schools, and student groups on a set of state and local measures to assist in identifying strengths, challenges, and areas in need of improvement.

State measures apply to all LEAs, schools, and student groups and are based on data that is collected consistently across the state. Local measures apply for LEAs and charter schools and are based on data collected at the local level.

State and local measures are drawn from ten priority areas of the Local Control Funding Formula (LCFF).

The state measures are as follows:

- Chronic Absenteeism
- Suspension Rate
- English Learner Progress
- Graduation Rate
- Academic Performance
- College/Career

California's new accountability and continuous improvement provides information about how LEAs and schools are meeting the needs of California's diverse population.



Blue



Green



Yellow

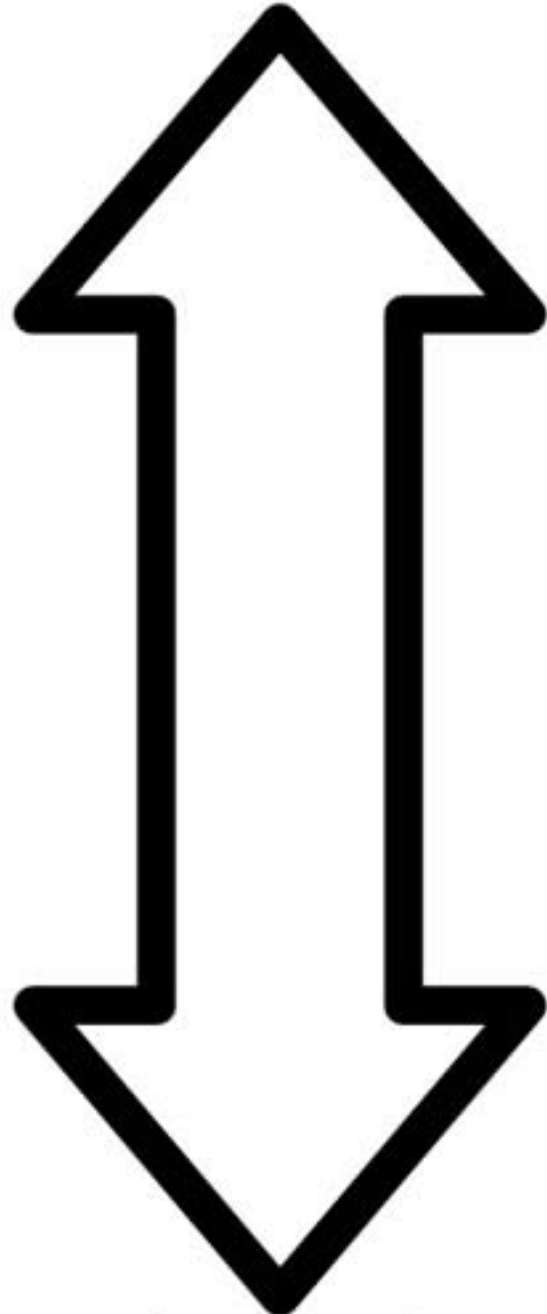


Orange



Red

Highest Performance



Lowest Performance

SCHOOL FUNDING

How are California schools funded? It is important to understand how school funding relates to the state's compliance mandates.

Most of the funding for K-12 education comes from the state. In 2018-19, California public schools received a total of \$97.2 billion in funding from three sources: the state (58%), property taxes and other local sources (32%), and the federal government (9%). These shares vary across school districts.

Some districts, known as "basic aid" or "excess tax" districts, fund their revenue limit entirely through property taxes and receive no general purpose state aid. They also retain any excess property taxes within their district.

Local Control Funding Formula (LCFF)

The LCFF, enacted through the 2013-14 state budget, is the new system for calculating funding for most public schools in California. Each district receives a base grant per student, plus additional supplemental and concentration grants targeted for students who are low income, foster youth, or English-Language Learners. All K-12 students in public schools are eligible for LCFF funds, with more targeted funding for students who are low income, in foster care, or English-Language Learners.

LCFF funds almost every service provided by public schools, including teacher salaries, classroom materials, and facilities. LCFF can also be used for school-based mental health programs and staff, including social workers, counselors, nurses, and psychologists.

School districts are currently receiving LCFF funds, which will increase through 2020. Districts must submit a three-year Local Control and Accountability Plan (LCAP) and annual LCAP updates to their County Office of Education. The LCAP must demonstrate how funds will be used to support targeted students in eight distinct state priorities. It is estimated that, after years of cuts, at full implementation, LCFF will bring school funding to at least 2007 levels.

LCAP PRIORITIES

Local Indicators

Eight Priorities

Priority 1: Basic Services and Conditions at Schools

State Indicator - N/A

Local Indicator - Text books availability, adequate facilities, and correctly assigned teachers

Priority 2: Implementation of State Academic Standards

State Indicator - N/A

Local Indicator - Annually report on progress in implementing the standards for all content areas

Priority 3: Parent Engagement

State Indicator - N/A

Local Indicator - Annually report progress toward seeking input from parents/guardians in decision making and promoting parental participation in programs

Priority 4: Student Achievement

State Indicator - Academic Performance - Grades 3-8 and Grade 11, English Learner Progress

Local Indicator - N/A

Priority 5: Student Engagement

State Indicators - Graduation Rate, Chronic Absenteeism

Local Indicators - N/A

Priority 6: School Climate

State Indicator - Suspension Rate

Local Indicator - Administer a climate survey every other year

Priority 7: Access to a Broad Course of Study

State Indicator - N/A

Local Indicator - Annually report progress on the extent students have access to, and are enrolled in, a broad course of study

Priority 8: Outcomes in a Broad Course of Study

State Indicator - College/Career

Local Indicators - N/A

KEY TERMS

Annual Performance Report (APR) – The APR describes the state’s slippage in meeting the measurable and rigorous targets established in the State Performance Plan (SPP); and any revisions to the state’s targets, improvement activities, or resources in the SPP and justifications for the revisions.

California Assessment of Student Performance and Progress (CAASPP) System was established on January 1, 2014. The CAASPP System replaced the Standardized Testing and Reporting (STAR) Program, which became inoperable on July 1, 2013. The CAASPP system includes the Smarter Balanced summative assessments for English language arts/literacy and mathematics, the California Science Tests, the reading/language arts standards-based tests in Spanish, and the California Alternative Assessments.

California Collaborative for Educational Excellence (CCEE) - Established pursuant to California Education Code Section 52074, which states that “(t)he purpose of the California Collaborative for Educational Excellence is to advise and assist school districts, county superintendents of schools, and charter school districts in achieving the goals set forth in a local control and accountability plan.” The CCEE is a public agency that is governed by a five-member governing board composed of the State Superintendent of Public Instruction (or his or her designee), a county superintendent of schools appointed by the Senate Committee on Rules, a superintendent of a school district appointed by the Governor, and a teacher appointed by the Speaker of the Assembly.

California Dashboard - A website released in March 2017 that parents/guardians, educators, and the public can use to see how districts and schools are meeting the needs of California’s diverse student population based on the concise set of measures included in the new accountability system, including test scores, graduation rates, English learner progress, and suspension rates. Additionally, the Dashboard includes reporting and evaluation of local indicators. The Dashboard is part of California’s new school accountability system based on the Local Control Funding Formula, enacted in 2013. As provisioned in the California Education Code, the Dashboard will be used to support local educational agencies (LEAs) in identifying strengths, weaknesses, and areas for improvement; to assist in determining whether LEAs and schools are eligible for technical assistance; and to assist the state in determining whether LEAs and schools are eligible for more intensive support/intervention.

California Department of Education (CDE) – A governmental agency within California that oversees public education. Its headquarters are located in California’s capital city, Sacramento.

CaEDFacts – A compilation of statistics and information on a variety of issues concerning education in California.

CALPADS – A longitudinal data system used to maintain individual-level data including student demographics, course data, discipline, assessments, staff assignments, and other data for state and federal reporting.

Child Find – A legal requirement that schools find all children who have disabilities and who may be entitled to special education services. Child find covers every child from birth through age 21. The school must evaluate any child that it knows, or suspects may have a disability.

Disproportionality – The overrepresentation of a particular racial or ethnic group in a particular area.

Every Student Succeeds Act (ESSA) – On December 10, 2015, President Obama signed Every Student Succeeds Act (ESSA), reauthorizing the federal Elementary and Secondary Education Act (ESSA) and replacing the No Child Left Behind Act (NCLB), the 2001 reauthorization of ESSA.

Individualized Education Program (IEP) – a document that is developed for children in public school who are eligible for special education. The IEP is created through a team effort and reviewed periodically. This document is the foundation that directs instructional planning for students with exceptional needs.

Individuals with Disabilities Education Act (IDEA) – The Individuals with Disabilities Education Act is a four-part piece of American legislation that ensures students with disabilities are provided with Free Appropriate Public Education that is tailored to their individual needs. IDEA was previously known as the Education for All Handicapped Children Act from 1975 to 1990. In 1990, the United States Congress reauthorized EHA and changed the title to IDEA. Overall, the goal of IDEA is to provide children with disabilities the same opportunity for education as those students who do not have a disability.

Least Restrictive Environment (LRE) – In the U.S. the Individuals with Disabilities Education Act is a special education law that mandates regulations for

students with disabilities in order to protect their rights as students and the rights of their parents. Under this act, it is required that all students receive a Free and Appropriate Public Education, and that these students should be educated in the least restrictive environment. The least restrictive environment clause states that students with disabilities should be educated with students without disabilities to the maximum appropriate extent. If a student should require supplementary aids and services necessary to achieve educational goals while being placed in a classroom with students without disabilities, they should be provided as needed.

Local Control Funding Formula (LCFF) - California's school funding law is a way for schools to focus on student success. LCFF requires school districts to focus on eight key areas that help all students succeed.

Minimum cell size – the minimum number of children experiencing a particular outcome, to be used as the numerator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.

Minimum n-size – the minimum number of children with disabilities enrolled in a LEA with respect to identification, and the minimum number of children with disabilities enrolled in a LEA with respect to placement and discipline, to be used as the denominator when calculating either the risk for children in all other racial or ethnic groups.

Significant Disproportionality – the determination that a school district (LEA) has significant over-representation based on race and ethnicity overall, by disability, by placement in a particular educational setting, or by disciplinary actions.

United States Department of Education (ED) – The United States Department of Education, also referred to as the ED for education department, is a cabinet-level department for the United States government. It began operating on May 4, 1980, having been created after the Department of Health, Education, and Welfare was split into the Department of Education and the Department of Health and Human Services by the Department of Education Organization Act, which President Jimmy Carter signed into law on October 17, 1979.

RESOURCES

California Dashboard

<https://www.caschooldashboard.org>

The California Assessment of Student Performance and Progress (CAASPP)

<https://www.cde.ca.gov/ta/tg/ca/>

The California Collaborative for Educational Excellence (CCEE)

<http://ccee-ca.org>

CalEDFacts

<https://www.cde.ca.gov/re/pn/fb/>

California State Board of Education (SBE)

<https://www.cde.ca.gov/be/>

Federal Program Monitoring

<https://www.cde.ca.gov/ta/cr/>

LCAP

<https://www.cde.ca.gov/re/lc/>

LCFF

<https://www.cde.ca.gov/fg/aa/lc/lcffoverview.asp>

Performance Indicator Review

<https://www.cde.ca.gov/re/lc/>

DMSELPA Padlet

<https://padlet.com/jeyle1/DMSELPA>

APPENDICES

FMTA Consultant Assignments by Region

The Focused Monitoring and Technical Assistance (FMTA) Consultants are assigned geographically and by quality assurance activity to align with the eleven California County Superintendents Educational Services Association (CCSESA) regions.

The FMTAs are responsible for coordinating all monitoring and technical assistance activities for the local educational agencies and Special Education Local Plan Areas in their assigned counties, providing information, and facilitating access to technical assistance related to program monitoring and program implementation.

Regional Map



County Assigned Consultants

Comprehensive Review Consultants

CCSESA Region	Counties	Consultant(s)	Email	Telephone Number
1	Del Norte, Humboldt, Lake, Mendocino, Sonoma	Heidi Brahms	HBrahms@cde.ca.gov	916-322-0373
2	Butte, Glenn, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama, Trinity	Jasmine Ayten	JAyten@cde.ca.gov	916-322-1849
3	Alpine, Colusa, El Dorado, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, Yuba	Bernd Reynolds	BReynolds@cde.ca.gov	916-445-0789
3	Alpine, Colusa, El Dorado, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, Yuba	Jim Durgin	JDurgin@cde.ca.gov	916-327-3537
3	El Dorado Charter	Jasmine Ayten	JAyten@cde.ca.gov	916-322-1849
4	Alameda, Contra Costa, San Francisco, San Mateo, Solano	Barbara Gaskin	BGaskin@cde.ca.gov	916-327-3674
4	Marin, Napa	Jasmine Ayten	JAyten@cde.ca.gov	916-322-1849
5	Monterey, San Benito, Santa Clara, Santa Cruz	Peggy Hernandez	PHernandez@cde.ca.gov	916-323-2616

5	Monterey, San Benito, Santa Clara, Santa Cruz	Matt Wilkins	MWilkins@cde.ca.gov	916-445-4559
6	Amador, Calaveras, San Joaquin, Stanislaus, Tuolumne	Brad Lacy	BLacy@cde.ca.gov	916-327-4219
7	Fresno, Kings, Madera, Mariposa, Merced, Tulare	FMTA I	APasion@cde.ca.gov	916-324-8898
8	Kern, San Luis Obispo, Santa Barbara, Ventura	FMTA I	APasion@cde.ca.gov	916-324-8898
9	Orange	Sean Howland	SHowland@cde.ca.gov	916-445-4547
9	Imperial, San Diego	Aaron Christensen	AaChristensen@cde.ca.gov	916-319-0668
10	Inyo, Mono, Riverside, San Bernardino	Shirley Waegell	SWaegell@cde.ca.gov	916-327-3533
11	Los Angeles	Monica Pecarovich	MPecarovich@cde.ca.gov	916-327-3535
11	Los Angeles	Matt Wilkins	MWilkins@cde.ca.gov	916-445-4559

Disproportionality Review Consultants

CCSESA Region	Counties	Consultant(s)	Email	Telephone Number
1	Del Norte, Humboldt, Lake, Mendocino, Sonoma	Libbey Durkee	LDurkee@cde.ca.gov	916-327-0863

2	Butte, Glenn, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama, Trinity	Lisa Bojé	LBoje@cde.ca.gov	916-327- 3684
3	Alpine, Colusa, El Dorado, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, Yuba	Susan Olsen	SOlsen@cde.ca.gov	916-319- 0491
4	Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Solano	Kishaun Thorntona	KThorntona@cde.ca.gov	916-445- 5727
5	Monterey, San Benito, Santa Clara, Santa Cruz	Libbey Durkee	LDurkee@cde.ca.gov	916-327- 0863
6	Amador, Calaveras, San Joaquin, Stanislaus, Tuolumne	Kishaun Thorntona	KThorntona@cde.ca.gov	916-445- 5727
7	Fresno, Kings, Madera, Mariposa, Merced, Tulare	Susan Olsen	SOlsen@cde.ca.gov	916-319- 0491
8	Kern, San Luis Obispo, Santa Barbara, Ventura	Nicole Garibaldi	NGaribaldi@cde.ca.gov	916-319- 0298
9	Imperial, Orange, San Diego	Nicole Garibaldi	NGaribaldi@cde.ca.gov	916-319- 0298
10	Inyo, Mono, Riverside, San Bernardino	Susan Olsen	SOlsen@cde.ca.gov	916-319- 0491
11	Los Angeles	Lisa Bojé	LBoje@cde.ca.gov	916-327- 3684

Performance Indicator Review Consultants

CCSESA Region	Counties	Consultant(s)	Email	Telephone Number
1	Del Norte, Humboldt, Lake, Mendocino, Sonoma	Anthony Sotelo	ASotelo@cde.ca.gov	916-322-2235
2	Butte, Glenn, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama, Trinity	Anthony Sotelo	ASotelo@cde.ca.gov	916-322-2235
3	Alpine, Colusa, El Dorado, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, Yuba	Lynne Boone	LBoone@cde.ca.gov	916-327-3703
4	Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Solano	Vincent Pastorino	VPastorino@cde.ca.gov	916-327-0839
5	Monterey, San Benito, Santa Clara, Santa Cruz	John Burch	JBurch@cde.ca.gov	916-327-0296
6	Amador, Calaveras, San Joaquin, Stanislaus, Tuolumne	John Burch	JBurch@cde.ca.gov	916-327-0296
7	Fresno, Kings, Madera, Mariposa, Merced, Tulare	Anthony Sotelo	ASotelo@cde.ca.gov	916-322-2235
8	Kern, San Luis Obispo, Santa Barbara, Ventura	John Burch	JBurch@cde.ca.gov	916-327-0296

9	Imperial, Orange, San Diego	Vincent Pastorino	VPastorino@cde.ca.gov	916-327-0839
10	Inyo, Mono, Riverside, San Bernardino	Anthony Sotelo	ASotelo@cde.ca.gov	916-322-2235
11	Los Angeles	Kristen Brown	KBrown@cde.ca.gov	916-445-1064

Data Identified Noncompliance Review Consultants

CCSESA Region	Counties	Consultant(s)	Email	Telephone Number
1	Del Norte, Humboldt, Lake, Mendocino, Sonoma	Theresa Costa Johansen	TCostaJohansen@cde.ca.gov	916-323-2409
2	Butte, Glenn, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama, Trinity	Theresa Costa Johansen	TCostaJohansen@cde.ca.gov	916-323-2409
3	Alpine, Colusa, El Dorado, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, Yuba	Theresa Costa Johansen	TCostaJohansen@cde.ca.gov	916-323-2409
4	Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Solano	Shari Presnall	SPresnall@cde.ca.gov	916-445-7474
5	Monterey, San Benito, Santa Clara, Santa Cruz	Shari Presnall	SPresnall@cde.ca.gov	916-445-7474

6	Amador, Calaveras, San Joaquin, Stanislaus, Tuolumne	Shari Presnall	SPresnall@cde.ca.gov	916-445- 7474
7	Fresno, Kings, Madera, Mariposa, Merced, Tulare	Theresa Costa Johansen	TCostaJohansen@cde.ca.gov	916-323- 2409
8	Kern, San Luis Obispo, Santa Barbara, Ventura	Theresa Costa Johansen	TCostaJohansen@cde.ca.gov	916-323- 2409
9	Imperial, Orange, San Diego	Theresa Costa Johansen	TCostaJohansen@cde.ca.gov	916-323- 2409
10	Inyo, Mono, Riverside, San Bernardino	Richard Gifford	RGifford@cde.ca.gov	916-323- 9782
11	Los Angeles	Theresa Costa Johansen	TCostaJohansen@cde.ca.gov	916-323- 2409

Nonpublic Schools Consultants

CCSESA Region	Counties	Consultant(s)	Email	Telephone Number
1	Del Norte, Humboldt, Lake, Mendocino, Sonoma	Linda Ramos	LRamos@cde.ca.gov	916-327- 3656
2	Butte, Glenn, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama, Trinity	Linda Ramos	LRamos@cde.ca.gov	916-327- 3656

3	Alpine, Colusa, El Dorado, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, Yuba	Linda Ramos	LRamos@cde.ca.gov	916-327- 3656
4	Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Solano	Steve Perez	StPerez@cde.ca.gov	916-319- 0581
5	Monterey, San Benito, Santa Clara, Santa Cruz	Christine Krause	CKrause@cde.ca.gov	916-324- 4536
6	Amador, Calaveras, San Joaquin, Stanislaus, Tuolumne	Steve Perez	StPerez@cde.ca.gov	916-319- 0581
7	Fresno, Kings, Madera, Mariposa, Merced, Tulare	Christine Krause	CKrause@cde.ca.gov	916-324- 4536
8	Kern, San Luis Obispo, Santa Barbara, Ventura	Christine Krause	CKrause@cde.ca.gov	916-324- 4536
9	Imperial, Orange, San Diego	Michele Donahue	MDonahue@cde.ca.gov	916-319- 0769
9	Imperial, Orange, San Diego	Scharmela Edwards	SEdwards@cde.ca.gov	916-327- 3699
10	Inyo, Mono, Riverside, San Bernardino	Christine Krause	CKrause@cde.ca.gov	916-324- 4536
11	Los Angeles	Michele Donahue	MDonahue@cde.ca.gov	916-319- 0769

Other

Large Multi-Sites
(Sierra, Spectrum,
Point Quest)

Matthew Hill

MHill@cde.ca.gov

916-445-
5577

Administrators

Comprehensive Review:

Jack Brimhall, JBrimhall@cde.ca.gov, 916-445-9772

Lisa Stie, LStie@cde.ca.gov, 916-324-8898

Disproportionality Review:

James Johnson, JamJohns@cde.ca.gov, 916-327-6966

Performance Indicator Review:

Donna DeMartini, DDeMartini@cde.ca.gov, 916-445-4632

Data Identified Noncompliance Review:

Theresa Costa Johansen, TCostaJohansen@cde.ca.gov, 916-323-2409

Nonpublic Schools:

Tina Tranzor, TTranzor@cde.ca.gov, 916-327-0141

Questions: Special Education Division | 916-445-4613

Last Reviewed: Tuesday, July 30, 2019

B

Significant Disproportionality Comprehensive Coordinated Early Intervening Services (CCEIS) Worksheet 2019

This worksheet is to help the local educational agency (LEA) assemble information for the CCEIS Plan.

BACKGROUND INFORMATION

Local Education Agency (LEA) Name:

Special Education Local Plan Area (SELPA) Name:

Main Contact:

Telephone and Email:

CCEIS Period 2019 Significant Disproportionate Indicator(s) (check all applicable) (Refer to the Fiscal Year 2019 Notification Letter)

- Discipline Race/Ethnicity _____
- Placement (LRE) Race/Ethnicity _____
- Indicator 9 Race/Ethnicity _____
- Indicator 10 Race/Ethnicity _____
Disability Category _____

2018-19 Disproportionality Indicator(s) (check all applicable) (Refer to the Fiscal Year 2019 Notification Letter)

- Discipline Race/Ethnicity _____
- Placement (LRE) Race/Ethnicity _____
- Indicator 9 Race/Ethnicity _____
- Indicator 10 Race/Ethnicity _____
Disability Category _____

Has your district been previously identified as significantly disproportionate?

yes no

If your district been previously identified as significantly disproportionate, list previous year(s) of identification (please include indicator(s) and race/ethnicity for each year):

DESCRIBE THE PLAN DEVELOPMENT ACTIVITIES FOR CCEIS

PHASE ONE: GETTING STARTED
Find instructions for this phase at
<https://spptap.org/phase-1-getting-started/>

Convene a Leadership Team and Stakeholder Group

*You may use the Leadership and Stakeholder Identification Worksheet for items 1.1 and 1.2.
(Available at <https://spptap.org/sd-ceis-guidance-documents-and-forms/>)*

1.1 Leadership Team: List members' names, emails, titles/roles, and responsibilities related to the CCEIS Plan.

Member Name	Email	Title/Role	CCEIS Plan Responsibilities

Do the members of this team have decision-making authority? What is the process for LEA approval of this CCEIS plan? Type answer here:

1.2 Stakeholder Group: List members' names, roles, and CCEIS related responsibilities.

Role	Member Name(s)	CCEIS Plan Responsibilities
<input type="checkbox"/> Cabinet Level Leader- General Education		
<input type="checkbox"/> Cabinet Level Leader- Special Education		
<input type="checkbox"/> Director of Curriculum (or Similar)		
<input type="checkbox"/> SELPA Director (or Designee)		
<input type="checkbox"/> Director of Assessment (or Similar)		

<input type="checkbox"/> Appropriate Grade Level General Education Teacher		
<input type="checkbox"/> Appropriate Grade Level Special Education Teacher		
<input type="checkbox"/> Bargaining Unit Representative		
<input type="checkbox"/> Community Member		
<input type="checkbox"/> Parent (diverse representation)		
<input type="checkbox"/> Superintendent (or Designee)		
<input type="checkbox"/> Principal or Site Level Administrator		
<input type="checkbox"/> Human Resources Administrator		
<input type="checkbox"/> Business Services Representative		
<input type="checkbox"/> Other:		

Note: Team composition requires a diverse group of parents and community members, including representatives of the identified racial/ethnic category.

Provide the dates the Stakeholder group met, and a summary of the work completed by the Stakeholder Group:

1.3 Contact the State Performance Plan Technical Assistance Project (SPP-TAP) at the Napa County Office of Education (NCOE) and CDE FMTA Consultant.

The LEA is committed to the following activities:

- Accessing information via the SPP-TAP Website
- Communicating with CDE FMTA Consultant
- Communicating with SPP-TAP staff
- Participating in virtual Community of Practice (CoP) meetings
- Attending a Regional Session
- Attending Webinars
- Spring CCEIS Workshops
- Fall CCEIS Workshops

1.4 Choose Technical Assistance (TA) Facilitator(s)

Name the TA Facilitator(s) and describe current and anticipated services. LEAs are required to contract for a minimum of 10 hours or TA Facilitation for each area of identification. You must supply a copy of the contract or MOU for each TA facilitator. If you are using a non-SPP-TAP TA facilitator you must obtain permission from the CDE FMTA Unit III and supply a copy of the TA facilitator’s resume.

TA Facilitator Name	Current Services	Anticipated Services

- We have a contract or MOU with one or more of the SPP-TAP TA Facilitators.
- We are using a non-SPP-TAP TA Facilitator approved by our CDE FMTA Consultant.

1.5 Gather Relevant Data

List the relevant sources of data that are used to inform decision-making. Are there any additional data sources that would be beneficial but data was not available (e.g., Referral data by teacher, etc.)? *(See next two pages for samples of relevant data sources.)*

SAMPLE ROOT CAUSE ANALYSIS DATA SOURCES

Below are sample school and districtwide data sets CCEIS Leadership and Stakeholder Teams may wish to consider as part of the Root Cause Analysis process. This is not an exhaustive list; each LEA must determine the data to study based on its own areas of strength and need.

All data items must be gathered with and viewed through a cultural lens; therefore, they must be sorted by and analyzed with a focus on race, ethnicity, gender, and grade.

California Longitudinal Pupil Achievement (CALPADS) Data:

Academic

Attendance

Discipline

<https://www.cde.ca.gov/ds/sp/cl/>

California Department of Education California School Dashboard Data:

High School Graduation Rate

Academic Performance

English Learner Progress

Preparation for College/Career (CCI)

Chronic Absenteeism

<https://www.cde.ca.gov/ta/ac/cm/>

Specialized Programs Annual Performance Report Measures

Performance Indicators Related to Disproportionality (4b, 5, 9, 10)

Performance Indicators Not Directly Related to Disproportionality

<https://www.cde.ca.gov/sp/se/ds/leadatarpts.asp>

California Healthy Kids Survey Data

School Performance, Supports, and Engagements Data

School Supports and Connectedness by Race/Ethnicity

<http://chks.wested.org/about/>

Discipline Data

Office Referrals

Suspensions

Expulsions

Graduation, UC/CSU Preparation, Dropout, and Achievement Data

Honors and Advanced Placement Data

Dropouts by Age, Race, and Gender

<https://www.cde.ca.gov/ds/sd/sd/filesdropouts.asp>

Career and Technical Education (CTE) Inventories

English Learner Reclassification Data

Individual Student Transcripts and Courses of Study

Local Control Accountability Plan Areas of Focus

Positive Behavior Interventions and Supports Tiered Fidelity Index

Qualitative Results of Focus Group Discussions

Teachers

Students

Parents

Other

Relevant Local Assessment Data

Special Education Procedural Manual

Special Education Local Plan Area (SELPA) Local Plan

PHASE TWO: DATA AND ROOT CAUSE ANALYSIS
 Find instructions for this phase at
<https://spptap.org/phase-ii-data-and-root-cause-analysis/>

2.1 Complete a Local Educational Agency (LEA) Initiative Inventory

Enter your LEA initiatives that align or have some areas of integration with the efforts to address disproportionality.

You may wish to complete the Local Educational Agency (LEA) Initiative Inventory document (available at <https://spptap.org/sd-ceis-guidance-documents-and-forms/>) as you will need to upload that document to the CCEIS Portal.

Initiative and Funding Source	Relationship to LCAP and other Initiative Goals/Priorities	Target Group	Leaders and Responsible Staff	Educational Area(s): Curriculum and Instruction, Behavior, Family & Community Engagement, Climate, Social-Emotional Learning Other

2.2 Complete a Programmatic Self-Assessment

Identify programmatic self-assessment tool(s) used and describe process of completion.

Identify one or more of the approved Self-Assessment Tools used:

- Annotated Checklist for Addressing Racial Disproportionality
- Preventing DISPROPORTIONALITY by Strengthening District Policies and Procedures — An Assessment and Strategic Planning Process
- Racial/Ethnic Disproportionality in Special Education/Data Analysis Workbook

Identify other relevant Self-Assessment Tools used:

- Quality Standards for Inclusive Schools: Self-Assessment Instrument
- Addressing the Root Causes of Disparities in School Discipline: An Educator's Action Planning Guide
- Other: _____

Describe process of completion:

2.3 Complete Reflective Data Analysis

Describe the processes used to collect, analyze, and interpret data. Include data sources.

2.4 Determine Root Cause(s) Based on Data

Provide a *title* for the identified Root Cause of disproportionality and describe the Root Cause (including supporting data).

Root causes of disproportionality include an intersection between beliefs and practices.

Root Cause Title	Description of Root Cause with Supporting Data

PHASE THREE: PLAN FOR IMPROVEMENT
 Find instructions for this phase at
<https://spptap.org/phase-iii-plan-for-improvement/>

3.1 Select Focus Area(s)

List selected areas of focus and describe their connection to the identified root cause(s).

Selected Focus Area	Connection Root Cause
<input type="checkbox"/> Achievement Gap: Opportunity and Access Gap	
<input type="checkbox"/> Culturally Responsive School Environments	
<input type="checkbox"/> Positive Behavior Supports	
<input type="checkbox"/> Culturally Responsive MTSS	
<input type="checkbox"/> Access to Achieving in the Least Restrictive Environment: Inclusive Practices	
<input type="checkbox"/> Other: _____	

3.2a Develop Programmatic Improvement Action Plan

Complete information below for each measurable outcome (cut and paste empty boxes for additional outcomes).

Describe how the budget allocation aligns with the Programmatic Improvement Action Plan. (See Section 3.2b.)

Measurable Outcome:

Indicator(s):

Root Cause(s):

Focus Area(s):

Target Population:

You may wish to duplicate the four shaded boxes below to add additional activities *for each measurable outcome*.

Activity:

Staff Responsible:

Timeline:

Data Sources/Methods for Evaluating Progress:

3.2b Complete Budget Forms

Step 1: Download the following documents from the CCEIS Portal.

- 2018 CCEIS Budget and Allowable Expenditure Forms One and Two
- 2018 CCEIS Target Student Population

Step 2: Complete both documents.

Step 3: Save each document with your district's name or initials in the file name.

Step 4: Upload documents (one at a time) to the CCEIS Portal.

PHASE FOUR: IMPLEMENTING, EVALUATING AND SUSTAINING
 Find instructions for this phase at
[HTTPS://SPPTAP.ORG/PHASE-IV-IMPLEMENTING-EVALUATING-AND-SUSTAINING/](https://spptap.org/phase-iv-implementing-evaluating-and-sustaining/)

4.1 Implement Programmatic Improvement Action Plan

List staff responsible for oversight of CCEIS activities (including submission of Progress Report and Quarterly Expenditure Reporting Forms).

Staff Name	Reports to Submit (Progress Reports, Budget Reports, or Both)	Email

4.2 Evaluate Effectiveness

Describe process for ongoing collection and analysis of data related to the measurable outcomes outlined in the Programmatic Improvement Action Plan. This includes tracking of target students, sharing data with stakeholders, and adapting the action plan based on data.

4.3 Build Supports and Sustainability

Describe the process for adding support for sustainability of CCEIS activities that demonstrate success in reducing disproportionality. Consider LCFF/LCAP, blended funding, grant writing, and other funding sources.

4.5 Complete and Submit SPP-TAP Feedback survey

List staff responsible for completing and submitting survey provided by SPP-TAP at the end of the CCEIS period.

Staff Name	Title	LEA/Agency	Email

CCEIS Plan Signature Form

The signature form must be filled out AFTER the CCEIS Plan has been completed. The form is available at <https://spptap.org/sd-ceis-guidance-documents-and-forms/>. *Note: Signatures are required from the LEA Superintendent, SELPA Director, and School Board Chairperson.*

Review

The person completing the CCEIS Plan in the portal will be asked to review the entire CCEIS Plan prior to submitting it to CDE for approval.

2019 BUDGET ALLOCATION

**Significant Disproportionality
Comprehensive Coordinated Early Intervening Services (CCEIS)**

Individuals with Disabilities Education Act of 2004, Part B Grant

Complete the required information for the identified local educational agency (LEA).

LEA Name :	County District Code:
LEA Contact Name:	LEA Contact Email:
SELPA Name:	SELPA Contact Email:

Provide the Fiscal Year 2018–19 allocation awarded for Resource Codes 3310 and 3315:

2018 Resource 3310 Allocation	2018 Resource 3315 Allocation
\$	\$

Provide the Fiscal Year 2019–20 allocation awarded for Resource Codes 3310 and 3315:

Provide the 2019 allocations the SELPA provided to the identified LEA for resource codes 3310 and 3315. The 15 percent set-aside for CCEIS expenditures will be determined from these two resource codes.

2019 Resource 3310 Allocation	2019 Resource 3315 Allocation
\$	\$

In the box below, indicate the 15 percent set aside for each of the Fiscal Year 2019–20 allocations the LEA was awarded for resource codes 3310 and 3315:

2019 CCEIS Resource 3312 3312 = 15% of 3310		2019 CCEIS Resource 3318 3318 = 15% of 3315		Total 2019 CCEIS Budget (3312 plus 3318)
\$	plus	\$	equals	\$

The above 15 percent set-aside amounts will be the 2019-20 CCEIS allocations for resource codes 3310 (CEIS Resource Code 3312) and 3315 (CEIS Resource 3318) and should be expended and reported accurately in quarterly CCEIS Progress and Expenditure Reports.

Please use the Total 2019 CCEIS Budget indicated above to complete the 2019 Allowable Costs Budget.

2019 Target Student Population

The Comprehensive Coordinated Early Intervening Services (CCEIS) are to be provided to a targeted population.

The purpose of this document is to assist the local educational agency (LEA) to define the target student population to receive CCEIS and estimate the number of students to receive such services.

Reporting on this activity requires the following:

- The definition of the target student population to receive the CCEIS and CCEIS expenses for 2019 must conform to the U.S. Office of Special Education Programs (OSEP) IDEA Part B Regulations Significant Disproportionality (Equity in IDEA). Please refer specifically to Questions C-3-2 and C-3-3, pages 19 and 20, on the U.S. Department of Education Web page at <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/significant-disproportionality-qa-2-23-17.pdf>.
- The estimated number of students expected to receive CCEIS during the 27-month period within which the local educational agency (LEA) must expend the 15 percent set aside of IDEA funding for CCEIS. The total estimated number of students for the entire 27-month period must be an unduplicated student count.

Targeted Student Population Reporting

The LEA must complete the following Targeted Student Population Reporting Charts based on current student data.

The estimated student numbers:

- Must be greater than zero
- Must represent the students expected to receive CCEIS services
- Cannot equal the number of all students

Directions: Complete the following Target Student Population Charts for the 2019 CCEIS Service Period. Please feel free to add additional pages as needed.

Students <u>Currently Not Identified</u> as Needing Special Education 2019 CCEIS Service Period: July 1, 2019 to September 30, 2021		
Report Periods	Description of Targeted Student Population	Number of Students <u>Currently Not Identified</u> as Needing Special Education Receiving CCEIS Initiatives
First 12 months: 7/1/2019 to 6/30/2020		
Second 12 months: 7/1/2020 to 6/30/2021		
Last 3 months: 7/1/2021 to 9/30/2021		
Total Target Students served during this 27 month period		

Students <u>Currently Identified</u> as Needing Special Education 2019 CCEIS Service Period: July 1, 2019 to September 30, 2021		
Time Periods	Description of Targeted Student Population	Number of Students <u>Currently Identified</u> as Needing Special Education Receiving CCEIS Initiatives
First 12 months: 7/1/2019 to 6/30/2020		
Second 12 months: 7/1/2020 to 6/30/2021		
Last 3 months: 7/1/2021 to 9/30/2021		
Total Target Students served during this 27 month period		

Please ensure to indicate the Total Target Students served on the Quarterly Progress Reports.

Please verify, scan, and submit electronically with the CCEIS Programmatic Improvement Plan to SigDisp@cde.ca.gov.

2019 ALLOWABLE COSTS BUDGET
Significant Disproportionality Comprehensive Coordinated Early Intervening Services (CCEIS)
Individuals with Disabilities Education Act of 2004 (IDEA), Part B Grant

Complete the table below to reflect the **Total 2019 CCEIS Budget** as reported on the 2019 Budget Allocation. CCEIS expenses for 2019 must conform to the U.S. Office of Special Education Programs (OSEP) IDEA Part B Regulations Significant Disproportionality (Equity in IDEA). For detailed allowable CCEIS expenditures, please refer specifically to Questions C-3-1 through C-3-10, pages 19 through 24, on the U.S. Department of Education Web page at <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/significant-disproportionality-ga-2-23-17.pdf>.

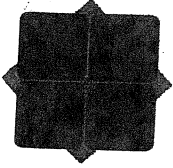
The 2019 CCEIS period is from July 1, 2019, through September 30, 2021. The local educational agency (LEA) must fully expend the CCEIS 15 percent set-aside by September 30, 2021.

2019 Budget Line Items	Brief Description of 2019 CCEIS Activities	Amount for each CCEIS Activity
1000–Certified Salaries		\$
2000–Classified Salaries		\$
3000–Employee Benefits		\$
4000–Materials and Supplies		\$
5000–Services and Other Operating Costs		\$
5100–Contract Services		\$
7300–Indirect Cost Rate (ICR) CDE-approved rate of ____ percent) Note: ICR cannot be used for Object Code 5100		\$
Total Amount for 2019 CCEIS Activities. The amount must equal the Total 2019 CCEIS Budget as indicated on the 2019 Budget Allocation Summary.		\$

The authorized agents validate the accuracy of the information reported:

LEA Superintendent (Print Name & Signature)	Date Signed: Contact Phone:
LEA Special Education Director (Print Name & Signature)	Date Signed: Contact Phone:
SELPA Director (Print Name & Signature)	Date Signed: Contact Phone:
SELPA/LEA Business Fiscal Officer (Print Name & Signature)	Date Signed: Contact Phone:

Please verify, sign, and email directly to the SigDisp@cde.ca.gov.



State Performance Plan Technical Assistance Project

SPP-TAP

Significant Disproportionality Comprehensive Coordinated Early Intervening Service Plan Forms (CCEIS)

District Name: Victor Valley Union High

Director Student Support/ Special Education Margaret Akinnusi
makinnusi@vvhhsd.org
Victor Valley Union High

10 Created 2018-11-28 16:00:39
Archived Records

Plan Year: 2018

Indicators

Indicators	Race / Ethnicity	Previously Identified as significantly disproportionate	previous year(s) of identification
------------	------------------	---	------------------------------------

Indicator_4b	Yes	2018 Significant Disproportionate Indicator(s): Indicator 5b (In Regular Class less than 40%) - African American 2017 Significant Disproportionate Indicator(s): Indicator 5b (In Regular Class less than 40%) - African American Indicator 10 (Emotional Disturbance) - African American Indicator 4b (Disproportionate Discipline) - African American 2016 Significant Disproportionate Indicator(s) Indicator 4b (Disproportionate Discipline) - African American Indicator 5c (Separate Schools) - African American 2015 Significant Disproportionate Indicator(s) Indicator 5a (Least Restrictive Environment) - African American Indicator 5c (Separate Schools) - African American 2014 Significant Disproportionate Indicator(s) Indicator 5c (Separate Schools) - African American 2013 Significant Disproportionate Indicator(s) Indicator 5c (Separate Schools) - African American 2012 Significant Disproportionate Indicator(s) Indicator 10 (Emotional Disturbance) - African American 2011 Significant Disproportionate Indicator(s) Indicator 10 (Emotional Disturbance) - African American Indicator 5c (Separate Schools) - African American Indicator 4b (Disproportionate Discipline) - African American 2010 Significant Disproportionate Indicator(s) Indicator 10 (Emotional Disturbance) - African American 2009 Significant Disproportionate Indicator(s) Indicator 4b (Disproportionate Discipline) African American Indicator 5 (Separate Schools) - African American Indicator 10 (Emotional Disturbance) - African American
Indicator_Placement	Black or African American_4c	
Indicator_9	Black or African American_9	
Indicator_10	Black or African American_10 Emotional Disturbance	

Phase 1: Getting Started

1.1 Leadership Team - Last Edit 01/04/2019 11:08 am

Team Member Name	Leadership Team Email	Role	Responsibilities with CCEIS
Dr. Ron Williams	Rwilliams@vvuhsd.org	Superintendent and/or Designee	Review and Approval of Plan and Implementation
Lauren Franciose	LFranciose@vvuhsd.org	Superintendent and/or Designee	Monitoring and Support Implementation. Communicates with cabinet and school sites
Margaret Akinnusi	Makinnusi@vvuhsd.org	Other Special Education Director	Manages leadership and Stakeholder teams, oversees CCEIS Plan development, data management.
Jon Eyler	jeyler@clsteam.net	Other SPP-TAP Facillitator	Actively participates in the CCEIS process to include: meets with Leadership Team; co-facilitates Stakeholder Group meetings; aggregates discipline data through SHAPE to identify school trends and students in need of intervention; and, provides access to Direction Survey, a formative school climate survey system.
Dr. Caryl Miller	carylm49@verizon.net	Other SPP_TAP Facillitator	Actively participates in the CCEIS process to include: meeting with Leadership Team; co-facilitates Stakeholder Group meetings; assists with completing the CCEIS Plan; and monitors the Plan for Improvement. Facilitates the Least Restrictive Environment (LRE) Committee. Assists in updating procedures and guidance documents as referenced in the Programmatic Improvement Action Plan.
Steve Atkeson	SAtkeson@vvuhsd.org	Other Director Bussiness Services Department	Review CCEIS funds and disbursement based on goal activities. Helps with expenditure reporting

Do the members of this team have decision-making authority? Yes

What is the process for LEA approval of this CCEIS Plan?

Yes, the Leadership Team is comprised of cabinet members with the authority to make decisions. The Leadership Team has the following responsibilities: makes recommendations for Stakeholder Group members representing a diverse range of participants; oversees completion, implementation, and monitoring of the CCEIS Plan; reviews decisions made by the Stakeholder, and in turn, present this information to the rest of the cabinet members for discussion and approval as appropriate. Leadership Team members attend Stakeholder Team meetings to allow

the opportunity to link discussions across both groups. A draft of the CCEIS Plan is presented to the Stakeholder Group for review and recommended changes to the Plan with simultaneous input from those Leadership Team members present during the Stakeholder Group discussions. The final version of the CCEIS Plan is presented to the School Board by Leadership Team members during a regular meeting session.

1.2 Stakeholder Group - Last Edit 01/04/2019 01:54 pm

Team Member Name	Stakeholder Role	Other	Responsibilities with CCEIS
Laurren Francoisse	Cabinet Level Leader - General Education		Assistant Superintendent of Educational Services: Supervises the CEIS Plan process. In addition to providing monitoring and support Implementation of plan.
Margaret Akinnusi	Cabinet Level Leader - Special Education		Manages leadership and stakeholder teams, oversees CEIS Plan activities and progress reporting.
Christine Foote	Director of Curriculum		Manages SIGDIS professional development: UDL, and SEL trainings, plus LCAP plan.
Peggy Dunn	Other	Selva Program Manager	Active role as an external agency related to Special Education, informs district of legal requirements and CCEIS submissions Informs team of legal requirements, CCEIS submissions.
Doug Kubacki	Appropriate Grade Level Special Education Teacher		Special Education Teacher at Lakeview Leadership Academy: Active role as administrative designee facilitation of Special Education services and discipline at the middle school sites.
Tanya Martin	Parent		Active role as a liaison between parents and school sites in implementation and facilitation of Parent Training which connects School, Parents, and the Community. In addition she brings parent insight during review of root causes.
Nancy Noyer	Principal or Site Level Administrator		Active role in review of the CEIS Plan and implementation of applicable sections of the Programmatic Improvement Action Plan at the high school level.
Rama Bassham	Other	Psychologist	Active role in the CEIS process by providing support in SEL and PBIS input, consultation and support for at the school level.
Ebony Purcell	Principal or Site Level Administrator		Assisting with ensuring that CCEIS plan and programs such as PBIS is being implemented with fidelity at her school.

Carol Cronk	Other	Coordinator Math	Manages Professional Development in inclusion of special education teachers in math and other UDL related training.
Caryl Miller	Other	SPP-TAP Facilitators	Active role in the CEIS process through technical assistance provided on development of the CEIS Plan and Programmatic Improvement Action Plan, facilitation of the Stakeholder Group meetings, alignment of various improvement and accountability plans, and coordination with District Business Services and the SELPA.
Jon Eyler	Other	SPP-TAP Facilitators	Active role in the CEIS Plan process through data collection and analysis, root cause analysis, and implementation of the Programmatic Improvement Action Plan including progress monitoring.
Valerie Hatcher	Principal or Site Level Administrator		Active role in review of the CEIS Plan and implementation of applicable sections of the Programmatic Improvement Action Plan at the her school site.
Carlos Cema	Principal or Site Level Administrator		Active role in review of the CEIS Plan and implementation of applicable sections of the Programmatic Improvement Action Plan at the middle school level.
Joseph Inzunza	Other	Educational Psychologist	Active role in the CEIS process by providing support in SST input, consultation and support at the school level.
Laureen Beyer	Other	Coordinator English Language	Managing SigDis Professional Development, PBIS, Trauma Informed and Implicit Bias
Mike Lee	Principal or Site Level Administrator		Assist the principal at his school in playing active role in review of the CEIS Plan and implementation of applicable sections of the Programmatic Improvement Action Plan at the high school level.
Melda Gaskins	Principal or Site Level Administrator		Active role in review of the CEIS Plan and implementation of applicable sections of the Programmatic Improvement Action Plan at the high school level.
Rafael Navarro	Principal or Site Level Administrator		Active role in review of the CEIS Plan and implementation of applicable sections of the Programmatic Improvement Action Plan at the high school level.

Pam Larez	Other	School Nurse	Active role in implementation and facilitation student wellness and well-being, in addition to playing active role on as a member of the district SARIB team to improve student school attendance.
Anita Tucker	Other	Dean-LLA	Active role in review of the CEIS Plan and implementation of applicable sections of the Programmatic Improvement Action Plan at the high school level.
Dr. Benisha Carr	Other	Dean of Students GEC	Active Role in Implementation & facilitation through development of the District Discipline Matrix and CWA data.
Kevan Loyd	Principal or Site Level Administrator		Active Role in Implementation & facilitation through development of the District Discipline Matrix and CWA data.
Pamela Davis	Director of Assessment		Active role in the CEIS process by providing support in SST input, consultation and support at the school level
Maura Balmaceda	Other	EL Coordinator	Assisting with Focus Group and Parent/Student Engagement Activities Implementation & facilitation through DELAC and Parent Engagement
Daniel Gervars	Other	AP CIMS	Assisting with Focus Group and Parent/Student Engagement Activities
M.Stoddard	Other	General Education Teacher	Active role in review of the CEIS Plan and implementation of applicable sections of the Programmatic Improvement Action Plan at the high school level.

Describe the work of this group:

Dates Leadership Team met and summary of Work completed: 10/31/18 : To establish CCEIS timeline and review the indicators VVUHSD was out for 12/15/18: Review CCEIS plan progress and New CEIS Plan Dates Stakeholder Group met and summary of Work completed: 7/9/12: Introductions of team members 9/5/18 & 9/6/18: Background Information, & purpose of group.Revision of CEIS Plan to align to a SMART goal format & prepare for following year's CCEIS plan. 11/5/18: Complete annotated checklist, determine focus groups & questions regarding CCEIS Plan, Root Causes,

Attach Agendas and Sign-in Sheets:

Leadership meeting 10-31-18.pdf 12-15-18 Stakeholder Mtg.pdf 11-5-18 Stakeholder Mtg.pdf Stakeholder Mtg 10-17-18.pdf

1.3 Technical Assistance - Last Edit 12/18/2018 03:58 pm

Technical Assistance Support

Accessing Information via the SPP-TAP Web site

Communicating with CDE FMTA Consultant

Communicating with SPP-TAP staff

Participating in virtual Community of Practice meetings

Attending a Regional Session

Attending the Equity Symposium: Disproportionality

Attending Webinars

1.4 Technical Assistance (TA) Facilitator(s) - Last Edit 01/09/2019 12:12 pm

District is working with a(n)

SPP-TAP TA Facilitator(s)

Name of TA

Delete

Dr. Jon Eyler

Dr. Caryl Miller

Contracts or MOUs for all TA Facilitators:

CLS Contracts.pdf

Resume(s) for non-SPP-TAP Facilitator(s) approved by CDE FMTA Consultant:

1.5 Relevent Data Gathered - Last Edit 12/06/2018 04:40 pm

Types of Data

Additional Data

The following set of data sources have been used and the periodic reports will be in continuous usage to analyze the data for improving practices and informed decision making.

California Special Education Management Information System (CASEMIS) December and June reports as applicable for special education enrollment by gender, primary disability, ethnicity, age, grade, discipline days, services, and percentage of time inside regular class.

Phase 2: Data & Root Cause Analysis

2.1. LEA Initiative Inventory - Last Edit 12/05/2018 02:33 pm

File Name

Download

LEA_Initiative_Inventory_1.pdf

Download

2.2. Programatic Self-Assessment - Last Edit 01/10/2019 04:25 pm

Tool 1	Tool 2	Tool 3	Tool 4	Tool 5	Other	Self Assessment Process
	Racial/Ethnic Disproportionality in Special Education/Data Analysis Workbook		Quality Standards for Inclusive Schools: Self Assessment Instrument	Addressing the Root Causes of Disparities in School Discipline: An Educator's Action Planning Guide		<p>A task force of leadership and diverse stakeholder groups was formed and was charged with developing an understanding of root causes and the conditions that resulted in the district's identification as significantly disproportionate. We examined the lack of achievement in the state standard, using reflective data analysis, in order to determine root causes and developing the Programmatic Improvement Action Plan.</p> <p>The Stakeholder Group was provided with series of self-assessment tools that included surveys (cultural proficiency, school climate and diversity, and Health Kids Survey), the California Department of Education Dash Board reporting, Fergus, E and Ahram, Racial/Ethnic Disproportionality in Special Education Data Analysis Workbook and Equity in Education Handbook, New York University (NYU), Supplemental Disproportionality Report (including compositions, recidivism, risk ratios, and trends by incident, disposition, grade, school, location, gender, age of entry in to special education and referral source disaggregated by race/ethnicity and disability) the discipline event study for the 2017-2018 school year and State CAASPP reporting. All of the data was reviewed</p>

by the Leadership Team and Stakeholder Group, through the guidance of our facilitator, for the purposes of in-depth discussion of how it translates to inequality practices and the majority of the students affected the most. In addition to the broad range of student-level data, the Stakeholder Group reviewed the LEA initiatives including Local Control and Accountability Plan (LCAP), Strategic Plan 2016-2020, the 2017-2020 Performance Indicator Review (PIR) data (for graduation rates, statewide assessments, and LRE general education participation), CDE Comprehensive Review exit summary, and the PBIS inventory assessment results, which encompasses a quarterly academic review as prescribed in the LCAP.

Members of the Leadership Team have attended Stakeholder Group meetings to jointly participate in reviewing the self-assessment data/results and ascertain root causes of disproportionality. Subgroups dialogue during the Stakeholder meetings to identify the contributors to trends/patterns. Then the Stakeholder Group collectively pinpointed those elements contributing to disproportionate effects.

The group identified trends by race/ethnicity, disability factors; and instructional settings. This information was summarized and analyzed during a follow up meeting to ascertain next steps and if any additional self-assessments needed to occur. Based on this reflective data analysis, the root causes and focus areas were validated by the team and an Improvement action plan was developed that included measurable outcomes, activities and programs to accomplish measurable outcomes including staff training and developments, we

identified staff that will be responsible, and timelines/methods for evaluating progress.

For monitoring and evaluation, there will be ongoing data collection and analysis on the action plans, the stakeholder and leadership groups will meet on a quarterly basis in order to continue or modify the actions set forth in the plan and to show fidelity. Stakeholders will be informed in a variety of settings. Principals will be updated at the district monthly meeting, as well as counselors. A series of LCAP Advisory group meetings are planned throughout the year and offer a forum for discussion on all of the aforementioned data sets. Special Education also holds monthly meetings that will allow stakeholders to be informed. Lastly, the district Strategic Planning team will also review and discuss the data to evaluate progress towards implementation. District holds a robust discussion within the scope of Strategic Planning and the LCAP to determine what is best serving the needs of our district and what needs to be adapted or changed moving forward. The discussion will expand to also consider the areas of disproportionality. Teachers union will play a big role in the distribution of teachers within the district and teachers with more seniority will be part of younger teacher mentoring.

Discipline Reports

Discipline Event Study identified patterns and explanations around disproportionate trends in discipline data. Discipline Referral Data were used as follows:

Percent of Total Enrollment by Race/Ethnicity

Comparison: Percent of Total Enrollment by Race/Ethnicity and Percent of Discipline Events

Comparison: Percent of Special Education Enrollment by Race/Ethnicity and Percent of Discipline Events
 Total Number and Percent of Discipline Events by Selected Race/Ethnicity
 Gender Composition
 Number of Discipline Events by School, Location, and Grade
 Number of Discipline Referrals per Day by Month
 Student Frequency of Discipline Events
 Incident Frequency of Discipline Events
 Consequences of Discipline Event

The Discipline Event Study calculations determined notable findings as outlined below.

Elevated compositions (discipline events) with African American students at 25.9% events with 18.1% enrollment: Hispanic at 63.2% events with 53.0% enrollment
 Elevated compositions (discipline events for SWDs) with Hispanic at 51.9% events with 43.4% enrollment
 Grade: the greatest number of discipline events occur in 9th and 10th grade
 Location: a large majority of discipline events occur in the classroom
 Incidents: the top discipline incidents are low level behaviors (i.e. defiance (2.25 %), truancy (8.4 %), and disruption (29 %), out of class without permission (21%))
 Consequences: top consequences are warning (18.8 %) Counseled (10.8 %) Saturday school (10.3 %), After School

Detention (12.2 %) and suspension (8.7 %)
 Recidivism (risk ratio): students most likely to have more than 11 events are: African American students

2.3. Reflective Data Analysis - Last Edit 01/10/2019 04:27 pm

Reflective Data Analysis

As VVUHSD has been identified significantly disproportionality across several previous school years, a series of self-assessment tools were reviewed by the Leadership Team and Stakeholder Group, through the guidance of two SPP-TAP Technical Assistants. In the 2017-18 school year, the programmatic self-assessment listed below was chosen to understand patterns and explanations around disproportionate trends in identification by race, disability, placement, and gender.

Equity in Education – Addressing Racial/Ethnic Disproportionality in Special Education/Data Analysis Workbook, New York University (NYU) by Dr. Edward Fergus and Roey Ahram (“NYU Data Analysis Workbook”)

The *NYU Data Analysis Workbook* was generated by the Collaborative Learning Solutions (CLS).

It was a consensus of the Leadership Team on October 31, 2018 and the Stakeholder Group at its November 5, 2019 meeting that the data from the *NYU Data Analysis Workbook* was current and this information was supplemented by additional self-assessment tools.

A thorough and reflective analysis of the reports generated using the *NYU Data Analysis Workbook*, from December 1, 2016 data, Table A, CA Special Education Management Information System (CASEMIS), was conducted by an earlier Stakeholder Group meeting on November 5, 2018. The Group reviewed three main data calculations: classification rate; composition index; and, relative risk ratio.

The NYU Data Workbook calculations determined notable findings as outlined below.

Elevated Classification Rates above the district wide classification rate of 11.5% by Race/Ethnicity:

American Indian at 19.5%

African American at 22.5%

Elevated Classification Rates by Race/Ethnicity and Disability

Hispanic at 8.8%

Intellectual Disability at 11.62%

Specific Learning Disability at 53.78%

Autism at 11.06%

American Indian at 19.5%

Intellectual Disability at 26.67%

Other Health Impairment at 26.67%

Specific Learning Disability at 40.00%

African American at 22.5%

Specific Learning Disability at 53.73%

White at 11.9%

Intellectual Disability at 15.08%
 Other Health Impairment at 14.29%
 Specific Learning Disability at 42.46%
 Autism at 15.87%

Elevated Risk Ratios: Special Education Identification

American Indian at 1.69
 African American at 2.49

Elevated Risk Ratios by Major Disability Areas and Ethnicity

Intellectual Disability: American Indian (3.78); Pacific Islander (1.51); African American (1.94);
 Emotional Disturbance: African American (5.44)
 Other Health Impairment: American Indian (3.99); African American (3.12)
 Specific Learning Disability: African American (2.68)
 Multiple Disabilities: African American (4.66)
 Autism: White (1.99)

Notable Differences in Composition Rates of Gender by Race/Ethnicity

American Indian Male at 0.50% for SPED; 0.31% for Total Enrollment
 American Indian Female at 0.44% for SPED; 0.25% for Total Enrollment
 African American Male at 23.39% for SPED; 9.19% for Total Enrollment
 African American Female at 12.79% for SPED; 9.34% for Total Enrollment
 White Male at 10.53% for SPED; 7.78% for Total Enrollment

Supplemental Reports

Supplemental Reports generated from 2015-16 enrollment data were used in addition to the *NYU Data Analysis Workbook* with findings for ages 14-16 as listed below. These reports were generated by Collaborative Learning Solutions.

Percentage by Ages of Entry by Major Disability Areas

Emotional Disturbance (ED) at 10.6%
 Other Health Impairment (OHI) at 6.0%
 Specific Learning Disability (SLD) at 5.9%

Percentage by Ages of Entry by Ethnicity

Latino at 4.6%
 American Indian at 0.0%
 African American at 4.7%
 White at 6.7%

Referral Source by Disability from Parent

Emotional Disturbance at 80.0%
 Other Health Impairment at 46.7%
 Specific Learning Disability at 39.2%

Referral Source by Disability from Within School System (teacher, SST, district)

Emotional Disturbance: 0.0%
 Other Health Impairment: 40.0%
 Specific Learning Disability: 49.0%

Referral Source by Ethnicity

By Parent: Latino at 24.6%; American Indian at 38.5%; African American at 30.0%; White at 33.9%

Combined Teacher, SST, District: Latino at 64.5%; American Indian at 61.5%; African American at 57.9%; White at 59.5%

Least Restrictive Environment Calculator

On October 17, 2017, the Stakeholder Group reviewed reports prepared by Collaborative Learning Solutions (CLS), "Least Restrictive Environment (LRE) Calculator (Indicators 5A-5C)" by race/ethnicity, disability, and placement. Elevated risk ratios were reviewed by the Stakeholder Group identified as follows:

Indicator 5B: Risk ratio of: 1.7 for Asian; 2.0 for Intellectual Disability; and, 1.5 for Autism served inside regular class less than 40% of the day

Indicator 5C: Risk ratio of 2.4 for African American; 1.6 for Intellectual Disability; and, 6.6 for Emotional Disturbance served in Separate Schools, Residential Facilities, and Homebound/Hospital

Based on the findings from the referenced LRE Calculator information above, the Stakeholder Group requested that the *Quality Standards for Inclusive Schools Self-Assessment Instrument* (2017 Stetson & Associates) be distributed to district and school-site administrators, special and general education teachers, related service providers, counselors, psychologists, and Stakeholder Group members including parents and community representatives. The Stetson Instrument was converted into SurveyMonkey application by CLS, with permission from the Vice President of Operations from Stetson & Associates, Inc. There were 119 responses.

The Stakeholder Group reviewed and discussed the Improvement Legend for Three Phases: Initiation (requiring Considerable Improvement); Implementation (requiring Moderate Improvement); and, Advanced Phase (continue to Maintain Improvement). Procedural Safeguards: 77% In Place; 23% Not in Place

Instructional Excellence for Diverse Learners: 91% In Place; 9% Not in Place

Collaborative Partnerships: 63% In Place; 37% Not in Place

Responsive Staffing and Scheduling: 82% In Place; 18% Not in Place

Strong Parent Partnerships: 73% In Place; 27% Not in Place

Accountability for Results: 83% In Place; 17% Not in Place

Leadership for the Common Good: 80% In Place; 20% Not in Place

It was agreed to address numerous items in the "Initiation Phase." Two items in the Category 1 – "Procedural Safeguards" category and all of category 2 – "Collaborative Partnerships" were chosen by the Stakeholder Group.

Stetson Survey results were integrated into an adapted version of *Assessment of School Practices to Inclusive Education* (2017 Stetson & Associates), with permission from Stetson & Associates, Inc. This instrument was completed by members of the LRE Planning Team on September 5-6, 2018 and presented to the Stakeholder Group on December 4, 2018. The completed document includes: goals; action steps; person responsible; resources needed; timeframe; and, evidence of successful completion. Also, members of the LRE Planning Team were reviewed and revised based on the results of the SurveyMonkey as well as a current available staff.

Performance Indicator Review

In addition, the 2016-17 PIR Improvement Process data for graduation rates, statewide assessments, and LRE general education participation were reviewed and analyzed by the Stakeholder Group. In addition to the broad range of student-level data, the Stakeholder Group reviewed the LEA initiatives including Local Control and Accountability Plan (LCAP), Strategic Plan 2016-2020, the 2016-17 Performance Indicator Review (PIR)

data (for graduation rates, statewide assessments, and LRE general education participation), CDE Comprehensive Review exit summary, and the PBIS inventory assessment results which encompasses a quarterly academic review as prescribed in the LCAP. (2017-2020)

Members of the Leadership Team attended the November 5, 2018 Stakeholder Group meeting to jointly participate in reviewing the self-assessment data/results and ascertain root causes of disproportionality. Subgroups dialogue during the Stakeholder meetings to identify the contributors to trends/patterns. Then the Stakeholder Group collectively pinpointed those elements contributing to disproportionate effects.

Annual Performance Report Measure

Historical Review of District Level Special Education Annual Performance Report (APR) Measures at Stakeholder Group Meetings

October 5, 2016: Review and analysis of the 2013-14 and 2014-15 APR Measures

October 17, 2017: Review and analysis of the 2014-15 and 2015-16 APR Measures

November 5, 2018: Review and analysis of the 2015-16, and 2016-17 APR Measures

Stakeholder Group members focussed on those Indicators that have not been met across several years, which included: Indicator 1, 3, 4B, 5A-C, 10, and 14.

Specific Indicators listed below were discussed further by the Stakeholder Group.

Indicator 1 – Graduation Four Year Rate:	50.38 (Target: 74.84%)
Indicator 3 – Statewide Assessments	
English Language Arts (ELA) Participation Rate:	94.30% (Target 95.00%)
Math Participation Rate:	94.30% (Target 95.00%)
ELA Level 3 or 4 Achievement Rate:	8.90% (Target 13.90%)
Math Level 3 or 4 Achievement Rate:	3.18% (Target 11.60%)
Indicator 4B – Suspension and Expulsion by Race and Ethnicity	
African American	1.98%
Hispanic	0.71%

Indicator 5 – Least Restrictive Environment

- A. Inside regular class 80% or more of the day 28.76% (Target > 50.2%)
- B. Inside regular class less than 40% of the day 53.32% (Target < 23.6%)
- C. In separate schools, residential facilities,
or homebound/hospital placements 4.26% (Target < 4.2%)

Indicator 14 – Eligibility Post-school

- A. Higher Education 55.0% (Target 55.3%)
- B. Higher Ed or Competitively Employed 65.0% (Target 75.4%)

Culture, Climate and SEL

The district working with Collaborative Learning Solution (CLS) to rendered services described below:

Culture/Climate and CEIS Consultation: work with district leadership to establish a district structure for culture/climate tiered system of support (behavioral health and wellness) and provide guidance on the development and implementation of the CEIS plan.

School Site Coaching (Technical Assistance): coaching sessions with each school site team throughout the year. Consultant will (1) work with the team at each of school sites to implement the framework. (2) work with teams to analyze the data reports (school climate indicators such as attendance, connectedness, participation, discipline, wellness), (3) develop school wide plans which identify strategies in response to school climate data, and (4) help with the administration of a tiered system fidelity tool in April/May of each year.

Data Services: access to SHAPE to disaggregate school site discipline data for all school sites. This is a screening tool for identifying student in need of intervention and identifying school wide trends and caseload management. Access to Direction Survey, a formative school climate survey solution.

Professional Development: Training in the area of behavioral health, wellness, social-emotional learning, restorative practices, other means of correction. Topics to be finalized by district leadership.

FCMAT

The district entered into agreement with Fiscal Crisis and Management Assistance team (FCMAT) to review the district special education program (placement, staffing, continuum of special education and related services, LRE etc.) and other non-special education program (SST procedures). Out of this review were recommendation that the district is working through such as revamping the SST process, monthly meeting between special education and HR. etc.

On December 4, 2018, a meeting with Assistant Superintendent and Director of Curriculum to discuss current District initiatives that would support sustaining efforts of the CCEIS Plan. In addition, the California School Dashboard Local Indicators Priority 1 was finalized. Appropriately Assigned Teachers, Access to Curriculum-Aligned Instructional Materials, and Safe, Clean and Functional School Facilities, Priority 2 - Implementation of State Academic Standards, Priority 3 - Parent Engagement, Priority 6 - School Climate. Currently priority 7 is being finalized

Thorough and thoughtful discussions with the Leadership Team and Stakeholder Group, with the assistance if two TA facilitators, resulted in the same conclusions about root causes as previous years, what is working, what is not working, and priority areas for improvement. Based on this reflective data analysis, the root causes and three focus areas were validated.

2.4. Root Causes - Last Edit 01/04/2019 03:06 pm

Root Cause	Supporting Data
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<p>Inconsistent identification, assessment and re-assessment of students</p>	<p>Inconsistent identification, assessment, and re-assessment of students with behavior problems, specifically, inappropriate behaviors cited as a reason for placement in special education particularly African American students; The Leadership Team and Stakeholder Group at separate meetings used the Collaborative Learning Solutions' tracking worksheet to identify those areas of race/ethnicity and disability to determine trends. The following high-risk areas were clearly identified by both groups independently. 1. African American Overall (male) 2. Disability/Ethnicity: a.Latino: Speech and Language Impairment; b.African American:Emotional Disturbance, Other Health Impairment; Speech and Language Impairment; and, c. White:Other Health Impairment,and Autism. 3. Disability: Emotional Disturbance; Other Health Impairment; Autism. 4. Least Restrictive: Environment: Emotional Disturbance - Separate Settings.</p>
<p>Lack of Cultural Responsiveness</p>	<p>Lack of culturally responsive and consistent progressive behavior intervention system to address discipline in order to promote proactive practices and/or administer appropriate consequences. Disability: Emotional Disturbance; Other Health Impairment; Autism, African American males and Hispanic/Latino</p>
<p>Lack of interventions, supports and implementation</p>	<p>Lack of culturally responsive and consistent progressive behavior intervention system to address discipline in order to promote proactive practices and/or administer appropriate consequences; Least Restrictive Environment: Emotional Disturbance - Separate Settings.</p>
<p>Implicit Bias</p>	<p>Implicit bias is a major factor in pre-referral, assessment, identification, and placement decisions for African American and multi-ethnic students. Embedded stereotypes whether conscious or unconscious that result in excessive referral, assessment, identification and/or placement of African American Students and Multi-ethnic students.</p>

Phase 3: Plan for Improvement

3.1 Areas of Focus - Last Edit 01/04/2019 03:15 pm

Root Cause	Areas of Focus	Connection between Root Cause and Area(s) of Focus
Inconsistent identification, assessment and re-assessment of students	Culturally Responsive PBIS Culturally Responsive School Environments Inclusive Practices	These four focus areas are closely connected to the identified root causes. Based on reflective discussion with the Leadership Team and Stakeholder Group, the root causes occurred in several categories to include: inconsistent identification and evaluation of special education students; inconsistent educational benefit in general education classes; lack of implementation of a consistent multi-tiered interventions; and solutions for academically and behaviorally struggling students; capacity of the district to provide continuum of services within the least restrictive environments for student's behavioral challenges and emotional disturbance; absence of responsive and clear positive behavior intervention systems; and racial disparities impact decision-making process (discipline referrals, special education assessments and eligibility.)

3.2 a Action Plan - Last Edit 01/10/2019 06:31 pm

Measureable Outcomes	Indicator(s)	Root Cause	Focus Area(s)	Target Population
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By June, 2019, in order to increase alignment and consistency with statewide targets for indicator 5, the average amount of time students receive special education services in least restrictive settings with typical peers will increase by 10% as measured by June and December 2019 CALPADS reports and disaggregated data from the SHAPE online system, through administration and analysis of the Quality Standards for Inclusive Schools Self-Assessment and through School Climate and SEL professional development activities organized by members of the CCEIS Leadership Team, Collaborative Learning Solutions staff, and site stakeholders.

Indicator_4b,
Indicator_Placement,
Indicator_10

Lack of interventions, supports and implementation

Culturally Responsive PBIS, Culturally Responsive School Environments, Inclusive Practices

•9th and 10th graders with specific higher rates of 4 or more office referrals for in class infractions
•9th and 10th grade students with lower grades (D's and F's)
•Students referred to School Attendance Review Boards (SARB)
•Students on behavior contracts

Activity

Staff Responsible

Timeline

Data Source/Methods for Evaluating Progress

<p>Contract with Collaborative Learning Solutions (CLS) to provide a series of "School Climate Transformation" and "Academic, Social, Emotional Learning (CASEL) professional development activities. (CEIS funds)</p>	<p>December 2019</p>	<p>Positive growth with engagement, connections, relations and safety with student, staff and the school community as measured through the Panorama survey of students and staff on SEL</p>	
<p>School Sites will evaluate and monitor the number of Special Education students placed in restrictive environments outside of the District to determine the necessity of those placements. General funds</p>	<p>Middle and High School Leadership Teams and Trainer of Trainers (Trained by Boys Town Consultants)</p>	<p>Ongoing</p>	<p>Special Education Department is collaborating with Middle and High School Leadership Teams in the reduction of the number of students placed outside of the District (Non Public Schools and County Programs) with regard to student's progress monitoring and implementation of programs that will support transitioning students back to district schools.</p>

Middle School Implementation of Boys Town Well Managed Schools, Training, Coaching and Monitoring to address cultural awareness in balancing the academic playing field for all students through consciousness decision-making regarding referrals, interventions strategies, behavior challenges and student needs.

**•Coordinator of Special Education
•School Leadership Teams
•Special Education Teachers
•District Staff designated by the Superintendent's Office.**

Fall 2019

Special Education Department is collaborating with Middle and High School Leadership Teams in the reduction of the number of students placed outside of the District (Non Public Schools and County Programs) with regard to student's progress monitoring and implementation of programs that will support transitioning students back to district schools.

Survey will be administered to students, staff and parents through Panorama Education Services that support student success through SEL. (LCAP and CEIS funds)

Special Education Director and Coordinator of English Language

Spring - Fall 2018-19

Through data analysis to where professional training if any is needed in order to continue to monitor student progress and overall well being.

Measureable Outcomes

Indicator(s)

Root Cause

Focus Area(s)

Target Population

By October, 2019, in order to increase alignment and consistency with statewide targets for indicator 4, the number of special education students suspended and removed from regular education settings will decrease by 5% (including removals from school and to interim placements) by implementing an applicable tiered response to problem behaviors, such as appropriate consequences and CEIS-funded interventions, as measured through engagement in decision making processes by Collaborative Learning Solutions, principals, and other site stakeholders.

Indicator_4b,
Indicator_9,
Indicator_10

Implicit Bias,
Inconsistent
identification,
assessment and
re-assessment
of students ,
Lack of Cultural
Responsiveness,
Lack of
interventions,
supports and
implementation

Inclusive
Practices

•9th and
10th
graders
with
specific
higher
rates of 4
or more
office
referrals
•Students
referred to
School
Attendance
Review
Boards
(SARB)
•Students
on
behavior
contracts

Activity	Staff Responsible	Timeline	Data Source/Methods for Evaluating Progress
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•Ongoing alignment of discipline practices with the revised District Discipline Matrix
•Cultural Awareness discussions during teacher/staff collaboration days
•Cultural Awareness seminar and Training on Microaggressions during the District Management Retreat two consecutive years (General Education funds)

•District Management
•District Management
•Educational Services Department

Ongoing

Evidence of District Management's review and updating their mission statement to align with the District Strategic Plan

Training for any staff member who has the capacity to make discipline referrals, and/ or decisions (including but not limited to administrators, office staff, teachers, direct support services providers, school security staff) on the use of the Discipline Progressive Matrix Administrators Guide for Proactive Intervention and Consistent Consequences Supported by Evidence-based Practices. (Special Education and General Education funds)

- CLS Staff
- Facilitator of Attendance and Discipline
- Dean of Alternative Education
- School Site

June 2019

CALPADS data showing 3% reduction in suspension and expulsion of all races/ethnicities represented proportionality by general and special education populations

Conduct monthly CWA meetings with discussion of discipline procedures/ process and review discipline data by school site. (LCAP funds)

Facilitator of Attendance and Discipline

Monthly

Agenda's, sign in sheets and Quarterly Reduction in discipline events by school sites

Measureable Outcomes

Indicator(s)

Root Cause

Focus Area(s)

Target Population

•The Student Success Team (SST) procedures will be consistently

Indicator_4b, Indicator_Placement

Lack of Cultural Responsiveness,

Culturally Responsive

9th and 10th

implemented with fidelity across all school sites resulting in the number of students referred for special education eligibility testing and/or services will decrease. •Focus Area: Access to, and Achieving in the Least Restrictive Environment •Focus Areas: Using a Multi-Tiered System of Supports SMART GOAL By May 2019, in order to increase alignment and consistency with statewide targets for Indicators 5 and 10, the number of students referred for special education assessment to determine eligibility for services will decrease by 3% by revising the SST procedures and related forms; ensuring SST form accessibility; implementing SST procedures with fidelity across all school sites; providing professional development on the SST procedures and forms to school-site administrators, counselors, general and special education teachers, and other pertinent stakeholders such as parents; documenting SST data, including post SST procedures; and by recording baseline data of the entry age of students receiving special education services and the number of those students who have gone through the SST process, as measured by CASEMIS and CALPADS data, as well as products and artifacts related to the established student success team (SST) procedures. •Lack of interventions, supports and implementation for students at Tier 1 and 2 levels that deliver universal design and culturally responsive instruction in the least restrictive environment •The Student Success Team (SST) procedures will be consistently implemented with fidelity across all school sites resulting in the number of students referred for special education eligibility testing

Lack of interventions, supports and implementation

PBIS, Culturally Responsive School Environments, Inclusive Practices

graders with specific higher rates of 4 or more office referrals

and/or services will decrease. •Focus Area: Access to, and Achieving in the Least Restrictive Environment

•Focus Areas: Using a Multi-Tiered System of Supports SMART GOAL

By May 2019, in order to increase alignment and consistency with statewide targets for Indicators 5 and 10, the number of students referred for special education assessment to determine eligibility for services will decrease by 3% by revising the SST procedures and related forms; ensuring SST form accessibility; implementing SST procedures with fidelity across all school sites; providing professional development on the SST procedures and forms to school-site administrators, counselors, general and special education teachers, and other pertinent stakeholders such as parents; documenting SST data, including post SST procedures; and by recording baseline data of the entry age of students receiving special education services and the number of those students who have gone through the SST process, as measured by CASEMIS and CALPADS data, as well as products and artifacts related to the established student success team (SST) procedures. •Lack of interventions, supports and implementation for students at Tier 1 and 2 levels that deliver universal design and culturally responsive instruction in the least restrictive environment By May 2019, in order to increase alignment and consistency with statewide targets for Indicators 5 and 10, the number of students referred for special education assessment to determine eligibility for services will decrease by 3% by revising the SST procedures and related forms; ensuring SST form accessibility; implementing SST

procedures with fidelity across all school sites; providing professional development on the SST procedures and forms to school-site administrators, counselors, general and special education teachers, and other pertinent stakeholders such as parents; documenting SST data, including post SST procedures; and by recording baseline data of the entry age of students receiving special education services and the number of those students who have gone through the SST process, as measured by CASEMIS and CALPADS data, as well as products and artifacts related to the established student success team (SST) procedures.

Activity	Staff Responsible	Timeline	Data Source/Methods for Evaluating Progress
<p>Revise the SST procedures and related forms to ensure accessibility, tracking and documentation; Counselors will keep a baseline database of the entry age of students receiving special education services and the number of those students going through the SST process</p>	<ul style="list-style-type: none"> •School Psychologists •School Counselors School Site Administrators 	<p>June 2019</p>	<ul style="list-style-type: none"> •The number of students referred for special education testing for eligibility and or services will decrease by 3% •Revised SST procedures and guidelines with accessibility, tracking, and documentation will be available on AERIES

•Provide professional development on the updated SST procedures and forms for school-site administrators, counselors, general and special education teachers, and other pertinent staff as well as parents as applicable •Post SST procedures and guidelines on the District website. (LCAP for all activities above)

•Director of Student Support Services
 •Coordinator of Special Education Services
 •Educational Services Administrators
 Technology Department

June 2019

•Documentation of SST Team participation in professional development (e.g., sign-in sheets, materials, participant evaluation surveys) will be available •SST procedures and related documents will be posted on the District website

Measureable Outcomes

Indicator(s)

Root Cause

Focus Area(s)

Target Population

By December 2018, in order to increase alignment and consistency with statewide targets for indicator 10, the number of students referred for special education eligibility testing and/or identified with ED due to behavioral/ discipline issues will be in alignment with proportionate risk ratios for special education identification as well as proportionate classification rate of disability and race/ethnicity through the following activities: (a) district participation in transition IEPs from feeder districts to address inclusive settings; (b) provide training on the ED eligibility process; (c) audit ED student files to determine level of intervention and prevention practices; (d) fidelity of Behavior Intervention Plans (BIP); and, (e) similarities and/or dissimilarities between eligibility and more restrictive placements as evidenced by review of: (i) baseline data; (ii) reduction in the number of students referred for special education eligibility testing and/or identified ED due to behavior/discipline issues; (iii) CASEMIS data findings; (iv) accountability system in place for feeder elementary school district ED students transitioning into VVUHSD; (v) number of feeder district ED students placed in NPS and other separate environments reduced from the previous year; and, (vi) findings from ED files audit and evidence of psychologists' input regarding those findings with identified strategies.

Indicator_10	Inconsistent identification, assessment and re-assessment of students	Culturally Responsive PBIS, Culturally Responsive School Environments, Inclusive Practices	•9th and 10th graders with specific higher rates of 4 or more office referrals. •Students referred to School Attendance Review Boards (SARB) •Students on behavior contracts.
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Activity	Staff Responsible	Timeline	Data Source/Methods for Evaluating Progress
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<p>•WUHSD will attend and participate in the Transition IEPs from the feeder districts to decrease placement of students matriculating out of the feeder district into Nonpublic School (NPS) •(NPS) placements and other restrictive, separate settings</p>	<p>SELPA Director or designee •Director and coordinator of Special Education •School Psychologists •Feeder Elementary School Special Education •Directors or designees</p>	<p>May - June 2019</p>	<p>•The number of feeder district ED students placed in NPS and other restrictive, separate settings will be reduced from the prior year •December 1 2019, CASEMIS Pupil Count •Web IEP (district online IEP platform) monitoring system</p>
<p>Audit of ED student files to determine lack of prevention practices for ED students needing social-emotional or counseling support, reasons for initial placements, fidelity of Behavior Intervention Plans (BIP), similarities and/or dissimilarities between eligibility and more restrictive placements •Share and discuss findings from the ED student file audit with psychologists. (LCAP and CCEIS funds for all activities above)</p>	<p>•Consultant with psychological educational expertise in social-emotional disturbance, Mental Health services and behavioral intervention •Special Education Administrators</p>	<p>May 2019</p>	<p>Findings from ED file audit and evidence of psychologists' input to those findings and identified strategies from the psychologists on how to address the higher number of African American students identified as ED</p>

•District wide implementation and integration of PBIS •Ongoing coaching and training provided to all schools LCAP funded

•PBIS Team Leader •Director of Special Education. •Site Administrators Psychologists OCI Teachers (OCI: On Campus Intervention and DM SELPA

Ongoing

•PBIS evaluative metrics and outcomes
• PBIS Tiered Fidelity (TIF) Inventory results •Discipline data - CALPADS and CWA records

Provision of PBIS materials and supplies to support implementation including character building; curricular materials for schools in early stages of training, and new staff training. (Combined CEIS and LCAP funds for all activities above)

PBIS Liaison staff

ongoing

Documentation of agendas, attendance sheets, training materials purchased, and completed workshop surveys by participants

3.2 b Budget Forms - Last Edit 12/19/2018 03:24 pm

File Name

Form 1.pdf

Form 2.pdf

Target Population.pdf

Phase 4: Implementing, Evaluating, & Sustaining Resource

4.1 Implement Action Plan - Last Edit 01/06/2019 05:52 pm

Staff Name	Email
Margaret Akinnusi	Makkinusi@VWUHSd.org
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Dr. Laureen Beyer	Lbeyer@VWUHSd.org
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4.2 Evaluate Effectiveness - Last Edit 01/06/2019 06:19 pm

Effectiveness Evaluation

Ongoing data collection and analysis of data will be shared with Leadership Group and Stakeholder Team For PBIS - School-Wide Information System (SWIS), PBIS Tiered Fidelity (TIF) Inventory results; CALPADS discipline data; will be reviewed and monitored. Monthly behavior data reports. data collection, analysis, progress reports on site tiered system of support implementation and ready access of quality. Access to SHAPE to disaggregate school site discipline data for all school sites. Trauma Informed Approaches, and Culturally Responsiveness Practices will be analyzed quarterly.

Survey results and Panorama Survey.

For LRE - Use of AERIES data and SELPA CASEMIS reports for Indicators 5a-5c; monitoring of IEPs for % of time served in regular classes shared with special education department chairs for discussions; FCMAT recommendations for improvement.

District Dash Board information will be shared with the principals and administrators, cabinet members and stakeholder group by the Assistant Superintendent of Educational Services

The Action Plan will be monitored by the Stakeholder Group and adapted based on data analysis from the areas listed above.

4.3 Build Supports & Sustainability - Last Edit 01/06/2019 06:50 pm

Supports and Sustainability

I have reviewed this CCEIS Plan and deem it complete.

Name

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For technical problems, please contact Susan Stewart at slstewart@napacoe.org. For content questions, please contact Sharon Falk at sfalk@napacoe.org.



California Department of Education (CDE) DataQuest total enrollment by ethnicity

Specific CASEMIS reports for Federal program location of services by Separate School (450), Residential Facility (460), and Home Hospital (470).

Data sources from California Longitudinal Pupil Achievement Data System (CALPADS) including discipline removals for students with disabilities by: out of school suspensions, in school suspensions, and expulsions.

The use of AERIES an online/portal database, monitors attendance, behavior, demographics, and medical information. Staff members have different levels of view and input capacities based on their job responsibilities.

Panorama Survey, specifically monitors students, teachers and parents social emotional well being and of school climate.

California Accountability Model and School Dashboard, Five-by-Five Tables, Reports, and Measures for all available grade levels and target groups: Chronic Absenteeism; Suspension Rate; Graduation Rate; College/Career; English Language Arts; Mathematics; and Participation Rates.

Number of students by disability and ethnicity/race with behavior intervention plans (BIPs) and the different types of implementation strategies to support their behaviors and learning. Use AERIES intervention tab to track intervention.

Number of students by ethnicity/race disaggregated by disability and and without disabilities who received counseling services (e.g., family therapy, school-based individual or group counseling). Use AERIES intervention tab to track intervention

Discipline Events/Incidents reports by school site by gender, number of overall discipline events, discipline events by grade, discipline events by location, discipline events by risk ratios for disability and racial/ethnic group. The VVUHSD has contracted with Shape and Panorama Education (SEL, playbook and survey) for ongoing data analysis using the discipline data from AERIES to allow each school site to monitor trends monthly and identify students in need of intervention.

Annual Performance Report Measures (2014-15 through 2016-17)

Report , “Victor Valley Union High School District - Special Education Review (July 1, 2018) conducted by the Fiscal Crisis & Management Assistance Team

2016-17 California Healthy Kids Survey Main Reports for Staff and Students

2017 Performance Indicator Review and results of “drill down data activities” and for Graduation Rates, Statewide Assessments and, Least Restrictive Environment.

2017 District Coordinated Early Intervening Plan (CEIS)

2017-2020 District Local Control and Accountability Plan

Positive Behavioral Interventions and Supports (PBIS) Tiered Fidelity Index (TFI) by school sites

Focus Group Discussions from the Stakeholder Team meetings.

VVUHSD is predicated on data-driven decisions. In order to sustain and facilitate implementation of the Programmatic Improvement Action Plan, we will conduct a thorough analysis of our data in order to continue or modify the actions set forth in the plan and to show fidelity.

Data sets will include: test results of all incoming grade 7 and 9 students to identify at promise learners (March yearly), suspension and expulsion data will be monitored monthly, school site D and F grade monitoring quarterly, and reading intervention program data will be monitored quarterly.

The Panorama education Inc. will be administered annually. This will serve to inform the district as to the school climates respectively and provide insight into student perceptions of safety and well-being. VVUHSD will monitor the implementation of PBIS at all sites and ensures that appropriate professional development is provided as well as ongoing development of the red system of support through MTSS.

Both district middle schools will offer a reading intervention block beginning in 2017-18 and this will provide a baseline of data to monitor growth.

Stakeholders will be informed in a variety of settings. Principals will be updated at the district monthly meeting as well as counselors. A series of LCAP Advisory group meetings are planned throughout the year and offer a forum for discussion on all of the afore mentioned data sets. Special Education also holds monthly meetings that will allow stakeholders to be informed. Lastly, the district Strategic Planning team will also review and discuss the data to evaluate progress towards implementation.

VVUHSD employs a robust discussion within the scope of Strategic Planning and the LCAP to determine what is best serving the needs of our district and what needs to be adapted or changed moving forward. The discussion will expand to also consider the areas of disproportionality.

VVUHSD will successfully implement and sustain a multi-tiered system of student supports with fidelity in every school and will continue to develop student relationships. coaching sessions with each school site team throughout the year. Accelerate and maximize student academic and social-emotional outcomes through the application of database problem solving utilized by effective leadership at all levels of the educational system.

Inform the development, implementation, and ongoing evaluation of an integrated, aligned, and sustainable system of service delivery that prepares all students for post-secondary education and/or successful employment within our global society. access to SHAPE to disaggregate school site discipline data for all school sites. This is a screening tool for identifying student in need of intervention and identifying school wide trends and caseload management. Access to Direction Survey, a formative school climate survey solution

4.4 SPP-TAP Feedback Survey - Last Edit 01/06/2019 05:55 pm

Staff Name	Title	Email	LEA/Agency
Margaret Akinnusi	Director, Student Support Services / Special Education	makinnusi@vuhsd.org	Victor Valley Union High School District
Francesca Copeland	Coordinator, Special Education	FCopeland@VVUHSD.org	Victor Valley Union High School District

Local Educational Agency Initiative Inventory: Linking Initiatives

Victor Valley Union High School District

Step 1: Enter your district's current initiatives into the table below.

Initiative, Funding Source, and Intended Outcomes	Purpose and Relationship to Strategic Plan or Organizational Priorities	Target Group	Leaders and Responsible Staff	Educational Area(s): Curriculum and Instruction, Behavior, Family and Community Engagement, Climate, Social-Emotional Learning, Other
Performance Indicator Review (PIR) & Comprehensive Review Funding Source: Special Education	Quality Assurance and focus monitoring of Special Education programs As part of the continuous improvement cycle.	Students with Disabilities- Performance Indicators: SPPI 1 SPPI 3 SPPI 5	<i>District Special Education Staff</i> <i>PIR District Stakeholders</i>	All Discipline Graduation IEP Process School Climate Family and Community Engagement
Parent Engagement as defined in the LCAP Funding Source- General Funds	Provide opportunities to create partnerships among families, schools, and the community. This plan enables parents to be aware of educational expectations and become a full participant in their child's academic success. In addition	Parent & Students/District	School Staff / Administration/District Level Management/Parent Advisors/ ELD Coordinator	All Family and Community Engagement School Climate Student Achievement
Surveys: LCAP priorities survey in the areas of Student Engagement, Parent Involvement, and School Climate	Three different surveys (Students, parents, and staff) provide useful data; promotes teacher parent and student engagement, achievement and	Students Parents School Staff	District and Site Level Administrators in collaboration with The number of students suspended and removed from regular education settings will be reduced	School Climate and Safety Student Well-being Academic Motivation

Local Educational Agency Initiative Inventory: Linking Initiatives

<p>Panorama Survey on School Climate: CCEIS funds</p>	<p>wellbeing; and fosters a forum to identify local needs based on results and engage stakeholders in addressing those needs using evidence based strategies.</p>		<p>from 10% to 5% (including removed from school or removed to an interim placement) Consultant LCAP And CEIS Plan Stakeholder Groups</p>	<p>School Development Supports and Connec by Race/Ethnicity Parent Involvement</p>
<p>Boys Town Training Well- Managed Schools</p> <p>Funding Source: CCEIS Funds / general Funds</p>	<p>Discover a method to identify skills to assist student(s) who are having Behavioral Problems Formulate a plan for incorporating the use of reinforcement to encourage Positive behavior in the classroom/ building Create a plan for incorporating the use of a continuum of correction for problem Behaviors in the classroom, building and Describe a plan for the addressing escalated in emotionally intense situations. Determine strategies to use in your classroom/building to create a positive Learning environment</p>	<p>All Students, All Teachers and Administration School Staff</p>	<p>Student Support Services Middle School Staff School Staff/ Administration/ District Stakeholders and Boys Town Consultants</p>	<p>All students, and staff Discipline / Behavior School Climate Equity & Student Achievement</p>

Local Educational Agency Initiative Inventory: Linking Initiatives

	<p>where students can reach their full potential. Develop strategies to effectively prevent problem behavior with fidelity.</p>			
<p>Revision of LEA's Discipline Matrix and SST procedures Funding Source: General Funds</p>	<p>Establish district wide uniformity in policies and procedures, to increase student achievement and support student learning in a supportive environment.</p>	<p>Students Staff</p>	<p>Student Support Services School psychologist and Counselors</p>	<p>For all students Curriculum, SEL, Reviewing seat time for student struggling, and student engagement</p>
<p>Professional development and Instructional strategies:</p> <ul style="list-style-type: none"> • 18-19 Math & English 'Lesson Studies • NGSS Curriculum Planning • Common Formative Assessments 2.0 • Cengage MindTap • Kegan strategies • Quality Teaching of English Learners (QTEL) <p>Funding Source: General Funds</p>	<p>To ensure that all students learn in a supportive environment with highly qualified teachers, who are provided opportunities for meaningful professional learning, and who participate in a collaborative culture of continuous improvement for student achievement</p>	<p>Teaching Staff Students</p>	<p>Educational Service department All Teachers (General and Special Education)</p>	<p>Curriculum and Instruction</p>

Local Educational Agency Initiative Inventory: Linking Initiatives

<p>Early Warning Intervention System General Funds</p>	<p>The tool calculates research based early warning indicators that are predictive of whether student's graduate or drop out of high school. The early warning indicators include course failures, grade point average (GPA), credit accumulation, and behavioral incidents.</p>	<p>Student</p>	<p>Educational Services Assistant Superintendent and Director of Curriculum.</p>	<p>Equity & Student Achievement Discipline / Behavior</p>
<p>Positive Behavior Intervention Supports (PBIS) as defined in the LCAP & facilitated through the Desert Mountain Special Education Local Plan Area (SELPA) Funding Sources: General Funds and CCEIS FUNDS</p>	<p>Provides school wide systems of support that include proactive strategies for defining, teaching, and supporting appropriate student behavior to create positive school environments.</p>	<p>Student and School Community as listed in LCAP</p>	<p>Site PBIS Teams Desert Mountain SELPA District and Site Level Administrators Parent Liaisons</p>	<p>Behavior Climate Early Intervention Plan Student Achievement</p>
<p>Attention 2 Attendance Software Funding Source: General Funds</p>	<p>Data collected will assist in facilitating; 1- Mail letters to parents partly regarding attendance issues concerning students 2-Monitoring conferences held at site Administrators allowing A2A to send out letters. 3-Determining who is in need of a meeting or</p>	<p>Students at risk of habitual truancy, and failing due to lack of school attendance</p>	<p>District wide administration, monitored at school levels by administrators in charge of attendance.</p>	<p>Student Attendance, Equity & Student Achievement Discipline / Behavior</p>

Local Educational Agency Initiative Inventory: Linking Initiatives

	<p>SARB referral 4-Provide district wide based absentee. Analysis reports for informed decisions regarding attendance that may lead to interventions and home visits. 5-The program is tied to the district's Aeries system.</p>			
<p>Ongoing revision of the District Strategic Plan 2016-2020 As defined in the Local Control and Accountability Plan (LCAP) Funding Source: General Education</p>	<p>The Strategic Plan sets the foundations for the districts policies and actions through 2020. Ensure equitable access and opportunity for all students to achieve by utilizing high quality instruction/early Intervention/prevention and behavior strategies.</p>	<p>District Stakeholders Students Community Members</p>	<p>District Stakeholders All District Staff Students Community Members</p>	<p>Student Achievement and engagement. Curriculum and Instruction. Family and Community Engagement, Equity fi all and school climate</p>
<p>Fiscal Crisis and Management Assistance Team (FCMAT) Funding Source, General and Special education funds</p>	<p>To review the district's special education program Review the district's implementation of student success teams, Response to Intervention, and Multi-Tiered System of Supports, and make recommendations for improvement</p>	<p>Special Education Department, Human Resources, Business Services Department and Educational Services Department</p>	<p>Assistant Supt of Ed Services Department Assistant Supt of HR, Director of Curriculum and LCAP, Director of Special education and Coordinator of Special Education.</p>	<p>Provide insight on sch climate, equity, and achievement for all students and service w fidelity</p>

Local Educational Agency Initiative Inventory: Linking Initiatives

<p>Culture/Climate and CCEIS Consultation, School Site Coaching, professional Development and Data Services: Funding Source: CCEIS funds</p>	<p>Work with district leadership to establish a district structure for culture/climate tiered system of support (behavioral health and wellness) and provide guidance on the development and implementation of the CEIS plan. Coaching sessions with each school site team throughout the year</p>	<p>All students and staff members. PBIS team members</p>	<p>Director of Special Education in collaboration with Collaborative Learning Solution (CLS)</p>	<p>Climate, Social-Emotional Learning, & Equity.</p>
<p>Differentiated Assistance with San Bernardino County Superintendent of Schools</p>	<p>Build capacity to strengthen systems to support improved organizational learning and improve student outcomes. Promote a climate of candor, evidence and urgency toward positive action. Shift from compliance to capacity-building.</p>	<p>All students, staff members and parents.</p>	<p>San Bernardino County Superintendent of Schools educational leaders and Victor Valley Union High School District management team.</p>	<p>All student, Equity, School Climate and Culture, compliance. Family and Community Engagement</p>

Local Educational Agency Initiative Inventory: Linking Initiatives

- **Name the common areas:** The common areas among all the initiatives listed above deals with addressing in student achievement, equity, school climate and culture,
- **Identify processes for collaboration and integration of initiatives, including timelines**
All the initiatives are district wide that includes staff, students' parents and community members. Timelines are built in to each of the individual initiatives.
- **Describe any groups of students that do not appear**
All students are addressed in addition to all of the targeted students from our CCEIS plan in.
- **Identify areas that are more weighted than others**
Quality Assurance, equity, school climate, SEL and parent engagement,

Special Education State Indicators	DINC	PIR	DISPRO	SIG DIS	COMP REVIEW	LCAP Priority #	DASH-BOARD
<i>Indicator 1 - Graduation 4-Year Rate</i>		✓			✓	5	✓
<i>Indicator 2 - Dropout 4-Year Rate (<11.72%)</i>		✓			✓	5	
<i>Indicator 3 - Statewide Assessment</i>							
% Participated (ELA >95%, Math >95%)		✓			✓	7, 8	
ELA Proficiency		✓			✓	4	✓
Math Proficiency		✓			✓	4	✓
<i>Indicator 4 - Suspension/Expulsion</i>							
A. Overall (<2.76%)		✓			✓	6	✓
B. Race/Ethnic			✓	✓	✓	6	✓
<i>Indicator 5 - LRE</i>							
A. Inside of regular class 80% or more of day (>51.2%)		✓	✓	✓	✓	1, 7	✓
B. Inside of regular class less than 40% of day (<22.6%)		✓	✓	✓	✓	1, 7	✓
C. Separate Facility (<4.0%)		✓	✓	✓	✓	1, 2, 7	✓
<i>Indicator 6 - Preschool LRE</i>		✓					
A. Regular Program (>43.8%)		✓			✓	7	
B. Separate (<32.4%)		✓			✓	7	
<i>Indicator 7 - Preschool Assessments</i>						7	
<i>Indicator 8 - Parent Involvement (>92.0%)</i>		✓			✓	3	✓
<i>Indicator 9 - Racial/Ethnic Disproportionality</i>			✓	✓	✓	1, 2, 4, 7	✓
<i>Indicator 10 - Disability Disproportionality (varies by disability)</i>			✓	✓	✓	1, 2, 4, 7	
<i>Indicator 11 - Eligibility Evaluation (100%)</i>	✓				✓		
<i>Indicator 12 - Part C to B Transition (100%) SELPA calculation</i>	✓				✓		
<i>Indicator 13 - Secondary Transition Goals/Services (100%)</i>	✓				✓		
<i>Indicator 14 - Post School</i>							
A. Higher Education (>56.3%)		✓			✓	4	✓
B. Higher Education or Competitively Employed (>76.4%)		✓			✓	4	✓
C. Any Post-Secondary Education or Employed (>85.0%)		✓			✓		✓
<i>Indicator 15 - Resolution Session</i>					✓		
<i>Indicator 16 - Mediation</i>					✓		
<i>Indicator 17 - State Systemic Improvement Plan</i>							
Timely Corrections					✓		
Timely and Complete Reporting					✓		
Audit Findings					✓		
English Learners - CASEMIS						2	✓
FOSTER - CALPADS						10	✓
POVERTY - CALPADS						8	✓

KEY	LCAP Priorities	Dashboard Indicators
DINC: Data Identified Non-Compliance	Priority 1: Basic Services	High School Graduation Rate
PIR: Performance Indicator Report	Priority 2: Implementation of CCSS	Academic Performance
DISPRO: Disproportionate Representation	Priority 3: Parental Involvement	Suspension Rate
SIG DIS: Significant Disproportionality	Priority 4: Student Achievement	English Learner Progress
COMP REVIEW: Comprehensive Review	Priority 5: Student Engagement	Preparation for College/Career
LCAP Priority #: Local Control Accountability Plan Priority Number	Priority 6: School Climate	Chronic Absenteeism
DASHBOARD: Dashboard State and Local Indicators	Priority 7: Course Access	Basic Conditions
	Priority 8: Other Student Outcomes	Parental Involvement/Engagement
	Priority 9: Expelled Pupils (COE)	School Climate Surveys
	Priority 10: Foster Youth	Implementation of Academic Standards

STRATEGIC PLAN FOR WEB ACCESSIBILITY

1.0 ORGANIZATIONAL STATEMENT

The California Association of Health and Education Linked Professions, a Joint Powers Authority (CAHELP JPA), values diverse experiences and perspectives and strives to fully include everyone who engages with the organization. Therefore, CAHELP is committed to ensuring that individuals with disabilities have an opportunity equal to that of nondisabled peers accessing CAHELP programs, benefits, and services, including those delivered through information technology (IT). The CAHELP Strategic Plan for Web Accessibility, hereinafter referred to as “SPWA” establishes a foundation for equality of opportunity and provides guidance to ensure equal access to IT the CAHELP purchases, creates, and uses, such as websites, software, hardware, and media in accordance with applicable state and federal laws including, but not limited to, Sections 504 and 508 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act as amended (ADA).

The SPWA shall apply to all new, updated, and existing online web content and functionality. All CAHELP web content shall meet WCAG 2.0 Level AA conformance and shall be updated according to changes in WCAG standards, as best practice, and in accordance to federal and state law. WCAG 2.1 was published on June 5, 2018 by the Worldwide Web Consortium (W3C) and establishes 17 new success criteria that have been included in this policy. By conforming to WCAG 2.1, CAHELP also conforms to WCAG 2.0.

2.0 DEFINITIONS

Accessible: Refers to the concept that individuals with disabilities are able to access and use a product or system, including with the help of assistive technologies. For example, an “accessible” web site may be designed so that the text can be enlarged by the user, rather than having a fixed font size, or may be designed so that it can be interpreted and “read out loud” by screen reader software used by blind or low-vision individuals.

Accessible Information Technology: Information technology that has been designed, developed, or procured to be usable by, and therefore accessible to individuals with disabilities, including those who use assistive technologies.

Assistive Technologies: Adaptive, rehabilitative devices that promote greater independence for individuals with disabilities by changing how these individuals interact with technology. Examples include special input devices (e.g., head or foot mouse, speech recognition), screen reading software, and screen magnifiers.

Usability: Refers to how easily, effectively, and efficiently users can use a product or system to achieve their goals, and how satisfied they are with the experience.

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3.0 REGULATORY REQUIREMENTS (SECTIONS 504/508; TITLE II ADA, CALIFORNIA UNRUH CIVIL RIGHTS ACT)

Accessibility awareness is an important aspect of the CAHELP's underlying legal obligation to ensure that individuals with disabilities have equal access to programs, services, and information within the same timeframe as nondisabled peers. No individual shall be excluded from participation in, deny the benefits of, or otherwise be subjected to discrimination from any of the CAHELP programs, services, and activities, including those delivered through information technology. The regulatory requirements in Sections 504 and 508 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act (ADA), as amended in 1990, provide the basis for equal access and governs the overall responsibility of CAHELP **content developers and approvers**, webmasters, procurement officials, and all others responsible for content management, to ensure that online content and functionality are equally accessible to all.

Section 504 and Title II of the ADA are implicit and require public agencies to make web pages accessible. **The ADA prohibits discrimination against individuals with disabilities by any state or local government and any of its department, agencies, or other instrumentalities. Section 504 prevents intentional or unintentional discrimination based on an individual's disability and applies to employers and organizations that receive federal financial assistance. Section 508 is limited to federal agencies but is extremely influential because its compliance standards require federal agencies to provide software and website accessibility to individuals with disabilities. The California Unruh Civil Rights Act (UCRA) is a California statute providing that all persons within the jurisdiction of this state are free and equal, and no matter what their disability are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. The UCRA specifies that "[a] violation of the right of any individual under the Americans with Disabilities Act of 1990...shall also constitute a violation of this section."**

Title II Americans with Disabilities Act (ADA). "...Protect qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It additionally extends the prohibition of discrimination on the basis of disability established by section 504 of the Rehabilitation Act of 1973, as amended, to all activities of State and local governments, including those that do not receive Federal financial assistance. By law, the Department of Justice's Title II regulation adopts the general prohibitions of discrimination established under section 504 and incorporates specific prohibitions of discrimination from the ADA.

Section 504, Title 29 of the United States Code § 794. "No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

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Section 508, Title 29 of the United States Code § 1194.1. “...Section 508 also requires that individuals with disabilities, who are members of the public seeking information or services from a Federal agency, have access to and use of information and data that is comparable to that provided to the public who are not individuals with disabilities, unless an undue burden would be imposed on the agency.”

California Unruh Civil Rights Act (UCRA), Cal Civ. Code § 51. (a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever... ”

Refer to Appendix D for **WCAG 2** Checklist produced by Web Accessibility in Mind (WebAIM).

3.1 Legal Guidance:

- Department of Justice (DOJ) Guidance (June 2003)
- ADA/504 “generally require” equal access unless fundamental alteration or undue burden
- OCR Dear Colleague Letter (June 2010)
Colleges and universities must make book readers and other educational technologies equally accessible
- OCR FAQs (May 11)
- Follow-up from June 2010 Dear Colleague letter – legal requirements articulated in letter apply to elementary and secondary schools
- DOJ Notice of Proposed Rulemaking (May 2016)
- Proposed rulemaking for state and local governments with regard to web accessibility

NOTE: Effective January 18, 2017, the U.S. Access Board published a final rule updating accessibility requirements for information and communication technology (ICT) covered by Section 508 of the Rehabilitation Act of 1973. Major changes in the revised Section 508 Standards include the incorporation of the web standards in WCAG 2.0 developed by the W3C and clarifies applicability to websites, electronic documents, and software. The final rule also requires all public-facing official agency business content, as well as specific categories of non-public-facing content that is official agency business, to be accessible, and that software and operating systems must interoperate with assistive technology.

4.0 COMPLIANCE/RESPONSIBILITIES

Under this strategic plan, CAHELP personnel shall:

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- Adhere to the CAHELP strategic plan for web accessibility;
- Develop, purchase and/or acquire, to the extent feasible, hardware and software products that are accessible to individuals with disabilities; and
- Promote awareness of this strategic plan to all members of the CAHELP community, particularly those in roles that are responsible for creating, selecting, or maintaining electronic content and applications.

4.1 Implementation of the Policy

CAHELP management in collaboration with the **CAHELP** JPA Virtual Compliance Supervisor is responsible for facilitating and ensuring implementation of this strategic plan for web accessibility with fidelity.

The CAHELP JPA Virtual Compliance Supervisor **in collaboration with the designated Accessibility Compliance Team (ACT)** is responsible for issuing and updating any requirements, standards or guidelines that support this strategic plan and shall facilitate regular communication among organizational departments to address consistent implementation of this strategic plan throughout CAHELP.

4.2 Revisions to the Strategic Plan

The **Chief Executive Officer (CEO) of CAHELP** is the approver of the strategic plan for web accessibility and has the authority to approve revisions upon recommendation by the CAHELP JPA Virtual Compliance Supervisor and **ACT**.

The CAHELP JPA Virtual Compliance Supervisor in collaboration with the **ACT** has the authority to initiate revisions to the strategic plan and is responsible for regular reviews and updates.

All revisions substantive in nature to the strategic plan will be presented for approval to the CEO and subsequently presented to the CAHELP Governance Council for review and **approval**.

4.3 Oversight and Responsibilities

The **CAHELP** JPA Virtual Compliance Supervisor is responsible for online web accessibility and functionality and is a member of the **ACT**. **He/she** is responsible for establishing systems of audit, accountability, corrective action of accessibility of all online content and functionality on an ongoing basis. **He/she** and **the ACT** shall work towards ensuring equal access and opportunity to organizational programs and services for all individuals, including those delivered online. The **ACT** shall be comprised of the following:

- Chief Operations Officer, CAHELP
- JPA Virtual Compliance Supervisor, CAHELP
- Representative from IT Department, as needed
- Representative from Web Programmer/Host, as needed

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- Representative from Desert/Mountain Children’s Center
- Representative from Desert/Mountain Special Education Local Plan Area
- JPA Virtual Compliance Program Technician, CAHELP

Membership of the ACT shall be at the discretion and determination of the CEO, CAHELP.

4.3.1 Responsibilities of Accessibility Compliance Team (ACT)

The ACT responsibilities shall include, but not be limited to, all of the following:

- ❖ Report accessibility issues and recommended solutions;
- ❖ Review and recommend changes and/or modifications to the strategic plan for web accessibility;
- ❖ Evaluate effectiveness of accessibility training(s) and provide recommendations for modifications to improve training and to ensure organizational compliance;
- ❖ Participate in audit of website, web developer meetings (contract renewal, web redesign, etc.); evaluate needs of compliance team; and
- ❖ Attend regularly scheduled team meetings, appropriate accessibility workshops, trainings, etc.

4.3.2 Responsibilities of the CAHELP JPA Virtual Compliance Supervisor

The CAHELP JPA Virtual Compliance Supervisor shall work in collaboration with the ACT in support of the organization’s accessibility requirements and shall:

- ❖ Create workflow and approval process for online content;
- ❖ Develop, coordinate, implement, and facilitate one-to-one and/or annual training regarding online content accessibility and functionality for content developers and approvers, and other staff as needed;
- ❖ Develop, review, revise, and implement strategic plan for web accessibility;
- ❖ Provide recommendations for implementation, or modification to establish compliance;
- ❖ Contract for services (i.e., auditor, web developer, training, etc.);
- ❖ Develop long range plan for addressing problems, taking into account identified priorities, with all proposed remedies to be completed within a reasonable timeframe;
- ❖ Set up systems of accountability and verify claims of accessibility by vendors, open sources;

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- ❖ Set up a system of testing and accountability to maintain the accessibility of all online content and functionality on an ongoing basis;
- ❖ Maintain appropriate records;
- ❖ Develop, implement, and manage CAHELP strategic plan for web accessibility;
- ❖ Develop long range content management and accessibility plans and priorities for CAHELP in conjunction with accessibility requirements under federal and state law, and best practices;
- ❖ Analyze, plan, and coordinate the needs for training and educational development in designing and creating accessible materials;
- ❖ Develop, implement, and maintain a process for public input and reporting on inaccessible virtual content;
- ❖ Investigate, research, analyze, and respond to inquiries and complaints of accessibility-related issues regarding the functionality of the website and virtual content;
- ❖ Perform regular accessibility audit of CAHELP website, applications, and external platforms hosting CAHELP content;
- ❖ Perform accessibility evaluations for website and applications under consideration for purchase and/or use;
- ❖ Manage, monitor, and evaluate budget and expenditure-related activities;
- ❖ Supervise, evaluate, and train personnel assigned to the JPA Virtual Compliance team; and
- ❖ Attend regularly scheduled team meetings, appropriate accessibility workshops, trainings, etc.

4.3.3 Responsibilities of CAHELP JPA Virtual Compliance Technician

The CAHELP JPA Virtual Compliance Technician performs specialized technical work in assisting, training, and advising CAHELP employees regarding virtual regulations, compliance, policies, and procedures. The CAHELP JPA Virtual Compliance Technician:

- ❖ Advises on virtual compliance issues, regulations and procedures;
- ❖ Resolves complex virtual compliance issues;
- ❖ Reviews and makes recommendations for the procurement of software programs to ensure virtual accessibility;
- ❖ Performs monthly audits of virtual compliance;
- ❖ Attends and conducts accessibility and compliance training workshops;

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- ❖ Prepares and disseminates virtual compliance reports, materials, forms, correspondence, and other written information; and
- ❖ Interprets and applies laws, regulations and procedures affecting virtual compliance.

4.3.4 Responsibilities of Designated Content Developers and Approvers, Webmaster, and Procurement Officials

The **CAHELP JPA** Virtual Compliance Supervisor in collaboration with the **ACT** shall provide and/or procure appropriate training necessary to ensure that individuals as defined below are knowledgeable and appropriately trained to create and/or develop accessible online content, maintain functionality, and procure appropriate IT software, hardware, and media.

- ❖ **CAHELP JPA Virtual Compliance Technician:** Primary support technician to the Virtual Compliance team responsible for assisting in resolving compliance issues, auditing of website and functionality, and providing accessibility support services and training to CAHELP staff;
- ❖ **Content Developers:** Individuals responsible for uploading, modifying, maintaining, and updating content on web pages;
- ❖ **Content Approvers:** Individuals responsible for review of online content and ensuring content meets principles of accessibility and WCAG guidelines;
- ❖ **Procurement Officials:** Individuals responsible for the research and procurement of IT equipment; and
- ❖ **Webmaster:** Individual(s) responsible for the overall accountability and compliance of online content and functionality.

An accessibility checklist (Appendix B) based on WCAG 2.0 Level AA is available to assist content developers and approvers, web designers, and purchasing agents in creating and procuring accessible IT. This checklist can also be used by procurement officials as a reference for vendors and contractors providing products and services to CAHELP. Many of the items in the checklist apply to web pages and web-based applications as well as electronic documents in Microsoft Word, Adobe PDF, and other formats, and other products and services that are not specifically web-based.

Refer to Appendix B for a checklist for implementing HTML-related principles and techniques for seeking WCAG 2.0 conformance produced by Web Accessibility in Mind (WebAIM).

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4.3.5 Workflow for Creating/Publishing Online Content

To ensure efficiency, accountability, and implementation, designated content developers and approvers shall upload content to the CAHELP website and/or web pages in the following manner:

4.3.5.1 Content Developers shall:

- Receive and review proposed online content;
- Log in to CAHELP website;
- Enable “design mode” feature to edit or add content to a page;
- Create and/or develop content per accessibility checklist (i.e., headings, subheadings, text, images, video, etc.);
- Save content (Note: Web system will automatically forward an e-mail notification to the content auditor to review saved content);
- Review returned content and complete revisions as needed; and
- Publish and maintain approved online content.

4.3.5.2 Content Approvers shall:

- Log in to CAHELP website;
- Receive and review all e-mail notifications of pending online content for review;
- Review proposed online content;
- Approve or reject propose online content based on accessibility checklist and accessibility standards; and
- Return content to content developer for modifications.

Content developers and approvers are responsible for ensuring accurate and up-to-date information are published on the website.

Questions regarding content development and management, and accessibility requirements shall be submitted to accessibility@cahelp.org. Staff may also complete and submit a helpdesk ticket to the IT support desk. Requests for assistance shall be completed without unreasonable delay.

5.0 ACCESSIBILITY STANDARDS

The following is a set of accessibility standards provided by the W3C Web Accessibility Initiative (WAI) that are commonly recognized by governments and organizations:

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- *Web Content Accessibility Guidelines (WCAG) 2.0* (applicable to all web content and applications, including on mobile, television, and other delivery channels);
- *Authoring Tool Accessibility Guidelines (ATAG) 2.0* (applicable for websites that provide users the opportunity to generate content, such as adding comments, posting to forums, or uploading image or videos; also relevant if an organization provides tools, such as content management systems (CMS), for staff or customers to manage websites and content); and
- *User Agent Accessibility Guidelines (UAAG) 2.0* (applicable when additional plug-ins, such as media players, are provided to deliver content or when custom controls are developed to provide nonstandard functionality. UAAG may also be relevant where mobile applications deliver web content as part of the application, and to the procurement process if your organization provides browsers for staff).

Given the CAHELP's commitment to providing accessible opportunities and environments, it looks to the W3C WCAG 2.0 Level AA and Web Accessibility Initiative Accessible Rich Internet Applications (WAI-ARIA) 1.0 as a target for meeting these commitments. The WCAG 2.0 includes success criterion (WCAG guidelines) organized under four general principles, which provide the foundation of web accessibility. **The latest version, WCAG 2.1, extends WCAG 2.0 by adding 17 new success criteria. The W3C recommends that sites adopt WCAG 2.1 as the new conformance target to provide improved accessibility and to anticipate future policy changes.** The following four principles have been adopted by CAHELP.

5.1 Principles of Accessibility (P.O.U.R.)

- **Perceivable:** Information and user interface components must be presented to users in ways they can perceive;
- **Operable:** User interface components and navigation must be operable;
- **Understandable:** Information and the operation of user interface must be understandable; and
- **Robust:** Content must be robust enough that it can be interpreted reliably by a wide variety of user agents, including assistive technologies.

CAHELP online content shall be Perceivable, Operable, Understandable, and Robust. Content developers and approvers, webmasters, procurement officials, and all others responsible for developing, loading, maintaining, or auditing web content and functionality shall implement the accessibility standards to ensure compliance with the CAHELP's underlying legal obligation to ensure individuals with disabilities are not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any of the CAHELP's programs, services, and activities delivered online.

5.2 WCAG Guidelines

Under the four principles of accessibility there are 12 WCAG guidelines that provide the framework and overall objectives to help content developers and approvers, webmasters, procurement officials, and all others responsible for

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developing, loading, maintaining, or auditing web content and functionality, understand the success criteria and better implement the techniques to meet accessibility standards. In its adoption of the four principles of accessibility, the CAHELP ensures that online content and functionality shall be developed in accordance to the 12 WCAG guidelines in each principle of accessibility.

5.2.1 Perceivable

- ❖ *Guideline 1.1. Text Alternatives:* Provide text alternatives for any non-text content so that it can be changed into other forms people need, such as large print, braille, speech, symbols or simpler language;
- ❖ *Guideline 1.2. Time-based Media:* Provide alternatives for time-based media;
- ❖ *Guideline 1.3 – Adaptable:* Create content that can be presented in different ways (i.e., simpler layout) without losing information or structure; and
- ❖ *Guideline 1.4 – Distinguishable:* Make it easier for users to see and hear content including separating foreground from background.

5.2.2 Operable

- ❖ *Guideline 2.1 – Keyboard Accessible:* Make all functionality available from a keyboard;
- ❖ *Guideline 2.2 – Enough Time:* Provide users with enough time to read and use content;
- ❖ *Guideline 2.3 – Seizures and Physical Reactions:* Do not design content in a way that is known to cause seizures or physical reactions;
- ❖ *Guideline 2.4 – Navigable:* Provide ways to help users navigate, find content, and determine where they are; and
- ❖ *Input Modalities:* Make it easier for users to operate functionality through various inputs beyond keyboard.

5.2.3 Understandable

- ❖ *Guideline 3.1 – Readable:* Make text content readable and understandable;
- ❖ *Guideline 3.2 – Predictable:* Make web pages appear and operate in predictable ways; and
- ❖ *Guideline 3.3 – Input Assistance:* Help users avoid and correct mistakes.

5.2.4 Robust

- ❖ *Guideline 4.1 – Compatible:* Maximize compatibility with current and future user agents, including assistive technologies.

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5.3 Levels of Conformance (Priority Levels)

W3C WAI guidelines provide three levels of conformance: Levels A, AA, and AAA:

1. *Level A*: Establishes a baseline level of conformance, and covers a basic set of core accessibility issues (such as alternate text on images and captions and videos);
2. *Level AA*: Includes additional success criteria such as providing a visible focus indicator for keyboard users, and ensuring sufficient color contrast; or
3. *Level AAA*: The highest level of conformance. Conforming to WCAG 2.0 at Level AAA would mean all success criteria have been met.

Level AA is the designated benchmark for measuring accessibility of CAHELP online content and functionality. Conformance to Level AA requires that CAHELP meet all Levels A and AA success criterion. Levels of conformance are based on impact on individuals with disabilities, feasibility, and other factors. Each of the success criteria under each principle of accessibility is identified with a conformance level. CAHELP shall ensure that **all public-facing official agency business content, as well as specific categories of non-public-facing content that is official agency business**, conform to all Level AA success criterion.

Example of conformance Level AA required:

Principle: UNDERSTANDABLE	
Guideline 3.2 - Predictable: Make web pages appear and operate in predictable ways.	
Success Criteria	Recommendation
3.2.3 <i>Consistent Navigation</i>	<i>Navigation links that are repeated on web pages do not change order when navigating through the site.</i>
Level AA	

With the new added success criteria under WCAG 2.1, the following lists requirements for conformance to WCAG 2.1, as well as information about how to make conformance claims, which are optional. This information also describes what it means to be accessibility supported, since only accessibility-supported ways of using technologies can be relied upon for conformance.

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5.3.1 Interpreting Normative Requirements: The main content of WCAG 2.1 is normative and defines requirements that impact conformance claims. Introductory material, appendices, sections marked as “non-nomative” diagrams, examples, and notes are informative (non-normative). Non-normative material provides advisory information to help interpret the guidelines but does not create requirements that impact a conformance claim.

5.3.2 Conformance Requirements: In order for a web page to conform to WCAG 2.1, all of the following conformance requirements must be satisfied:

5.3.2.1 *One of the following levels of conformance is met in full:*

- For Level A conformance (the minimum level of conformance), the web page satisfies all the Level A success criteria, or a conforming alternate version is provided.
- For Level AA conformance, the web page satisfies all the Level A and Level AA success criteria, or a Level AA conforming alternate version is provided.
- For Level AAA conformance, the web page satisfies all the Level AA and Level AAA success criteria, or a Level AAA conforming alternate version is provided.

5.3.3 Conformance (and conformance levels) is for full web page(s) only and cannot be achieved if part of a web page is excluded.

NOTE: For the purpose of determining conformance, alternatives to part of a page’s content are considered part of the page when the alternatives can be obtained directly from the page, e.g., a long description or an alternative presentation of a video. Authors of web pages that cannot conform due to content outside of the author’s control may consider a Statement of Partial Conformance. A full page includes each variation of the page that is automatically presented by the page for various screen sizes (e.g., variations in a responsive web page). Each of these variations needs to conform (or needs to have a conforming alternate version) in order for the entire page to conform.

5.3.4 Complete Processes

When a web page is one of a series of web pages presenting a process (i.e., a sequence of steps that need to be completed in order to accomplish an activity), all web pages in the process conforms at the specified level or better. (Conformance is not possible at a particular level if any page in the process does not conform at that level or better).

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5.3.5 Only Accessibility-Supported Ways of Using Technologies

Only accessibility-supported ways of using technologies are relied upon to satisfy the success criteria. Any information or functionality that is provided in a way that is not accessibility supported is also available in a way that is accessibility supported.

5.3.6 Non-Interference

If technologies are used in a way that is not accessibility supported, or if they are used in a non-conforming way, then they do not block the ability of users to access the rest of the page. In addition, the web page as a whole continues to meet the conformance requirements under each of the following conditions:

1. When any technology that is not relied upon is turned on in a user agent;
2. When any technology that is not relied upon is turned off in a user agent; and
3. When any technology that is not relied upon is not supported by a user agent.

In addition, the following success criteria apply to all content on the page, including content that is not otherwise relied upon to meet conformance, because failure to meet them could interfere with any use of the page:

- ❖ 1.4.2 – Audio Control;
- ❖ 2.1.2 – No Keyboard Trap;
- ❖ 2.3.1 – Three Flashes or Below Threshold; and
- ❖ 2.2.2 – Pause, Stop, Hide.

5.3.7 Conformance Claims (Optional)

Conformance is defined only for web pages. However, a conformance claim may be made to cover one page, a series of pages, or multiple related web pages.

5.3.7.1 *Required Components of a Conformance Claim*

Conformance claims are not required. Authors can conform to WCAG 2.1 without making a claim. However, if a conformance claim is made, then the conformance claim must include the following information:

1. Date of claim;

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2. Guidelines title, version and URI “Web Content Accessibility Guidelines 2.1”;
3. Conformance level satisfied (Level A, AA, AAA);
4. A concise description of the web pages, such as a list of URIs for which the claim is made, including whether subdomains are included in the claim; and
5. A list of web content technologies relied upon.

5.3.7.2 *Optional Components of a Conformance Claim*

In addition to the required components of a conformance claim, consider providing additional information to assist users. Recommended additional information includes:

- A list of success criteria beyond the level of conformance claimed that have been met. This information should be provided in a form that users can use, preferably machine-readable metadata.
- A list of the specific technologies that are “used but not relied upon.”
- A list of user agents, including assistive technologies that were used to test the content.
- A list of specific accessibility characteristics of the content, provided in machine-readable metadata.
- Information about any additional steps taken that go beyond the success criteria to enhance accessibility.
- A machine-readable metadata version of the list of specific technologies that are relied upon.
- A machine-readable metadata version of the conformance claim.

Refer to Appendix B for WCAG 2.0 Checklist produced by Web Accessibility in Mind (WebAIM) for list of success criteria at Level A and Level AA.

5.3.8 *Statement of Partial Conformance* - Third Party Content

Sometimes, web pages are created that will later have additional content added to them. For example, an email program, a blog, an article that allows users to add comments, or applications supporting user-

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contributed content. Another example would be a page, such as a portal or news site, composed of content aggregated from multiple contributors, or sites that automatically insert content from other sources over time, such as when advertisements are inserted dynamically.

In these cases, it is not possible to know at the time of original posting what the uncontrolled content of the pages will be. It is important to note that the uncontrolled content can affect the accessibility of controlled content as well. Two options are available:

1. A determination of conformance can be made based on best knowledge. If a page of this type is monitored and repaired (non-conforming content is removed or brought into conformance) within two business days, then a determination or claim of conformance can be made since, except for errors in externally contributed content which are corrected or removed when encountered, the page conforms. No conformance claim can be made if it is not possible to monitor or correct non-conforming content; OR
2. A “statement of **partial** conformance” may be made that the page does not conform but could conform if certain parts were removed. The form of that statement would be, “This page does not conform, but would conform to WCAG 2.0 at Level X if the following parts from uncontrolled sources were removed.” In addition, the following would also be true of uncontrolled content that is described in the statement of partial conformance:
 - a. It is not content that is under the author’s control.
 - b. It is described in a way that users can identify (e.g., they cannot be described as “all parts that we do not control” unless they are clearly marked as such).

A “statement of partial conformance due to language” may be made when the page does not conform but would conform if accessibility support existed for (all of) the language(s) used on the page. The form of that statement would be, “This page does not conform, but would conform to WCAG 2.0 at level X if accessibility support existed for the following language(s).”

5.3.9 Authoring Tool Accessibility Guidelines (ATAG) 2.0

Authoring Tools Accessibility Guidelines (ATAG) 2.0 provides guidelines for designing web content authoring tools that are both more accessible to authors with disabilities, and designed to enable, support, and promote the production of more accessible web content by all authors. Authors are individuals who use authoring tools to create or

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modify content. Authors include roles such as content authors, designers, programmers, publishers, testers, etc. ATAG is primarily for developers of authoring tools. An authoring tool is any web-based or non-web-based application(s) that can be used by authors (alone or collaboratively) to create or modify web content for use by other authors or end users.

Examples of software that are generally considered authoring tools under ATAG 2.0:

- ❖ What-you-see-is-what-you-get (WYSIWYG) HTML editor;
- ❖ Software for directly editing source code; software for converting to web technologies (e.g., “Save as HTML” features in office document applications);
- ❖ Integrated development environments (e.g., for web application development);
- ❖ Software that generates web content on the basis of templates, scripts, command-line input or “wizard” type processes;
- ❖ Software for rapidly updating portions of web pages (e.g., blogging, wikis, online forums);
- ❖ Software for generating/managing entire websites (e.g., content management systems, courseware tools, content aggregators);
- ❖ Email clients that send messages using web content technologies;
- ❖ Multimedia authoring tools; and
- ❖ Software for creating mobile web applications.

CAHELP shall consider authoring tools that web developers, designers, writers use to produce CAHELP web content (i.e., static web pages, dynamic web applications, etc.) based on their accessibility conformance claims and ATAG 2.0 accessibility standards.

Refer to the following for additional information:

- ❖ ATAG <http://www.w3.org/TR/ATAG/>
- ❖ WCAG <http://www.w3.org/TR/WCAG/>
- ❖ WAI-ARIA <http://www.w3.org/TR/wai-aria/>

5.3.10 User Agent Accessibility Guidelines (UAAG)

User Agent Accessibility Guidelines (UAAG) 2.0 is part of a series of accessibility guidelines. The core target audience of UAAG are the developers of the authoring tools, but policy makers and procurement decision makers within CAHELP can equally use UAAG criteria to determine whether the user agent technologies are accessible, or UAAG can be given to other developers to use to enhance the accessibility features of the tools. User agents are defined as any software that

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retrieves, renders and facilitates end user interaction with web content. UAAG 2.0 identifies the following user agent architectures:

- ❖ *Platform-based user agent, native user agent.* User agents that run on non-web platforms (operating systems and cross-OS platforms, such as Java) and perform content retrieval, rendering and end-user interaction facilitation themselves (e.g., Firefox, Internet Explorer, Chrome, Opera, Windows Media Player, QuickTime Pro, RealPlayer);
- ❖ *Embedded user agent, plug-in.* User agents that “plug-in” to other agents or applications (e.g., media player plug-in for a web browser, web view component). Embedded user agents can establish direct connections with the platform (e.g., communication via platform accessibility services);
- ❖ *Web-based user agent.* User agents that have user interfaces that are implemented using web content technologies and are accessed by users via a user agent. Web-based user agents transform content into web content technologies that the host user agent can render (e.g., web-based e-Pub reader, web-based video player).

UAAG provides guidance in designing user agents that make the web more accessible to individuals with disabilities. The goal of UAAG 2.0 is to ensure that all users, including users with disabilities, have equal control over the environment they use to access the web. A user agent that follows UAAG 2.0 will improve accessibility through its own user interface and its ability to communicate with other technologies, including assistive technologies (software that some individuals with disabilities use to meet their requirements). All users, not just users with disabilities, will benefit from user agents that follow UAAG 2.0.

Like WCAG, UAAG offers three layers of guidance: (1) principles, (2) guidelines; and (3) testable success criteria. Five principles provide a foundation for accessible user agents. Three of the five principles are parallel to WCAG 2.0, and two are specific to user agents. For each principle, there is a set of guidelines for making user agents more accessible to users with disabilities. These guidelines provide the framework to help individuals who use authoring tools to create or modify content, content authors, designers, programmers, publishers, testers, etc., understand the objectives for success criteria so they can better implement them. Under each guideline is also a set of testable success criteria that can be used wherever conformance testing is necessary, including design application, purchasing, regulation, and contractual agreements. Each success criterion is assigned a level of conformance, which are designed to meet the needs of different groups and different situations. The recommended conformance for UAAG is

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AA. Much of the value of the UAAG stems from the harmonious integration of the WCAG 2.0 and the ATAG 2.0.

CAHELP will recommend that developers of authoring tools, policy makers, and procurement officials ensure that user agents utilized to support CAHELP web content and web applications meet the W3C recommended UAAG 2.0 version Level AA conformance.

Refer to the following for additional information:

- ❖ UAAG <http://www.w3.org/TR/UAAG/>
- ❖ WCAG <http://www.w3.org/TR/WCAG/>
- ❖ WAI-ARIA <http://www.w3.org/TR/wai-aria/>

5.3.11 Accessibility Evaluation Tools (Testing Sites and Applications)

Evaluating the extent to which the CAHELP conforms to WCAG 2.0 Level AA is a process involving several steps. The activities carried out within these steps are influenced by many aspects such as the type of website (e.g., static, dynamic, responsive, mobile, etc.); its size; complexity; technologies used to create the website (e.g., HTML, WAI-ARIA, PDF, etc.); how much knowledge the auditors have about the process used to design and develop the website; and the main purpose for the audit (e.g., to issue an accessibility statement, to plan a redesign process, to perform research, etc.).

To ensure CAHELP meets established benchmarks for accessibility, it shall implement an audit of online content and functionality as specified herein to ensure compliance with W3C WCAG 2.0 Level AA and WAI-ARIA 1.0. Auditors shall utilize the [Techniques for WCAG 2.0](https://www.w3.org/TR/WCAG20-TECHS/) documented by W3C/WAI (url: <https://www.w3.org/TR/WCAG20-TECHS/>), and may also refer to the W3C Website Accessibility Conformance Evaluation Methodology (WCAG-EM) 1.0 to assist in providing a comprehensive evaluation of online content and functionality. The WCAG-EM highlights considerations for auditors to apply during the evaluation process but does not replace the need for quality assurance measures that are implemented throughout the design, development, and maintenance of the website and web applications to ensure their accessibility conformance. WCAG-EM does not in any way add to or change the requirements defined by the normative WCAG 2.0 standards and can be used in conjunction with techniques for meeting WCAG 2.0 success criteria. [Go to WCAG-EM 1.0 to access this information \(url: https://www.w3.org/TR/WCAG-EM/\)](https://www.w3.org/TR/WCAG-EM/).

Outside of the WCAG-EM, there are also a number of website evaluation tools available online to assist content developers and approvers, webmasters, procurement officials, and all others responsible

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for developing, loading, maintaining, or auditing web content and functionality, in determining whether or not the website meets accessibility standards. However, because these tools are limited in being able to uncover the majority of accessibility issues, the CAHELP shall procure the services of an external auditor in addition to conducting accessibility testing online, and internal auditing.

The CAHELP shall employ the following accessibility evaluation methods to audit all online content and functionality.

1. *Accessibility Audit:* An external accessibility auditor shall review the website, highlighting any accessibility issue(s) and provide recommendations to the **CAHELP JPA Virtual Compliance Supervisor**. The auditor shall utilize assistive software used by web users **who are disabled** (e.g., screen reader) to effectively carry out the audit, along with the free Web Accessibility Toolbar (WAT) developed by The Paciello Group. WAT aids manual examination of web pages for a variety of aspects of accessibility. **Go to WAT to download a copy (url: <https://developer.paciellogroup.com/resources/wat/>).**

The auditor can be a hired external accessibility consultancy, or an in-house member who is knowledgeable of the W3C accessibility guidelines who is appropriately trained in web accessibility.

2. *Accessibility Testing:* **The CAHELP JPA Virtual Compliance Technician, as designated by the CAHELP JPA Virtual Compliance Supervisor**, shall coordinate testing with real users with disabilities to complete common tasks on the website while a designated moderator notes all problems the user experiences. Regular usability testing will uncover more usability issues as users with disabilities may require additional time to complete tasks.
3. *Automated Accessibility Testing:* Both internal and external auditor may utilize automated programs to evaluate the website against accessibility guidelines.

For a list of online accessibility testing resources, see Appendix C (e.g., Useablenet, Web Accessibility Versatile Evaluator (WAVE), AChecker, **SiteImprove**, etc.).

The external auditor shall carry out the accessibility audit. After the findings from an accessibility audit has been implemented, the CAHELP shall initiate accessibility testing, as needed. The **CAHELP JPA Virtual Compliance Supervisor** shall further coordinate testing sessions with the assistance of county-operated programs and/or

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inviting a group of users living with visual, auditory, physical, and/or cognitive disabilities, to participate.

5.3.12 Qualifications of Accessibility Auditor

The external auditor shall have the requisite experience and knowledge to carry out an appropriate audit and to develop a proposed Corrective Action Plan. The external auditor shall meet the approved qualifications of an auditor as specified by the Office of Civil Rights (OCR) and shall:

- ❖ Audit all content and functionality of the CAHELP website to identify any online content or functionality that is inaccessible to individuals with disabilities, including online content and functionality developed by, maintained by, or offered through a third-party vendor or an open source;
- ❖ Use W3C WCAG 2.0 Level AA and WAI-ARIA 1.0 as the benchmarks for measuring accessibility, unless the CAHELP receives prior permission to use a different standard as a benchmark; and
- ❖ Develop a proposed Corrective Action Plan.

During the accessibility audit, the CAHELP may also seek input from members of the public with disabilities, including parents, students, employees, and others associated with the CAHELP, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.

The **Virtual Compliance Team** shall have overall responsibility for establishing systems of audit, accountability, corrective action of accessibility of all online content, and functionality on an ongoing basis (Section 4.0 Oversight and Responsibility).

Refer to Appendix C for list of Accessible Testing resources (e.g., Useablenet, Web Accessibility Versatile Evaluator (WAVE), AChecker, **SiteImprove**, etc.)

6.0 PROCEDURES

See Appendix A: Getting Started with Accessibility.

7.0 IT ACCESSIBILITY CHECKLIST

The following is a checklist for **content developers and approvers**, web designers and developers, and purchasing agents to consider when developing and/or procuring accessible information technology that the CAHELP purchases, creates, and uses, such as websites, software, hardware, and media. Many of the items in this checklist apply to web pages and web-based applications as well as electronic documents in Microsoft Word,

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Adobe PDF, and other formats, and other products and services that are not specifically web-based.

7.1 Make content and controls Perceivable by all users

- Do images have alternative text?
- Does video have captions and does audio have a transcript?
- Does the web page or document include headings, lists, ARIA landmarks, and other semantic elements to communicate document structure?
- Is the tab order and read order logical and intuitive?
- Do form fields within web pages and documents have appropriately coded labels and prompts?
- Have you avoided using visual characteristics to communicate information (e.g., “click the circle on the right” or “required fields are in red”)?
- Does the interface have sufficient contrast between text color and background color?
- Does the content scale well when text is enlarged up to 200 percent?

7.2 Make content and controls Operable by all users

- Can all menus, links, buttons, and other controls be operated by keyboard, to make them accessible to users who are unable to use a mouse?
- Does the web page include a visible focus indicator so all users, especially those using a keyboard, can easily track their current position?
- Do features that scroll or update automatically (e.g., slideshows, carousels) have prominent accessible controls that enable users to pause or advance these features on their own?
- Do pages that have time limits include mechanisms for adjusting those limits for users who need more time?
- Have you avoided using content that flashes or flickers?
- Does the web page or document have a title that describes its topic or purpose?
- Are mechanisms in place that allow users to bypass blocks of content (e.g., “skip to main content” link on a web page or bookmarks in a PDF)?
- Does the website include two or more ways of finding content, such as a navigation menu, search feature, or site map?
- Is link text meaningful, independent of context?

7.3 Make content and user interfaces Understandable to all users

- Has the language of the web page or document (or individual parts of a multilingual document) been defined?
- Have you avoided links, controls, or form fields that automatically trigger a change in context?
- Does the website include consistent navigation?
- Do online forms provide helpful, accessible error and verification messages?

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7.4 Make content Robust enough that it can be interpreted reliably by a wide variety of user agents, including assistive technologies

- Is the web page coded using valid HTML?
- Do rich, dynamic, web interfaces, such as modal windows, drop-down menus, slideshows, and carousels, include ARIA markup?

8.0 TRAINING

CAHELP shall provide and/or procure website accessibility training for all appropriate personnel, including, but not limited to content developers and approvers, webmasters, procurement officials, and all others responsible for developing, loading, maintaining, or auditing web content and functionality. Training shall continue on a schedule designed to maintain website accessibility consistent with, or superior to, that which is required under federal law.

9.0 RELATED INFORMATION

9.1 Resources and Support for IT Accessibility

- Accessible Technology at the CAHELP
- IT Accessibility Checklist
- Access Technology Center
- World Wide Web Consortium (W3C) Web Content Accessibility Guidelines 2.0

9.2 Legal and Policy Requirements

- Section 504 of the Rehabilitation Act of 1973 (<http://www2.ed.gov/about/offices/list/ocr/504faq.html>)
- Americans with Disabilities Act as amended (https://www.ada.gov/2010_regs.htm)
- **California Unruh Civil Rights Act (UCRA), Cal Civ. Code § 51.**
- Department of Justice (DOJ) Guidance (June 2003)
 - ❖ ADA/504 “generally require” equal access unless fundamental alteration or undue burden
- OCR Dear Colleague Letter (June 2010)
 - ❖ Colleges and universities must make book readers and other educational technologies equally accessible
- OCR FAQs (May 11)
 - ❖ Follow-up from June 2010 Dear Colleague letter – legal requirements articulated in letter apply to elementary and secondary schools
- DOJ Notice of Proposed Rulemaking (May 2016)
 - ❖ Proposed rulemaking for state and local governments with regard to web accessibility

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10.0 REVISION HISTORY

Version Number	Revised	Governance Approval
1.0	10/27/16	4/7/2017
2.0	08/24/18	9/7/2018
3.0	01/16/20	02/07/20

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A. GETTING STARTED WITH ACCESSIBILITY

To ensure accessibility standards are met, *content developers and approvers* must have an understanding of web accessibility, online content, and functionality, and an understanding of the terminology provided in Section 2.0 of this document. In designing web accessibility, *content developers and approvers* should consider these user characteristics in designing web accessibility:

A.1. Characteristics for Consideration

- (1) Unable to see. Individuals who are blind use either audible output (products called screen readers that read web content using synthesized speech) or tactile output (a refreshable Braille device).**
- (2) Has dyslexia. Individuals with learning disabilities such as dyslexia may also use audible output, along with software that highlights words or phrases as they are read aloud using synthesized speech.**
- (3) Has low vision. Individuals with low vision may use screen magnification software that allows them to zoom in all or a portion of the visual screen. Many others with less-than-perfect eyesight may enlarge the font on websites using standard browser functions, such as Ctrl + in Windows browsers or Command + in Mac browsers.**
- (4) Has a physical disability. Individuals with physical disabilities that effect their use of hands may be unable to use a mouse, and instead may rely exclusively on keyboard or use assistive technologies such as speech recognition, head pointers, mouth sticks, or eye-gaze tracking systems.**
- (5) Unable to hear. Individuals who are deaf or hard of hearing are unable to access audio content, so video needs to be captioned and audio needs to be transcribed.**
- (6) Using a mobile device. Individuals who are accessing the web using a compact mobile device such as a phone, face accessibility barriers, just like individuals with disabilities do. They're using a small screen and may need to zoom in or increase the font size, and they are likely to be using a touch interface rather than a mouse. Also, Apple's iPhone and iPad do not support Adobe Flash.**
- (7) Limited bandwidth. Individuals may be on slow internet connections if they are located in a rural area or lack the financial resources to access high-speed internet. These users benefit from pages that load quickly (use graphics sparingly) and transcripts for video.**

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- (8) Limited time. Very busy individuals may have too little time to watch an entire video or audio recording but can quickly access its content if a transcript is available.**

Accessible technology works for all of these users, and countless others not mentioned.

A.2. Essential Components of Web Accessibility

Web accessibility depends on several different components of web development and interactions working together and how improvements in specific components could substantially improve web accessibility. These components include:

- Content (information in a web page or web application, including (1) natural information such as text, images, and sounds, or (2) code or markup that defines structure, presentation etc.);
- Web browsers, media players, and other user agents;
- Assistive technology, in some cases, screen readers, alternative keyboards, switches, scanning software, etc.;
- User’s knowledge, experiences, and in some cases, adaptive strategies using the web;
- Developers, designers, coders, authors, etc., including developers with disabilities and users who contribute content;
- Authoring tools – software that creates web sites; and
- Evaluation tools – web accessibility evaluation tools, HTML validators, Cascading Style Sheets (CSS) validators, etc.

Authoring tools and evaluation tools are used by web developers to create web content. Individuals (“users”) use web browsers, media players, assistive technologies, or other means to get and interact with content. It’s important to note that there are significant interdependencies between the components. Components must work together in order for the web to be accessible. When accessibility features are effectively implemented in one component, the other components are more likely to implement them.

A.2.1. Examples

- When web browsers, media players, assistive technologies, and other user agents support an accessibility feature, users are more likely to demand it and developers are more likely to implement it in their content;

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- When developers want to implement an accessibility feature in their content, they are more likely to demand that their authoring tool make it easy to implement;
- When authoring tools make a feature easy to implement, developers are more likely to implement it in their content; or
- When an accessibility feature is implemented in most content, developers and users are more likely to demand that user agents support it.

If an accessibility feature is not implemented in one component, there is little motivation for the other components to implement it when it does not result in an accessible user experience. If one component has poor accessibility support, sometimes other components can compensate through “work-arounds” that require much more effort and are not good for accessibility overall.

A.3. Guidelines for Different Components:

The different components were briefly covered in Section 5.0 – Accessibility Standards: WCAG, ATAG, and UAAG. *Content Developers and Approvers*, web developers, and other individuals involved in the creation and maintenance of online content and functionality may refer to the following W3C WAI accessibility guidelines for additional information on the different components:

- [Authoring Tool Accessibility Guidelines](https://www.w3.org/WAI/intro/atag.php) (ATAG) addresses authoring tools (url: <https://www.w3.org/WAI/intro/atag.php>)
- [Web Content Accessibility Guidelines](https://www.w3.org/WAI/intro/wcag.php) (WCAG) addresses web content, and is used by developers, authoring tools, and accessibility evaluation tools (url: <https://www.w3.org/WAI/intro/wcag.php>)
- [User Agent Accessibility Guidelines](https://www.w3.org/WAI/intro/uaag.php) (UAAG) addresses web browsers and media players, including some aspects of assistive technologies (url: <https://www.w3.org/WAI/intro/uaag.php>)

B. HOW TO MAKE TECHNOLOGY ACCESSIBLE

The following information will provide *content developers and approvers and webmasters* how-to-pages with step-by-step guides for making particular types of content accessible. For additional information about accessibility of particular technologies, please refer to the pages that are most relevant for the technologies to be used. *Webmasters* and *content developers and approvers* shall be familiar with:

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- (1) Creating Accessible Documents
- (2) Developing Accessible Websites
- (3) Creating Accessible Videos
- (4) Procuring Accessible IT
- (5) Managing Projects for Accessibility

Content developers and approvers, and webmasters shall consider accessibility throughout the design and creation process of online content. The following are tips for creating accessible content and conducting simple accessibility tests:

- **Useable without a mouse:** Ensure all links, buttons, menus, and controls in web pages and applications can be used without a mouse, but instead can be navigated using only the keyboard. Whether an interface is functional using a keyboard alone is often a reliable indicator of overall accessibility;
- **Document structure:** Create web pages, Word documents, and PDF files that have good structure, including the use of headings, sub-headings, and lists that make these documents easier for users to understand and navigate;
- **Accessible images:** Include alternative text for graphics and avoid images of text. Individuals who cannot see an image rely on alternate text to access its content; and
- **Test with accessibility checker tools:** As stated in **subsection 5.3.11**, CAHELP will employ accessibility testing using online accessibility checkers. *Webmasters* may use accessibility checkers and/or web browser plug-ins to identify common accessibility problems and report them to the **CAHELP JPA Virtual Compliance Supervisor and/or the Accessibility Compliance Team (ACT)**. A list of online accessibility checkers is available in *Appendix B* to assist with accessibility efforts.

Accessibility issues shall be reported to the **CAHELP JPA Virtual Compliance Supervisor and/or the ACT** for accountability. Issues that exceed the parameters and scope of responsibility of the **CAHELP JPA Virtual Compliance Supervisor and ACT** shall be referred to an accessibility expert for review and recommendation for corrective action.

B.1. Creating Accessible Documents

The core steps needed for accessibility are the same regardless of whether the document is developed in HTML (web), Microsoft Word, Adobe PDF, or another document format. The following are the required basic steps to assist *content developers and approvers* in creating accessible documents:

- Use headings;

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- Use lists;
- Add alternate text to images;
- Use tables wisely; and
- Understand how to export from one format to another.

B.1.1. Headings

Identify headings and subheadings using the built-in heading features of the authoring tool. Headings (e.g., h1, h2, h3, etc.) form an outline of the page content and enable screen reader users to understand how the page is organized, and to quickly navigate to content of interest. Screen readers have features that enable users to jump quickly between headings with a single key stroke.

B.1.2. Use Lists

Use the list controls provided in the document authoring software. Content that is organized as a list should be created using the list controls. Authoring software provides one or more controls for adding unordered lists (with bullets) and ordered lists (with numbers). When lists are explicitly created as lists, this helps screen readers to understand how the content is organized. When screen reader users enter a list, their screen reader informs them that they're on a list and may also inform them of how many items are in the list, which can be very helpful information when deciding whether to continue reading.

B.1.3. Add Alternate Text for Images

Users who are unable to see images depend on content developers to supplement their images with alternate text, which is often abbreviated "alt text." The purpose of alt text is to communicate the content of an image to individuals who can't see the image. The alt text should be succinct, just enough text to communicate the idea without burdening the user with unnecessary detail. When screen readers encounter an image with alt text, they typically announce the image then read the alt text.

Authoring tools provide a means of adding alt text to images, usually in dialog that appears when an image is added, or later within an image properties dialog.

If images are purely decorative and contain no informative content, they do not require a description. However, they may still require specific markup, so screen readers know to skip them. Also, images that require a lengthier

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description, such as charts and graphs, may require additional steps beyond adding alt text.

B.1.4. Use Tables Wisely

Tables should not be used to control content layout. Tables in documents are useful for communicating relationships between data, especially where those relationships can be best expressed in a matrix of rows and columns. Authoring tools have other means of doing this, including organizing content into columns.

If the data is best presented in a table, try to keep the table simple. If the table is complex, consider whether it could be divided into multiple simpler tables with a heading above each.

A key to making data tables accessible to screen reader users is to clearly identify column and row headers. Also, if there are nested in columns and rows with multiple headers for each cell, screen readers need to be explicitly informed as to which headers relate to which cells.

B.1.5. When Exporting to PDF, Understand How to Preserve Accessibility

In order for an Adobe PDF document to be accessible, it must be a “tagged” PDF, with an underlying tagged structure that includes all of the features already described herein. There are right ways and wrong ways to export documents to PDF. Some authoring tools do not support tagged PDF at all, while others provide multiple ways of exporting to PDF, some that produce tagged PDF and some that do not. The CAHELP utilizes Adobe Acrobat **DC** which provides accessible tags.

B.1.6. Creating High Quality Scanned Documents

When documents are in electronic form, they are easier to distribute and can be more accessible than print documents. However, in order to be fully accessible, certain steps must be followed to be sure a scanned document is of high quality. Even if a document is not needed for an individual with a disability, a poor scan often negatively impacts the end user’s experience.

B.1.7. Developing an Accessible Website

In order to assure that the CAHELP website and web applications are accessible to and usable by everyone, web designers and developers must follow accessibility guidelines. The following topics address issues that are especially common on the website:

Features of an Accessible Website:

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- Good structure in web pages and documents;
- Good use of HTML headings;
- Accessible with keyboard;
- Accessible images;
- Accessible menus;
- Accessible forms;
- Accessible tables;
- Effective use of color;
- Meaningful link text;
- ARIA landmark roles;
- ARIA for web applications; and
- Avoiding reliance on visual characteristics.

B.1.8. Structure in Web Pages and Documents

In order to understand a document, everyone depends on understanding its structure. Screen reader users need to understand this structure and are dependent on *content developers* clearly identifying the headings, paragraphs, lists, tables, banners, menus, and other features as exactly what they are. In the world of web design this is called semantics, building a page using web elements that define the role of the object. For example, when adding a top-level heading to a web page, *content developers* shall use the built-in h1 feature that the authoring software provides. Simply making the text big and bold may look like a heading but it really is not a heading.

B.1.9. HTML headings

As discussed in Section 5.0, the core steps needed for accessibility are the same whether the document is developed in HTML (web), Microsoft Word, Adobe PDF, or another document format. The use of HTML headings is essential in developing an accessible website.

HTML headings service two purposes for non-sighted users:

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- They provide an outline of the page, so users can understand how the page is structured, and how all the sections relate to one another; and
- They provide a target so users can jump from heading to heading with a single keystroke, e.g., the letter “H” in some screen readers.

Content developers shall utilize built-in heading feature in authoring tools.

B.1.10. Accessible with Keyboard

Because many users are physically unable to use a mouse and might be navigating through a web page using a keyboard alone, conducting a simple accessibility test using the keyboard will help determine whether users can (1) access all features, (2) operate all controls, and (3) easily tell where they are on the web page. *Content developers* test this feature by using the tab key to navigate between features, and other keys of doing so would seem to make sense (e.g., enter or space to “click” the element that currently has focus), arrow keys to move within a widget such as a menu or slider, and escape to close a pop-up window.

B.1.11. Testing HTML Web Pages

Content developers should navigate through the web page using a keyboard alone. Using the tab key, *content developers* should be able to access all links and controls in a predictable order based on their visual position on the page. The success of this test can also be affected by whether there is sufficient visual indication of focus.

- WCAG 2.0 Success Criterion 1.3.2 Meaningful Sequence (Level A)
- WCAG 2.0 Success Criterion 2.4.3 Focus Order (Level A)

If users are unable to tell where they are on a web page when navigating with keyboard, *content developers and approvers*, and webmasters can typically fix this with some very simple cascading style sheets (CSS). *Content developers and approvers* should consult the webmaster and/or developer of authoring tools.

Movement through a web page or application should follow a logical order. It should mirror the visual order of navigation and controls on the page. Users who are navigating by keyboard (e.g., using the tab key) expect to move sequentially from left to right and top to bottom through the focusable elements on the page.

When creating web pages, be sure the order of items in the source code matches the visual order.

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B.1.12. Accessible Images

If web pages include images, the content of those images is, by default, inaccessible to individuals who are unable to see the images. Whether and how to address this issue depends on the purpose of the image within the context of the web page.

- **Simple Informative Images.** If images are designed to communicate information to the user, they must be described. Images that convey simple information must be described with alternative text, or “alt text.” Alt text is a short description of the content of the image, added in such a way that is typically invisible to individuals who can see the image but is exposed to individuals who are using assistive technologies such as screen readers or Braille displays. Browsers also display alt text visibly if an image fails to load. Such simple images include logos, buttons, and photographs. The description should describe the content and functionality of the image as concisely as possible to provide access to the content of the image without burdening the user with superfluous details.
- **Adding Alt Text in Word Processing Programs or Rich Text Editors.** Word processing applications such as Microsoft Word and Google Docs; as well as online rich text editors such as those used for adding content to Canvas, WordPress, or Drupal; all include support for alt text on images. When adding an image to a web page or document, simply look for a tab or field labeled “alt text” or equivalent and enter a short description into the field. If you are not prompted for alt text when adding the image, right click on the image after it has been added and select “Image Properties” or equivalent, then look around in the image properties dialog for an “Alt text” prompt.
- **Complex Informative Images.** Complex images, such as graphs, charts, or diagrams, may contain too much information to be effectively described using alt text. Instead, these images must be described with a long description. Long description is a more detailed description that provides equivalent access to the information of the image. The question *content developers* should ask is: Given the current context, what information is this image intended to communicate? That same information must be provided to individuals who are unable to see the image. A long description can include any structure necessary to communicate the content of the image, including heading list and data tables.

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- **Adding Long Description in HTML.** In HTML, long description can be added either on a separate web page or on the same page in a <div> with id attribute. The latter can be hidden from sighted users, although *content developers* should consider whether it might be of value to some sighted users too, particularly individuals who have difficulty understanding visually symbolic content such as charts and graphs. Once the long description is in place, add a longdesc attribute to the element, pointing to the URL of the long description.
- For assistance on providing accessible images and what constitutes alt text verses longdesc, consult the webmaster and/or developer of authoring tools.
- **Decorative Images.** If images are used solely for decorative purposes and does not convey meaning, they should be added to the page using CSS, not with the HTML element. If for some reason an image needs to be added using HTML, the element must have an empty alt attribute (alt=""). This is a standard technique for communicating to screen readers that the image should be ignored. The following are a few methods that *content developers* can tell screen readers to ignore the decorative image:
 - Avoid using the HTML element for decorative images; instead present the image as a background image using cascading style sheets (CSS)
 - If using the HTML element, add an empty alt attribute (alt="")
 - If using the HTML element, add the following attribute: role="presentation"

References:

- HTML5: Techniques for providing useful text alternatives
- National Center for Accessible Media (NCAM) guidelines for describing complex images: Effective Practices for Description of Science Content within Digital Talking Books
- National Center on Accessible Media (NCAM): Effective Practices for Describing STEM Images
- WCAG 2.0. Success Criterion 1.1.1 Non-text Content (Level A)

B.1.13. Accessible Menus

Website navigation menus often include dropdown or fly-out menus, where submenus are hidden by default and appear visibly when mouse users hover

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over or click a top-level menu item. These types of menus can present major accessibility challenges for many groups of users unless they are coded properly.

For assistance and information on creating accessible menus, consult the webmaster and/or developer of authoring tools. The webmaster and/or developer shall explore this problem in depth and provide recommendations to the [CAHELP JPA Virtual Compliance Supervisor](#) and/or the [ACT](#).

B.1.14. Accessible Forms

To create an accessible Online Form, *content developers* shall ensure that all form fields have accurate labels or prompts so screen reader users know what each field is asking for. Forms typically have labels or prompts that are obvious to sighted users, but their association with particular form fields is made based on visual cues, such as relative position and proximity to the field. Since screen reader users do not have access to these same visual cues, labels and prompts must be explicitly associated with form fields within the HTML (web).

The following should be used by *Content Developers* or form developers:

B.1.14.1. Use Label Element

The prompt “Last name” precedes the input field, but its relationship to the field is not explicitly defined. Therefore, some screen readers will simply announce this as an “edit” field but will not prompt the user to enter “Last name” into that field. Other screen readers will guess at the label, and in the example provided below, the user will probably guess accurately. However, as forms grow in complexity, screen readers that guess at labels are more likely to guess incorrectly, which means users are more likely to complete the form incorrectly. *Content developers* or form developers shall properly label form elements.

EXAMPLE OF INCORRECT FIELD:

```
<div>
```

Last name:

```
<input type="text" name="last_name" id="last_name">
```

```
</div>
```

CORRECT LABEL:

```
<div>
```

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```
<label for="last_name">Last name:</label>
<input type="text" name="last_name" id="last_name">
</div>
```

B.1.14.2. Use <fieldset> and <legend> Elements

For groups of related fields such as radio buttons and checkboxes, each form field must have a label as described in the previous section. However, that prompt alone can be meaningless if the user does not know the question. *Content developers* or form developers shall address this problem by grouping these elements together using a <fieldset> element then use a <legend> element to markup the question.

EXAMPLE:

```
<fieldset>
<legend>What is your favorite color?</legend>
<div>
<input type="radio" name="color" value="Red" id="color_red">
<label for="color_red">Red</label>
</div>
<div>
    <input type="radio" name="color" value="green"
id="color_green">
</div>
<div>
    <input type="radio" name="color" value="blue"
id="color_blue">
    <label for="color_blue">Blue</label>
</div>
</fieldset>
```

For additional assistance regarding appropriate use of labels, field sets, and legend elements, consult the webmaster and/or developer of authoring tools.

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B.1.14.3. Making PDF Forms Accessible

Interactive forms in Adobe PDF have many of the same issues as those described in developing online forms (HTML). Labels and prompts must all be created in a way that explicitly associates them with their corresponding form fields. It is also important to note that PDF form fields have a tendency to be out of order, so *content developers* or form developers must be sure to test the tab order of the PDF form, to be sure that users will move through the form in a logical sequence when jumping between fields using the keyboard.

Testing PDF Documents. In Adobe Acrobat, go to View > Tools > Accessibility, and select “Touch Up Reading Order.” This feature provides a visual indication of the approximate order in which content will appear if automatically re-purposed for display on a small screen.

To test an interactive PDF form, open the form in any desktop PDF reader and move through the form fields by pressing the tab key. Fields will be highlighted as they receive focus. If fields are not arranged in the expected sequence, this can be fixed in Adobe Acrobat. Go to View > Tools > Forms > Edit. All form fields will be listed in tab order in a sidebar panel. Simply drag fields to their correct position in the tab order.

References:

- WCAG 2.0 Success Criterion 1.3.1 Info and Relationships (Level A)
- WCAG 2.0 Success Criterion 1.3.2 Meaningful Sequence (Level A)
- WCAG 2.0 Success Criterion 2.4.3 Focus Order (Level A)

B.1.14.4. Avoiding CAPTCHA

CAPTCHA (an acronym that stands for “Completely Automated Public Turing Test to tell Computers and Humans Apart”) is a type of form field that is sometimes used to determine whether a user is human, in an effort to prevent computers from automatically submitting online forms. Often CAPTCHAs assume the form of distorted characters.

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CAPTCHA is inaccessible to many groups of users, including individuals who are blind or dyslexic. If audio CAPTCHA is provided as an alternative for these users, that still is not a solution for individuals who are deaf-blind. Also, CAPTCHAs are burdensome for everyone, and increase the likelihood that individuals will fail to submit the form or complete the task. *Content developers* should consider other creative alternative solutions that do not burden the user.

B.1.15. Accessible Tables

Data tables should not be used to force content into visible columns. Multi-column layouts can now be attained using CSS to handle layout and positioning. Data tables are useful for presenting data in rows and columns. A few specific HTML tags are required in order to ensure that data tables are accessible to screen readers. Without these tags, users who are unable to see the table can find it very difficult or impossible to understand the relationship between table headers and the cells within their scope.

Content developers should determine whether the table will be simple or complex and apply the specific tags as noted below.

B.1.15.1. Simple Table

A simple table has a single header at the top of each column, and optionally a single header in the first column of each row. It has no nested columns or rows. To make a simple table accessible, apply the following techniques:

- Markup all column headers or row headers as table headers using the <th> element.
- Define the scope of each <th> using the scope attribute (the value of scope can be either “col” or “row”)

B.1.15.2. Complex Table

A complex table is any table that is not a simple table, as defined in the preceding section. There might be nested rows or columns, or headers might be located in places other than the first row or column. These sorts of tables can be very challenging for screen reader users to understand. To ensure their accessibility, apply the following techniques:

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- Markup all column headers or row headers as table headers using the <th> element
- Add a unique id attribute to each <th> element
- For every table data cell (<td>), add a headers attribute that lists the ids of all headers that apply to that particular cell. If more than one header applies to a cell, separate ids with a space

For additional assistance and guidance regarding the use and development of accessible tables, consult the webmaster and/or developer of authoring tool.

B.1.16. Effective Use of Color

There are two accessibility issues related to choice of color:

B.1.16.1. Avoid Using Color to Communicate Information

Because some users are unable to perceive color differences or may not perceive color the same way others do, it is important to avoid using color alone to communicate information. For example, if link text is blue, *content developers* should also enable underline feature so users who are unable to perceive color differences can distinguish links from surrounding text.

B.1.16.2. Choose Colors with Ample Contrast

Because some users have difficulty perceiving text if there is too little contrast between foreground and background, *content developers* must use color combinations that meet clearly defined contrast ratios per W3C WCAG 2.0. CAHELP applies Level AA for contrast success criteria. In order to meet Level AA, *content developers* must ensure that text or images of text must have a contrast ratio of at least 4.5:1 (or 3:1 for large text). In order to meet the guidelines at the stricter Level AAA, the contrast ratio must be at least 7:1 (or 4.5:1 for large text).

Several free tools have been developed that make it easy to check color combinations for WCAG 2.0 compliance. *Content developers* may utilize the following resources to determine Level AA compliance for color contrast:

- [Colour Contrast Analyser by the Paciello Group](#) (for Windows or Mac) ([url](#):

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<https://www.paciellogroup.com/resources/contrastanalyser>



- [WebAIM Color Contrast Checker \(url: https://webaim.org/resources/contrastchecker/\)](https://webaim.org/resources/contrastchecker/)

B.1.17. Meaningful Link Text

Screen reader users navigate websites using a variety of techniques. One of those is to pull up a list of links (a feature on most screen readers) and navigate through that list. Given this, link text should be able to stand alone independently of its context. For example, links like “click here” and “more” are meaningless out of context. Also, speech recognition users can click links with a voice command like “click” followed by the link text. Therefore, *content developers* should keep link text short and easy to say.

For both of these reasons long URLs should be avoided as link text (short URLs like cahelp.org) are okay since they are easy to say and stand-alone independently of context.

B.1.18. ARIA Landmark Roles

ARIA is a new W3C specification that stands for “Accessible Rich Internet Applications.” It consists of markup that can be added to HTML in order to clearly communicate the roles, states, and properties of user interface elements. User interface includes both the “user agent user interface,” i.e., the controls (e.g., menus, buttons, prompts, etc.) and mechanisms (e.g., selection and focus) provided by the user agent that are not created by content; and the “content user interface,” i.e., the enabled elements that are part of content, such as form elements, links, applets, etc. This information helps screen readers and other assistive technologies to better understand the elements on a web page, and to provide a user interface that enables their users to effectively interact with those elements.

One of the easiest ARIA features to implement, and one that provides significant immediate benefits to screen reader users, is landmark roles. There are eight of these roles, each representing a block of content that occurs commonly on web pages. To use them, webmasters and/or developers of authoring tools simply add a relevant role attribute to an appropriate container within the HTML. Then, screen reader users can quickly jump to that section of the page. The eight ARIA landmark roles are:

- Role=”banner”
- Role”navigation” (e.g., a menu)

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- Role="main" (the main content of the page)
- Role="complementary" (e.g., a sidebar)
- Role="contentinfo" (meta data about the page, e.g., a copyright statement)
- Role="search"
- Role="form"
- Role="application" (a web application with its own keyboard interface)

If a role is used more than once on a page, the aria-label attribute should also be used in order to distinguish between the two regions. For example, a web page might have the following two navigation regions:

- `<div role="navigation" aria-label="Main-menu">`
- `<div role="navigation" aria-label="User_menu">`

When role="application" is used, there is an exception that the application has its own model for navigating and operating all controls by keyboard, and help text is easily available so users can learn the keystrokes. When assistive technologies encounter content that's marked up with role="application", they stop listening for users' keystrokes and hand off all functionality to the application. This can be problematic as it defies users' expectations. Keys that normally perform certain functions when using their assistive technology suddenly stop providing that functionality.

Therefore, webmasters and/or developers of authoring tools should use role="application" only when an application has been carefully developed with accessibility in mind, and steps have been taken to inform users of what to expect.

For additional clarification and guidance on Aria landmark roles, consult the webmaster and/or developer of authoring tool.

B.1.19. ARIA for Web Application

Like ARIA for Landmark Roles, ARIA for web applications is W3C specification that consists of markup that can be added to HTML in order to clearly communicate the roles, states, and properties of user interface elements. This information helps screen readers and other assistive technologies to better understand the elements on a web page, and to provide

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a user interface that enables their users to effectively interact with those elements.

For example, imagine a web page where a user is able to click a button to trigger some action on the page. When the user clicks the button, a message appears at the top of the page informing the user of their success or failure. Using HTML alone, screen reader users would have no idea that this message has appeared, and even if they suspected it had appeared, they might not be able to easily find it. With ARIA, webmasters and/or developers of authoring tools could simply add `role="alert"` to the container where the message will appear. Then, when the content of that container changes, screen readers will interrupt the user by announcing the message content. The user's focus will remain in their original location so they can resume their work.

Webmasters and/or developers of authoring tools creating dynamic, rich, interactive user interface elements for web pages must include ARIA markup or there is very little possibility of their being accessible.

Testing ARIA:

- Use the W3C Markup Validation Service to check HTML against current web standards. This tool includes checks for valid use of ARIA markup.
- Test website or web application with multiple browser/screen reader combinations. Support for ARIA is a moving target, and even if the code is valid, there might be problems in the way its rendered with assistive technologies. There is no substitute for testing, especially if the website has rich, interactive content.

For additional assistance and guidance, consult the webmaster and/or developer of authoring tool. For help with testing with assistive technologies, please contact accessibility@cahelp.org.

References:

- WCAG 2.0 Success Criterion 4.1.2 Name, Role, Value (Level A)

B.1.20. Avoiding Reliance on Visual Characteristics

Content that flashes or flickers can trigger seizures in susceptible individuals. Therefore, flashing or flickering content should be avoided.

The best technique for addressing this issue is to avoid using content that flashes or flickers. Not only can it cause seizures, but it is likely to be annoying or distracting for users in general. If *content developers* must use content that flashes or flickers, test the content using methods described below to be sure the content flashes or flickers at a safe level.

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Testing:

The W3C WCAG 2.0 includes specific technical requirements for determining whether content flashes or flickers at an unsafe level. In general, if content flashes more than three times per second, it is unsafe. However, the W3C provides a more precise technical formula for calculating general flash and red flash thresholds. The Trace Center at the University of Wisconsin has developed a Photosensitive Epilepsy Analysis Tools (PEAT) for measuring whether web or computer applications are likely to cause seizures.

References:

- WCAG 2.0 Success Criterion 2.3.1 Three Flashes or Below Threshold (Level A)

B.1.21. Creating Accessible Videos

Videos and audio content can help make web pages and course curriculum provided by the CAHELP Professional Learning more engaging. However, they can also erect barriers unless delivered with accessibility in mind. Videos should be produced and delivered in ways that ensure that all members of the audience can access their content. An accessible video includes captions, a transcript, audio description, and is delivered in an accessible media player. When delivering video content, the following accessibility issues must be considered by *content developers and approvers*, and other designated staff producing or delivering video:

- **Some people are unable to hear audio.** Audio content such as audio-recorded lectures or podcasts must be accompanied by a transcript, and videos must be provided with closed captions.
- **Some people are unable to see video.** Video must be carefully scripted or edited in a way that ensures all important content is accessible through the audio track. If this is not the case, any important information that is presented visually must be described in a separate narration track using a technique called audio description.
- **Some people are unable to operate a mouse.** Multimedia content should be delivered in a player that can be operated with keyboard alone, has controls that are properly labeled so that they are announced properly to screen reader users, and can be operated effectively by speech input users.

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B.1.21.1. Captions

Captions are text versions of the audio content, synchronized with the video. They are essential for ensuring a video is accessible to members of the public who are deaf or hard of hearing. Captions also help non-native English speakers to understand the video, make it possible to search for content within the video, help with the spelling of technical terms spoken in the video, and make it possible to generate an interactive transcript where users can click anywhere in the transcript to watch the video where the text is spoken.

There are two general approaches to captioning video that *content developers and approvers*, and other appropriate staff producing or delivering video can consider:

- **Outsource.** Companies such as Automatic Sync Technologies, 3PlayMedia, cielo24, and many other captioning service providers will caption videos for a fee. Consult **CAHELP JPA Virtual Compliance Team** prior to contacting these companies for additional information.
- **Do it Yourself.** There are free tools available online that make it possible and easy to caption video. See captioning your own video for free (*See Appendix D*).

The end product generated by the above two options is a caption file. Most caption files are plain text files with time codes indicating the start and stop times. However, there are various types of caption files with slight variations in their syntax. Once a caption file has been created, the final step is to add this file to the video. How *content developers and approvers* accomplish this depends on where the video is hosted. For specific instructions, select one of the following options:

- Adding captions to YouTube videos ([link to...](#))
- Adding captions to videos on web pages ([link to...](#))
- Adding captions to videos in Panopto ([link to...](#))
- Adding captions to videos in Canvas ([link to...](#))
- Adding captions to videos in MediaAMP ([link to...](#))

References:

- WCAG 2.0 Success Criterion 1.2.1 Audio=only and Video=only (Prerecorded) (Level A)

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- WCAG 2.0 Success Criterion 1.2.2 Cations (Prerecorded) (Level A)
- WCAG 2.0 Success Criterion 1.2.3 Audio Description or Media Alternative (Prerecorded) (Level A)
- WCAG 2.0 Success Criterion 1.4.2 Audio Control (Level AA)
- WCAG 2.0 Success Criterion 1.2.4 Captions (Live) (Level AA)
- WCAG 2.0 Success Criterion 1.2.5 Audio Description (Prerecorded) (Level AA)

B.1.21.2. Audio Description

Audio description is a separate narrative audio track that describes important visual content, making it accessible to individuals who are unable to see the video. Individuals who are blind can understand much of a video’s content by listening to its audio. However, if a video includes content that is only presented visually (e.g., on-screen text or key actions that are not obvious from the audio), this visual information must be described in order to be accessible to individuals who are unable to see it.

Like captions, there are two general approaches to producing audio description for video that *content developers and approvers*, and other appropriate staff producing or delivering audio shall consider:

- **Outsource.** The American Council of the Blind has compiled a comprehensive list of commercial services for producing audio description. If the video contains a lot of visual information, this may be the best option since describing visual content effectively requires specialized skills. Typically, service providers will produce a new video that has the descriptive narration mixed in with the program audio. *Content developers and approvers*, and other appropriate staff producing or delivering audio can then provide a video in two formats: one with audio description and one without.
- **Do it Yourself.** For videos that have very little visual information, the same free online tools that are used for creating closed caption tracks can be used for creating description tracks. Description tracks are essentially the same as caption tracks—short blocks of text with timestamps that synchronize the text with the video—but their function

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is different. They are intended to be read aloud by screen readers, rather than voiced by a human narrator. Playing video with text-based audio description requires a media player that supports this feature, such as Able Player, the open source media player developed at the University of Washington.

B.1.21.3. Live Captioning and Description.

If live events are simulcast over the web, live captioning is needed in order to provide access to the audio content for audience members who are deaf or hard of hearing. Similarly, live description may be needed if key visual content is not otherwise verbalized, such as in a dramatic production. At the CAHELP, these services are coordinated through the Professional Learning team with the assistance of *content developers* and *approvers*, and the **CAHELP JPA Virtual team and/or the ACT**.

B.1.21.4. Transcript

A transcript is a text version of the media content. A transcript should capture all the spoken audio, plus on-screen text and descriptions of key visual information that wouldn't otherwise be accessible without seeing the video. Transcripts make video content accessible to everyone, including individuals who are unable to view the video due to accessibility problems or technical limitations. They are also helpful for individuals who want to quickly scan or search a video's content but do not have the time to watch the entire video.

If *content authors* have captioned the video, a transcript is available as one of the optional output formats produced by the closed captioning process. This is true of both the free online tools and the commercial service providers. To make the transcript available simply link to it from the web page, wherever it is linked to or display the associated video.

Content developers and approvers, webmasters, procurement officials, and all others responsible for developing, loading, maintaining, or auditing web content and functionality, may consider using Able Player, the accessible open source media player developed at the University of Washington, which

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generates an interactive transcript automatically using the caption and/or description tracks.

B.1.21.5. Choosing an Accessible Media Player

When choosing how to deliver video, it is important that *content developers and approvers*, webmasters, procurement officials, and all others responsible for developing, loading, maintaining, or auditing web content and functionality, consider options that are fully accessible. Whether selecting a media player plugin or module for the CAHELP website or selecting a service to host videos, the following questions should be answered about the available options:

- Does the media player support close captions?
- Does the media player support audio description in a way that enables users to toggle the narration on and off?
- Can the media player's buttons and controls be operated without a mouse?
- Are the media player's buttons and controls properly labeled so they can be operated by a blind person using a screen reader?
- Is the media player fully functional, including all of its accessibility features, across platforms and in all major browsers?

Able Player, the accessible open source media player developed at the University of Washington satisfies all of the above criteria. It is a free, open-source media player developed with accessibility in mind. For additional information on Able Player, [go to Able Player on Github \(url: *https://ableplayer.github.io/ableplayer/*\)](https://ableplayer.github.io/ableplayer/).

B.1.22. Procuring Accessible IT

The CAHELP strives to ensure that IT products developed at, purchased by, or used at the CAHELP are accessible to all individuals. To reach this aspirational goal, the **ACT** shall be responsible for making decisions about which products to procure and must consider accessibility as one of the criteria for acquisition. This is especially critical for enterprise-level systems and other technologies that affect a large number of students, teachers, and/or staff. The following three steps provide an example of how accessibility can be considered in the procurement process.

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For additional information and guidance on procurement of products accessible to all, consult IT services or the **ACT** with any of these steps.

B.1.22.1. Ask vendors to provide information about the accessibility of their products.

The following is an example of accessibility language that could be used in requests for proposals (RFPs):

Mandatory Scored Requirement:

- Bidder must describe how their IT products or services are accessible to users in accordance with CAHELP guidelines;
- CAHELP refers to the WCAG 2.0 developed by W3C Level AA for guidance in meeting its IT accessibility commitments.

If there are issues that prevent a bidder's IT product or service from meeting these requirements, the bidder must describe efforts underway to address these issues, including anticipated timelines for completion.

B.1.22.2. Validate information provided by bidders and evaluate the product for accessibility

Consult **the ACT** for assistance. Vendors should provide detailed information about the accessibility of their product or services. One common method is by providing a Voluntary Product Accessibility Template (VPAT). This is a standard form developed to assist federal agencies in fulfilling their Section 508 requirements. VPATs can sometimes be informative, but they have limitations since they are self-reports completed by the vendors. Some vendors do not have adequate technical expertise to accurately assess their products' accessibility. Others skillfully complete their VPATs in ways that trivialize the significance of accessibility shortcomings. Therefore, VPAT claims should be independently verified and not accepted at face value. A VPAT could provide a good starting point, but ultimately vendors, particularly those whose products are selected as finalists, should be engaged in a thorough discussion about accessibility of their products.

Few IT products are fully accessible. However, vendors should at a minimum be willing to make a commitment to address their

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accessibility problems. Without this commitment, using the product may place the CAHELP at risk for discriminating against some of its users and/or employees.

The CAHELP procured and/or contracted web host shall provide detailed information about the accessibility of their web product or services and may provide a Voluntary Product Accessibility Template (VPAT) for consideration.

B.1.23. Include Accessibility Assurances in Contracts with Vendors

If ultimately the best product for meeting a particular need is one that fails to fully meet accessibility requirements, vendors should be asked to make a commitment to improving accessibility over a specified timeline, perhaps working with the **CAHELP JPA Virtual Compliance Team** and **the ACT**.

After procurement officials discuss accessibility issues with a vendor, the procurement contract should include language that specifically documents the agreement between vendor and procurer as to how satisfactory progress on accessibility will be measured. The vendor might provide a roadmap as an addendum to the contract with a prioritized list of accessibility issues and a timeline for addressing each issue. Contract extensions might be contingent upon satisfactory progress toward resolving the issues identified in the roadmap.

Even if the product is currently accessible, the contract should include language that assures continued accessibility as the product is updated. This is especially important for products that are developed on an ongoing rapid release cycle.

B.1.24. Managing Projects for Accessibility

It shall be the responsibility of the CAHELP JPA Virtual Compliance Supervisor to ensure that all projects related to accessibility be prioritized. All areas of the CAHELP website will be reviewed annually using the processes described at WCAG 2.0. Reviews are the responsibility of the **CAHELP JPA Virtual Compliance Supervisor** in collaboration with the **ACT**. Accessibility checks will be incorporated into the publishing workflow for all new content.

Student Name: Johnny Appleseed DOB: 1/1/2008 Date: 9/1/19

ADDENDUM / REVISION TO IEP

Next Meeting Date: 9/1/2020 Addendum/Revision to IEP Dated: _____
 Parent/Guardian/Surrogate: _____ Home Phone #: _____ Work Phone #: _____
 Parent/Guardian/Surrogate Address: _____ Mailing Address: _____
 Student's Address: (if different) _____ Parent/Guardian/Surrogate Emergency Phone #: _____
 School of Attendance: _____ District of Residence: _____ Residency Code: _____

Reason for Meeting: Add DMCC mental health treatment goals/services to the existing IEP.

Results of Meeting: DMCC mental health treatment goals/counseling were added.

CHANGE CODED ITEMS AS FOLLOWS: (DISABILITY, PRESCHOOL PLACEMENT, SCHOOL TYPE, STATEWIDE ASSESSMENT PROGRAM)
 Change: _____ Code from _____ to _____ Change: _____ Code from _____ to _____
 Change Weekly Percentage (%) of time in general education classes from _____ to _____ Exit Special Education: Date: _____ Code: _____

STATUS CODES: A = ADD M = MODIFY E = END NC = NO CHANGE

SPECIAL EDUCATION AND RELATED SERVICES									
STATUS	SERVICE (CODE NO.)	CLASS NO.	PROVIDER	LOCATION OF SERVICE (CODE NO.)	PROJECTED START DATE	PROJECTED END DATE	FREQUENCY (CODE NO.)	DURATION	
A	Code 525	<input checked="" type="checkbox"/> Indiv. <input type="checkbox"/> Group	550 DMCC	520 Sep Classm Pub Integrated Fac	9/1/2019	12/1/2019	2 x per week	60 Mins	
A	Code 525	<input checked="" type="checkbox"/> Indiv. <input type="checkbox"/> Group	550 DMCC	520 Sep Classm Pub Integrated Fac	12/2/2019	9/1/2020	3 x per month	30 Mins	
		<input type="checkbox"/> Indiv. <input type="checkbox"/> Group							
		<input type="checkbox"/> Indiv. <input type="checkbox"/> Group							
		<input type="checkbox"/> Indiv. <input type="checkbox"/> Group							
		<input type="checkbox"/> Indiv. <input type="checkbox"/> Group							
		<input type="checkbox"/> Indiv. <input type="checkbox"/> Group							

NOTE: Programs and services will be provided according to where the student is in attendance and consistent with the district of service calendar and scheduled services, excluding holidays, vacations, and non-instructional days unless otherwise specified.

SERVICE CODES FOR SPECIAL EDUCATION AND RELATED SERVICES									
210	Family Training, Counseling & Home Visits (age 0-2 only)	417	SELPA / DMCC Speech	540	Day Treatment Services	760	Recreation Services (includes therapeutic creation)		
220	Medical Services – evaluation only (ages 0-2 only)	425	Adapted Physical Education	550	Residential Treatment Services	820	College Awareness		
230	Nutrition Services (ages 0-2 only)	435	Health & Nursing – Specialized Physical	610	Specialized Services for Low Incidence Disabilities	840	Career Awareness		
240	Service Coordination (ages 0-2 only)		Health Care Services	710	Specialized Deaf & Hard of Hearing	850	Work Experience Education		
250	Special Instruction (ages 0-2 only)	436	Health & Nursing – Other Services	715	Interpreter Services	855	Job Coaching (includes job shadow and service)		
260	Special Education Aide in Regular Development Class	445	Assistive Technology Services	720	Audiological Services	860	Mentoring		
	Child Care Home (ages 0-2 only)	450	Occupational Therapy	725	Specialized Vision Services	865	Agency Linkages (referral and placement)		
270	Respite Care Services (ages 0-2 only)	460	Physical Therapy	730	Orientation & Mobility	870	Travel Training (includes Mobility training)		
330	Special Academic Instruction	510	Individual Counseling	735	Braille Transcription	890	Other Transition Services		
340	Intensive Individual Services	515	Counseling & Guidance	740	Specialized Orthopedic Services	900	Other Special Education and Related Services		
348	One-to-One Bus Aide	520	Parent Counseling	745	Reader Services	901	Transportation		
350	Individual & Small Group Instruction (ages 3-5 only)	525	Social Work Services (DMCC)	750	Note Taking Services				
355	Individual & Small Group Instruction (ages 6+)	530	Psychological Services	755	Transcription Services				
415	Language & Speech	535	Behavior Intervention Services						

Student Name: Johnny Appleseed

DOB: 1/1/2008

Date: 9/1/19

ADDENDUM / REVISION TO IEP

I UNDERSTAND THAT THIS IEP IS AN ADDENDUM/REVISION OF MY CHILD'S CURRENT IEP DATED _____, AND THAT ALL GOALS, OBJECTIVES, BENCHMARKS, AND SERVICES INCLUDED IN THE CURRENT IEP WILL BE CONTINUED UNLESS OTHERWISE STATED IN THIS ADDENDUM/REVISION.

INFORMED CONSENT (INITIAL EACH APPLICABLE STATEMENT BELOW)

_____ I have been advised of and given a copy of Special Education Procedural Safeguards/Parent Rights this school year.

_____ I have received a copy of this Individualized Education Program Addendum/Revision.

_____ I **CONSENT** to making these changes without an IEP team meeting.

_____ (IF APPLICABLE) I **CONSENT** to the participation of agencies for transition planning at this IEP meeting.

_____ (IF APPLICABLE) It has been explained to me and I understand the reason why a member of the Individualized Education Program (IEP) team is not present and I **CONSENT** and excuse the IEP team member from the IEP team meeting. _____
Title

_____ (IF APPLICABLE) I **CONSENT** to excuse the following IEP team member during the IEP team meeting: _____
Title

_____ (IF APPLICABLE) Prior to the IEP meeting, I received written information from an excused member of the IEP team that is relevant to the development of the IEP.

_____ (IF APPLICABLE) I **CONSENT** to the review, access, processing of claims, and reimbursement of Medi-Cal benefits/information by the LEA and/or IEP team for services provided under this IEP, including, if appropriate, the provision of Targeted Case Management Services.

_____ (IF APPLICABLE) I have been advised of the LEA's responsibility to conduct a vision and hearing screening of my child but **DO NOT CONSENT** to this examination.

_____ I **CONSENT** to this Individualized Education Program Addendum/Revision **EXCEPT** for the following:

_____ I **DO NOT CONSENT** to this Individualized Education Program Addendum/Revision. **REASONS:**

_____ I request a copy of this Individualized Education Program Addendum/Revision to be provided in my primary language: _____

_____ The Individualized Education Program Addendum/Revision has been interpreted orally by: (when appropriate) _____

_____ The **TRANSFER OF EDUCATIONAL RIGHTS AT THE AGE OF MAJORITY (18)** has been explained to the student and parent. Parent Initials: _____ Student Initials: _____

_____ The LEA facilitates parent involvement to improve services and results for my child. YES NO

LEA USE ONLY: Initial here if no response was provided by the parent/guardian: _____

I CONSENT TO ALL COMPONENTS OF THE IEP ADDENDUM/REVISION WITH ANY EXCEPTIONS NOTED ABOVE. I UNDERSTAND THAT THOSE COMPONENTS TO WHICH I CONSENT WILL BE IMPLEMENTED. I FURTHER UNDERSTAND THAT THIS CONSENT IS VOLUNTARY AND MAY BE REVOKED AT ANY TIME.

Parent/Guardian/Surrogate provided **VERBAL CONSENT** to implement this IEP.

Date: _____

Student: _____

Date: _____

Parent/Guardian/Surrogate: _____

Date: _____

Parent/Guardian/Surrogate: _____

Date: _____

THE FOLLOWING ATTENDED AND PARTICIPATED IN THE DEVELOPMENT OF THIS IEP ADDENDUM/REVISION:

LEA Representative _____ Date _____

Special Education Teacher _____ Date _____

General Education Teacher _____ Date _____

Nurse _____ Date _____

Other/Title _____ Date _____

Other/Title _____ Date _____

Speech-Language Pathologist _____ Date _____

Psychologist _____ Date _____

Parent/Guardian/Surrogate _____ Date _____

Other/Title _____ Date _____

Other/Title _____ Date _____

Other/Title _____ Date _____

California Association of Health and Education Linked Professions
Joint Powers Authority (CAHELP JPA)
DESERT/MOUNTAIN CHARTER SELPA EXECUTIVE COUNCIL MEETING
October 23, 2019 – 11:30 a.m.
Desert Mountain Educational Service Center, 17800 Highway 18, Apple Valley CA 92307

MINUTES

COUNCIL MEMBERS PRESENT:

Allegiance STEAM Academy – Sebastian Cогnetta, Aveson Global and Aveson School of Leaders – Kate Bean, Ballington Academy – Doreen Mulz (via telephone), Desert Trails Preparatory Academy (DTPA) & La Verne Elementary Preparatory Academy (LEPA) – Debra Tarver, Julia Lee Performing Arts Academy – Tanya Taylor, Odyssey Charter – Lauren O’Neill.

CAHELP STAFF PRESENT:

Peggy Dunn, April Hatcher, Marina Gallegos, Jenae Holtz, Linda Llamas, Kami Murphy, Kathleen Peters, Jennifer Sutton.

1.0 CALL TO ORDER

The regular meeting of the Desert/Mountain Charter SELPA Executive Council Meeting was called to order by Chairperson Jenae Holtz, at 11:43 a.m., at the Desert/Mountain Educational Service Center, Apple Valley.

2.0 PUBLIC PARTICIPATION

None.

3.0 ADOPTION OF THE AGENDA

3.1 **BE IT RESOLVED** that a motion was made by Lauren O’Neill, seconded by Kate Bean, to approve the October 23, 2019 Desert/Mountain Charter SELPA Executive Council Meeting Agenda as presented. A vote was taken and the following carried: 5:0: Ayes: Members Bean, Cогnetta, O’Neill, Tarver, Taylor. Nays: None, Abstentions: None.

4.0 INFORMATION/ACTION

4.1 Desert/Mountain Charter SELPA Policy and Procedures Chapters 6 and 22 (ACTION)

Policies and procedures governing the operation of special education programs within the Desert/Mountain Charter SELPA are developed, reviewed and revised throughout the year upon the recommendation of the Program Team. Policies and Procedures are modified as necessary in order to ensure that special education programs are operated in an efficient, effective and legally compliant manner. Suggested revisions to Charter SELPA Policy and Procedures and SELPA Forms are submitted to the D/M Charter SELPA Steering Committee for consideration and approval.

Jenae Holtz explained that one of the main goals of implementing the Temporary Intensive Supports Assessment (TISA) as listed in Chapter 22 is having a fading plan when a 1:1 aide is determined necessary. She confirmed that the TISA is a D/M SELPA tool and that the law states

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supports must be provided for a child to receive free appropriate public education (FAPE) but does not require a 1:1 aide. Jenae stated it is typically the school psychologist that will complete the TISA documents and the assessments. She said the TISA can be used with any child that is transferring in as well as current students to have a clear understanding of what that child needs and be able to make changes accordingly.

Kathleen Peters said if a parent asks for a 1:1 aide, the referral form is to be signed and the process started. The assessment will provide a basis for the response and will protect the LEA if a due process case is filed.

4.1.1 **BE IT RESOLVED** that a motion was made by Debra Tarver, seconded by Lauren O’Neill, that the Desert/Mountain Charter SELPA Policy and Procedures Chapters 6 and 22 be approved as presented. A vote was taken and the following carried: 5:0: Ayes: Members Bean, Cognetta, O’Neill, Tarver, Taylor. Nays: None, Abstentions: None.

4.2 Desert/Mountain Charter SELPA Forms D/M 151, 157, and 175 (**ACTION**)

Forms used in the operations of special education programs within the Desert/Mountain Charter SELPA are developed, reviewed and revised throughout the year upon the recommendation of the Program Team. Forms are modified as necessary in order to support the operations of special education programs in an efficient, effective and legally compliant manner. Suggested revisions to SELPA Forms are submitted to the D/M Charter SELPA Steering Committee for consideration and approval.

Kathleen Peters explained that Form D/M 175 Preschool Matriculation Assessment Determination is to be used during the preschool student’s annual IEP meeting that occurs in the last term of the school year.

4.2.1 **BE IT RESOLVED** that a motion was made by Lauren O’Neill, seconded by Sebastian Cognetta that the Desert/Mountain SELPA Forms D/M 151, 157, and 175 be approved as presented. A vote was taken and the following carried: 5:0: Ayes: Members Bean, Cognetta, O’Neill, Tarver, Taylor. Nays: None, Abstentions: None.

4.3 Desert/Mountain Charter SELPA Executive Council Meeting Dates and Times

The CAHELP JPA CEO seeks consideration in a change of dates and times for the January 22, 2020 and April 8, 2020 Desert/Mountain Charter SELPA Executive Council Meetings. The January 22, 2020 meeting is proposed to be held on January 16, 2020 at 10:00 a.m. and the April 8, 2020 meeting to be held on April 16, 2020 at 10:00 a.m. to coincide with the D/M Charter SELPA Steering Committee Meeting.

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- 4.3.1 **BE IT RESOLVED** that a motion was made by Lauren O’Neill, seconded by Tanya Taylor, to combine the D/M Charter SELPA Steering Committee and the D/M Charter SELPA Finance Committee Meetings ensuring D/M Charter SELPA Finance Committee items are included on the Desert/Mountain Charter SELPA Executive Council Meeting agendas. The motion continued that the Desert/Mountain Charter SELPA Executive Council approves the change of dates and times for the January 22, 2020 and April 8, 2020 Desert/Mountain Charter SELPA Executive Council Meetings. A vote was taken and the following carried: 5:0: Ayes: Members Bean, Cognetta, O’Neill, Tarver, Taylor. Nays: None, Abstentions: None.

At approximately 12:25 p.m., Doreen Mulz with Ballington Academy joined the meeting via telephone.

5.0 CONSENT ITEMS

It is recommended that the Desert/Mountain Charter SELPA Executive Council consider approving several Agenda items as a Consent list. Consent Items are routine in nature and can be enacted in one motion without further discussion. Consent items may be called up by any Committee Member at the meeting for clarification, discussion, or change.

- 5.1 **BE IT RESOLVED** that a motion was made by Debra Tarver, seconded by Tanya Taylor, that the following Consent Items be approved as presented. A vote was taken and the following carried: 5:0:1: Ayes: Members Bean, Cognetta, Mulz, Tarver, Taylor. Nays: None, Abstentions: O’Neill.

- 5.1.1 Approve the March 20, 2019 Desert/Mountain Charter SELPA Executive Council Meeting Minutes.

6.0 CHIEF EXECUTIVE OFFICER AND STAFF REPORTS

- 6.1 Introduction of New Members

Jenae Holtz introduced Leonardo da Vinci Health Science Charter as the new Desert/Mountain Charter SELPA member. She stated Josh Stepner is the CEO and principal of the LEA.

- 6.2 Legislative Updates

Jenae Holtz presented the latest in State and Federal law related to students with disabilities and school law. She reported that Senate Bill (SB) 223 will be effective January 1, 2020 which allows local educational agencies (LEAs) to adopt policies regarding administration of medicinal cannabis to students on campus. Jenae said LEAs are not required to have a policy but are allowed to adopt a policy to permit a parent or guardian to possess and administer marijuana at a school site to a student who is a qualified medical marijuana patient under California law. JoJo’s Act provides very clear guidelines of what can be allowed and what cannot.

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Jenae also reported on SB 605 which will be effective January 1, 2020 regarding assistive technology (AT). This bill requires LEAs to provide students with greater access to low incidence equipment (LIE) by continuing to provide AT devices after the student disenrolls from the LEA and to provide AT devices outside of school when the IEP team deems it is a necessary component of the student's FAPE. Jenae shared that there are concerns with the law as far as tracking the equipment. She continued that D/M Charter SELPA has limited LIE funding and once those funds are depleted, the LEAs are responsible for purchasing and tracking equipment. Jenae stated that she is working on creating a system for D/M SELPA to track low incidence equipment which she will share once it is in place to assist the LEAs.

Jenae highlighted the following:

- SB 695 – was vetoed by the Governor. It would have required IEP documents to be translated within 30 calendar days of IEP meeting. There is a current law that addresses non-English speaking parents and guardians understanding their child's IEP and translations being provided within a reasonable amount of time. Jenae suggested to aim to have the documents to the parents within 45 days but no more than 60 days.
- Assembly Bill (AB) 1322 – was vetoed by Governor. The bill would have established school-based health units. Governor assigned money supporting an interagency collaboration to improve coordination and accessibility of services and supports to students.
- AB 751 – Governor vetoed. It would have allowed the state to create other assessments to replace Smarter Balance.
- AB 328 – Effective 7/1/2022, the school day for middle schools and high schools, including charter schools to begin no earlier than 8:00 a.m. for middle schools and 8:30 a.m. for high schools. This will impact transportation, sports, and other aspects of schools.

6.3 Responsibilities of Desert/Mountain Charter SELPA Steering Meeting Remote Attendance

Jenae Holtz reported that there are a number of committee members that attend the D/M Charter SELPA Steering Committee Meetings remotely which is a wonderful alternative. She said her concern is that members are not actively participating in the meetings beyond initial roll call. Jenae continued that when she calls for responses from the member(s) participating remotely, she does not always receive a response. Jenae said it is important that members attend remotely that they remain engaged during the entire meeting. Jenae asked for staff attending remotely to mute their telephones and microphones until they are speaking to reduce background noise and disruptions.

6.4 Combining of CAHELP JPA Steering Meetings and Finance Committee Meetings

Jenae Holtz will lead a discussion on the combining of CAHELP JPA Steering Meetings and Finance Committee Meetings. Refer to item number 4.3.

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6.5 Professional Learning Summary

Jenae Holtz presented an update on the SELPA's professional development.

6.6 Resolution Support Services Summary

Kathleen Peters presented an update on the SELPA's resolution support services.

6.7 Compliance Update

Peggy Dunn presented the following update on compliance items from the California Department of Education (CDE):

- Performance Indicator Review (PIR) Review – CDE is currently reviewing PIR Plans. The PIR Plans for the following have been approved: Aveson Global, Aveson School of Leaders, Ballington Academy, Encore-High Desert, Encore-Riverside, Odyssey Charter, Pathways to College, and Taylion High Desert Academy.
- 2017-18 Disproportionality Follow-Up – waiting on CDE to respond regarding Desert Trails.
- 2018-19 Disproportionality – CDE is waiting for Aveson Global Leadership Academy to submit their Policies and Procedures. The disproportionality review must be completed and certified by October 30, 2019.

Peggy reported that CASEMIS to CALPADS submissions are currently being done. She said D/M Charter SELPA does the submission for the charter members and that Colette Garland will be in contact with the LEA CALPADS contact for additional access. Peggy stated the next CASEMIS 2 CALPADS meeting will be held on November 15, 2019 at 9:00 a.m. to 12:00 p.m. and can be attended remotely.

6.8 Desert/Mountain SELPA, Desert/Mountain Charter SELPA Compliance Monitoring Guide Draft

Peggy Dunn presented the Desert/Mountain SELPA, Desert/Mountain Charter SELPA Compliance Monitoring Guide Draft. Peggy stated the guide is designed to assist LEAs with compliance issues such as Disproportionality, Performance Indicator Review, Comprehensive Review and other. The guide will allow LEAs to be proactive and provides helpful tips.

Jenae Holtz asked for the members to review the guide and provide feedback to Peggy as it is still being edited. She stated the guide will be presented to the Governance Council on November 22, 2019 for final approval. Jenae said the guide is meant to provide understanding and guidance in regard to compliance issues.

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Peggy reviewed the Padlet provided by Dr. Jon Eyler. She encouraged the committee members to review the resources on the padlet. Peggy directed the attendees to the CASEMIS 2 CALPADS (C2C) Validator and Shape Education website. She said CAHELP JPA will be offering workshops on Shape Education.

7.0 INFORMATION ITEMS

None.

8.0 DESERT/MOUNTAIN CHARTER SELPA EXECUTIVE COUNCIL MEMBERS COMMENTS / REPORTS

None.

9.0 CEO COMMENTS

Jenae Holtz thanked the members for attending the meeting and shared her appreciation for them. Jenae said that Finance Committee items will be added to the meeting agenda effective January 2020.

Marina Gallegos reported that at the Finance Committee earlier in the day, there was discussion about the loss of average daily attendance (ADA) funding due to a school district closing two charter schools. She said there was also discussion about inter-district transfers and moving forward status quo. Marina said she will send the risk pool percentages to the members.

10.0 MATTERS BROUGHT BY CITIZENS

None.

11.0 ADJOURNMENT

Having no further business to discuss, a motion was made by Lauren O'Neill, seconded by Tanya Taylor, to adjourn the meeting. A vote was taken and the following carried: 6:0: Ayes: Members Bean, Cognition, Mulz, O'Neill, Tarver, Taylor. Nays: None, Abstentions: None

The next regular meeting of the Desert/Mountain Charter SELPA Executive Council will be held on Wednesday, January 16, 2020, at 10:00 a.m., at the Desert Mountain Educational Service Center, Aster/Cactus Room, 17800 Highway 18, Apple Valley, CA 92307.

Individuals requiring special accommodations for disabilities are requested to contact Jamie Adkins at (760) 955-3555, at least seven days prior to the date of this meeting.

To: Jenae Holtz <Jenae.Holtz@cahelp.org>

Subject: Correction to "State Laws Related to Special Education Going Into Effect on January 1, 2020"

Date: January 9, 2020

Subject: Official Message from the State Director of Special Education

The January 6, 2020, memo summarizing Assembly Bill (AB) 1172 incorrectly reported that the new statute "**requires** the CDE, if an investigation conducted by the CDE results in a finding that student health or safety has been compromised, to immediately suspend or revoke the school's certification."

In fact, the new statute reads as follows: "If an investigation conducted by the department results in a finding that pupil health or safety has been compromised or is in danger of being compromised at a nonpublic, nonsectarian school or agency, the department **may** immediately suspend or revoke the certification of the nonpublic, nonsectarian school or agency."

The Special Education Division regrets this error and wishes to publish this correction.

Sent: Monday, January 6, 2020 4:15 PM

To: Jenae Holtz <Jenae.Holtz@cahelp.org>

Subject: State Laws Related to Special Education Going Into Effect on January 1, 2020

Date: January 6, 2020

Subject: Official Message from the State Director of Special Education

State Laws Related to Special Education Going Into Effect on January 1, 2020

During the 2019 legislative year, several bills related to special education will become law on January 1, 2020. Three bills make changes specifically to special education statute. They are Assembly Bills (ABs) 1172, 605, and 947. Several other bills do not change special education statute but could have implications for students with disabilities.

Changes to Special Education Statutes

The AB 1172 amends several sections of Education Code pertaining to nonpublic, nonsectarian schools and agencies. The new law requires that local educational agencies (LEAs) that send students to nonpublic, nonsectarian schools (NPSs) conduct onsite monitoring visits; requires that NPSs notify the California Department of Education (CDE) of any student-involved incident in which law enforcement is contacted; requires the CDE, if an investigation conducted by the CDE results in a finding that student health or safety has been compromised, to immediately suspend or revoke the school's certification; requires that an NPS serving students with significant behavioral needs to have a person onsite who is qualified to implement behavior interventions; requires that administrators of NPSs hold or be working toward specified credentials or licenses; and requires that NPSs train specified staff in evidence-based practices and interventions specific to students' unique behavioral needs. Further, the new law requires NPSs to submit documentation as a part of their application for certification by the CDE that the NPS will train staff who will have contact or interaction with students during the school day in the use of specified evidence-based practices and interventions specific to the unique behavioral needs of the students it serves and require LEAs to verify compliance with this requirement. The full text of AB 1172 is available at

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1172.

The AB 605 adds Section 56040.3 to the Education Code pertaining to the use of assistive technology devices. The new law makes LEAs, including charter schools, responsible for providing a student with disabilities who requires the use of an assistive technology device with continued access to that device, or to a comparable device, when the student, because of enrollment in another LEA, ceases to be enrolled in that LEA. This responsibility is in force until alternative arrangements for providing the student with continuous access to the assistive technology device, or to a comparable

device, can be made or until two months have elapsed from the date that the student ceased to be enrolled in that LEA, whichever occurs first. The full text of AB 605 can be found at

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB605.

The AB 947 adds Education Code sections 56353 and 56354 to law. The new law authorizes school districts, county offices of education (COEs), and charter schools to consider elements of the expanded core curriculum, as defined, when developing individualized education programs (IEPs) for students who are blind, have low vision, or are visually impaired. If an orientation and mobility evaluation is needed for a student who is blind, has low vision, or is visually impaired, the new law would require that these evaluations be conducted by appropriately certified specialists and occur in familiar and unfamiliar environments, in varying lighting conditions, and in the home, school, and community, as appropriate to ensure that students receive necessary related services. The full text of AB 947 is available at

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB947.

Statutory Changes Having Implications for Students with Disabilities

The AB 34 amends the Education Code by requiring each LEA to ensure that specified information on bullying and harassment prevention is readily accessible in a prominent location on the LEA's existing Internet web site in a manner that is easily accessible to parents or guardians and pupils. The full text of AB 34 can be found at

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB34.

The AB 189 amends the Penal Code by adding qualified autism service providers, qualified autism service professionals, and qualified autism service paraprofessionals, as defined, to the list of individuals who are mandated reporters of child abuse or neglect. The full text of AB 189 can be found at

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB189.

The AB 413 amends both Education Code and Penal Code by deleting references to "at-risk" and replacing that term with the term "at-promise." The full text of AB 413 can be found at

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB413.

The AB 988 amends the Education Code by authorizing the Commission on Teacher Credentialing to allow applicants for an education specialist credential to demonstrate their area of concentration based on two years of experience in California, while the candidates hold the preliminary credential. The full text of AB 988 can be found at

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB988.

The AB 1354 amends the Education Code by requiring a COE, as part of the joint transition planning policy, to assign transition oversight responsibilities to existing COE personnel who will work with the county probation department, as needed, and relevant LEAs to ensure that specified transition activities are completed for a student and to facilitate the transfer of complete and accurate education records and a student's IEP

when a student enters the juvenile court school. In addition, AB 1354 would require a student detained for more than 20 consecutive schooldays to have an individualized transition plan to be developed by the COE in collaboration with the county probation department, as needed, and to have specified items accessible to the holder of the educational rights of the student on the student's release. The AB 1354 also requires the COE, in collaboration, as needed, with the county probation department, to establish procedures for the timely, accurate, complete, and confidential transfer of educational records, as specified. The full text of AB 1354 can be found at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1354.

Senate Bill (SB) 223 amends Education Code by authorizing the governing board of a school district, a county board of education, or the governing body of a charter school maintaining kindergarten or any of grades one to twelve, inclusive, to adopt, at a regularly scheduled meeting of the governing board or body, a policy that allows a parent or guardian of a student to possess and administer medicinal cannabis at a school site to the student who is a qualified patient entitled to the protections of the Compassionate Use Act of 1996, excluding cannabis in a smokeable or vapeable form. The full text of SB 223 can be found at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB223.

The SB 419 amends Education Code by extending the permanent prohibition against suspending students enrolled in kindergarten through grade three for disruption or willful defiance to include students in grades four and five. This prohibition is also being expanded to include student in grades six through eight, until July 1, 2025. The new law also applies these prohibitions to charter schools. Please note that this law will go into effect July 1, 2020. The full text of SB 419 can be found at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB419.

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AB-5 Worker status: employees and independent contractors. (2019-2020)

SHARE THIS:



Date Published: 09/19/2019 04:00 AM

Assembly Bill No. 5

CHAPTER 296

An act to amend Section 3351 of, and to add Section 2750.3 to, the Labor Code, and to amend Sections 606.5 and 621 of the Unemployment Insurance Code, relating to employment, and making an appropriation therefor.

[Approved by Governor September 18, 2019. Filed with Secretary of State September 18, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 5, Gonzalez. Worker status: employees and independent contractors.

Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the "ABC" test, to establish that a worker is an independent contractor for those purposes.

Existing law, for purposes of unemployment insurance provisions, requires employers to make contributions with respect to unemployment insurance and disability insurance from the wages paid to their employees. Existing law defines "employee" for those purposes to include, among other individuals, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

This bill would state the intent of the Legislature to codify the decision in the *Dynamex* case and clarify its application. The bill would provide that for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. The bill, notwithstanding this provision, would provide that any statutory exception from employment status or any extension of employer status or liability remains in effect, and that if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (*Borello*). The bill would exempt specified occupations from the application of *Dynamex*, and would instead provide that these occupations are governed by *Borello*. These exempt occupations would include, among others, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, commercial fishermen, workers providing licensed barber or cosmetology services, and others performing work under a contract for professional services, with another business entity, or pursuant to a subcontract in the construction industry.

The bill would also require the Employment Development Department, on or before March 1, 2021, and each

March 1 thereafter, to issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. The bill would make the exemption for commercial fishermen applicable only until January 1, 2023, and the exemption for licensed manicurists applicable only until January 1, 2022. The bill would authorize an action for injunctive relief to prevent employee misclassification to be brought by the Attorney General and specified local prosecuting agencies.

This bill would also redefine the definition of "employee" described above, for purposes of unemployment insurance provisions, to include an individual providing labor or services for remuneration who has the status of an employee rather than an independent contractor, unless the hiring entity demonstrates that the individual meets all of specified conditions, including that the individual performs work that is outside the usual course of the hiring entity's business. Because this bill would increase the categories of individuals eligible to receive benefits from, and thus would result in additional moneys being deposited into, the Unemployment Fund, a continuously appropriated fund, the bill would make an appropriation. The bill would state that addition of the provision to the Labor Code does not constitute a change in, but is declaratory of, existing law with regard to violations of the Labor Code relating to wage orders of the Industrial Welfare Commission. The bill would also state that specified Labor Code provisions of the bill apply retroactively to existing claims and actions to the maximum extent permitted by law while other provisions apply to work performed on or after January 1, 2020. The bill would additionally provide that the bill's provisions do not permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to the bill's enactment.

Existing provisions of the Labor Code make it a crime for an employer to violate specified provisions of law with regard to an employee. The Unemployment Insurance Code also makes it a crime to violate specified provisions of law with regard to benefits and payments.

By expanding the definition of an employee for purposes of these provisions, the bill would expand the definition of a crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) On April 30, 2018, the California Supreme Court issued a unanimous decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*).

(b) In its decision, the Court cited the harm to misclassified workers who lose significant workplace protections, the unfairness to employers who must compete with companies that misclassify, and the loss to the state of needed revenue from companies that use misclassification to avoid obligations such as payment of payroll taxes, payment of premiums for workers' compensation, Social Security, unemployment, and disability insurance.

(c) The misclassification of workers as independent contractors has been a significant factor in the erosion of the middle class and the rise in income inequality.

(d) It is the intent of the Legislature in enacting this act to include provisions that would codify the decision of the California Supreme Court in *Dynamex* and would clarify the decision's application in state law.

(e) It is also the intent of the Legislature in enacting this act to ensure workers who are currently exploited by being misclassified as independent contractors instead of recognized as employees have the basic rights and protections they deserve under the law, including a minimum wage, workers' compensation if they are injured on the job, unemployment insurance, paid sick leave, and paid family leave. By codifying the California Supreme Court's landmark, unanimous *Dynamex* decision, this act restores these important protections to potentially several million workers who have been denied these basic workplace rights that all employees are entitled to under the law.

(f) The *Dynamex* decision interpreted one of the three alternative definitions of "employ," the "suffer or permit" definition, from the wage orders of the Industrial Welfare Commission (IWC). Nothing in this act is intended to affect the application of alternative definitions from the IWC wage orders of the term "employ," which were not addressed by the holding of *Dynamex*.

(g) Nothing in this act is intended to diminish the flexibility of employees to work part-time or intermittent schedules or to work for multiple employers.

SEC. 2. Section 2750.3 is added to the Labor Code, to read:

2750.3. (a) (1) For purposes of the provisions of this code and the Unemployment Insurance Code, and for the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The person performs work that is outside the usual course of the hiring entity's business.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(2) Notwithstanding paragraph (1), any exceptions to the terms "employee," "employer," "employ," or "independent contractor," and any extensions of employer status or liability, that are expressly made by a provision of this code, the Unemployment Insurance Code, or in an applicable order of the Industrial Welfare Commission, including, but not limited to, the definition of "employee" in subdivision 2(E) of Wage Order No. 2, shall remain in effect for the purposes set forth therein.

(3) If a court of law rules that the three-part test in paragraph (1) cannot be applied to a particular context based on grounds other than an express exception to employment status as provided under paragraph (2), then the determination of employee or independent contractor status in that context shall instead be governed by the California Supreme Court's decision in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (Borello).

(b) Subdivision (a) and the holding in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (Dynamex), do not apply to the following occupations as defined in the paragraphs below, and instead, the determination of employee or independent contractor status for individuals in those occupations shall be governed by Borello.

(1) A person or organization who is licensed by the Department of Insurance pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance Code.

(2) A physician and surgeon, dentist, podiatrist, psychologist, or veterinarian licensed by the State of California pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation as defined in Section 13401 of the Corporations Code. Nothing in this subdivision shall apply to the employment settings currently or potentially governed by collective bargaining agreements for the licensees identified in this paragraph.

(3) An individual who holds an active license from the State of California and is practicing one of the following recognized professions: lawyer, architect, engineer, private investigator, or accountant.

(4) A securities broker-dealer or investment adviser or their agents and representatives that are registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or licensed by the State of California under Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations Code.

(5) A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment under that section are met.

(6) A commercial fisherman working on an American vessel as defined in subparagraph (A) below.

(A) For the purposes of this paragraph:

(i) "American vessel" has the same meaning as defined in Section 125.5 of the Unemployment Insurance Code.

(ii) "Commercial fisherman" means a person who has a valid, unrevoked commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game

Code.

(iii) "Working on an American vessel" means the taking or the attempt to take fish, shellfish, or other fishery resources of the state by any means, and includes each individual aboard an American vessel operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, including maintaining the vessel or equipment used aboard the vessel. However, "working on an American vessel" does not apply to anyone aboard a licensed commercial fishing vessel as a visitor or guest who does not directly or indirectly participate in the taking.

(B) For the purposes of this paragraph, a commercial fisherman working on an American vessel is eligible for unemployment insurance benefits if they meet the definition of "employment" in Section 609 of the Unemployment Insurance Code and are otherwise eligible for those benefits pursuant to the provisions of the Unemployment Insurance Code.

(C) On or before March 1, 2021, and each March 1 thereafter, the Employment Development Department shall issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. This report shall include, but not be limited to, reporting the number of commercial fishermen who apply for unemployment insurance benefits, the number of commercial fishermen who have their claims disputed, the number of commercial fishermen who have their claims denied, and the number of commercial fishermen who receive unemployment insurance benefits. The report required by this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

(D) This paragraph shall become inoperative on January 1, 2023, unless extended by the Legislature.

(c) (1) Subdivision (a) and the holding in *Dynamex* do not apply to a contract for "professional services" as defined below, and instead the determination of whether the individual is an employee or independent contractor shall be governed by *Borello* if the hiring entity demonstrates that all of the following factors are satisfied:

(A) The individual maintains a business location, which may include the individual's residence, that is separate from the hiring entity. Nothing in this subdivision prohibits an individual from choosing to perform services at the location of the hiring entity.

(B) If work is performed more than six months after the effective date of this section, the individual has a business license, in addition to any required professional licenses or permits for the individual to practice in their profession.

(C) The individual has the ability to set or negotiate their own rates for the services performed.

(D) Outside of project completion dates and reasonable business hours, the individual has the ability to set the individual's own hours.

(E) The individual is customarily engaged in the same type of work performed under contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.

(F) The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.

(2) For purposes of this subdivision:

(A) An "individual" includes an individual providing services through a sole proprietorship or other business entity.

(B) "Professional services" means services that meet any of the following:

(i) Marketing, provided that the contracted work is original and creative in character and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the contracted work.

(ii) Administrator of human resources, provided that the contracted work is predominantly intellectual and varied in character and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(iii) Travel agent services provided by either of the following: (I) a person regulated by the Attorney General under Article 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, or (II) an individual who is a seller of travel within the meaning of subdivision (a) of Section 17550.1 of the Business and Professions Code and who is exempt from the registration under subdivision (g) of Section 17550.20 of the Business and Professions Code.

(iv) Graphic design.

(v) Grant writer.

(vi) Fine artist.

(vii) Services provided by an enrolled agent who is licensed by the United States Department of the Treasury to practice before the Internal Revenue Service pursuant to Part 10 of Subtitle A of Title 31 of the Code of Federal Regulations.

(viii) Payment processing agent through an independent sales organization.

(ix) Services provided by a still photographer or photojournalist who do not license content submissions to the putative employer more than 35 times per year. This clause is not applicable to an individual who works on motion pictures, which includes, but is not limited to, projects produced for theatrical, television, internet streaming for any device, commercial productions, broadcast news, music videos, and live shows, whether distributed live or recorded for later broadcast, regardless of the distribution platform. For purposes of this clause a "submission" is one or more items or forms of content produced by a still photographer or photojournalist that: (I) pertains to a specific event or specific subject; (II) is provided for in a contract that defines the scope of the work; and (III) is accepted by and licensed to the publication or stock photography company and published or posted. Nothing in this section shall prevent a photographer or artist from displaying their work product for sale.

(x) Services provided by a freelance writer, editor, or newspaper cartoonist who does not provide content submissions to the putative employer more than 35 times per year. Items of content produced on a recurring basis related to a general topic shall be considered separate submissions for purposes of calculating the 35 times per year. For purposes of this clause, a "submission" is one or more items or forms of content by a freelance journalist that: (I) pertains to a specific event or topic; (II) is provided for in a contract that defines the scope of the work; (III) is accepted by the publication or company and published or posted for sale.

(xi) Services provided by a licensed esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist provided that the individual:

(I) Sets their own rates, processes their own payments, and is paid directly by clients.

(II) Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.

(III) Has their own book of business and schedules their own appointments.

(IV) Maintains their own business license for the services offered to clients.

(V) If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space.

(VI) This subdivision shall become inoperative, with respect to licensed manicurists, on January 1, 2022.

(d) Subdivision (a) and the holding in Dynamex do not apply to the following, which are subject to the Business and Professions Code:

(1) A real estate licensee licensed by the State of California pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by subdivision (b) of Section 10032 of the Business and Professions Code. If that section is not applicable, then this determination shall be governed as follows: (A) for purposes of unemployment insurance by Section 650 of the Unemployment Insurance Code; (B) for purposes of workers compensation by Section 3200 et seq.; and (C) for all other purposes in the Labor Code by Borello. The statutorily imposed duties of a responsible broker under Section 10015.1 of the Business and Professions Code are not factors to be considered under the Borello test.

(2) A repossession agency licensed pursuant to Section 7500.2 of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by Section 7500.2 of the Business and Professions Code, if the repossession agency is free from the control and direction of the hiring person or entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(e) Subdivision (a) and the holding in Dynamex do not apply to a bona fide business-to-business contracting relationship, as defined below, under the following conditions:

(1) If a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation ("business service provider") contracts to provide services to another such business ("contracting business"), the determination of employee or independent contractor status of the business services provider shall be governed by Borello, if the contracting business demonstrates that all of the following criteria are satisfied:

(A) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business.

(C) The contract with the business service provider is in writing.

(D) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.

(E) The business service provider maintains a business location that is separate from the business or work location of the contracting business.

(F) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(G) The business service provider actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity.

(H) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.

(I) The business service provider provides its own tools, vehicles, and equipment to perform the services.

(J) The business service provider can negotiate its own rates.

(K) Consistent with the nature of the work, the business service provider can set its own hours and location of work.

(L) The business service provider is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(2) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs labor or services for a contracting business.

(3) The determination of whether an individual working for a business service provider is an employee or independent contractor of the business service provider is governed by paragraph (1) of subdivision (a).

(4) This subdivision does not alter or supersede any existing rights under Section 2810.3.

(f) Subdivision (a) and the holding in *Dynamex* do not apply to the relationship between a contractor and an individual performing work pursuant to a subcontract in the construction industry, and instead the determination of whether the individual is an employee of the contractor shall be governed by Section 2750.5 and by Borello, if the contractor demonstrates that all the following criteria are satisfied:

(1) The subcontract is in writing.

(2) The subcontractor is licensed by the Contractors State License Board and the work is within the scope of that license.

(3) If the subcontractor is domiciled in a jurisdiction that requires the subcontractor to have a business license or business tax registration, the subcontractor has the required business license or business tax registration.

(4) The subcontractor maintains a business location that is separate from the business or work location of the contractor.

(5) The subcontractor has the authority to hire and to fire other persons to provide or to assist in providing the

services.

(6) The subcontractor assumes financial responsibility for errors or omissions in labor or services as evidenced by insurance, legally authorized indemnity obligations, performance bonds, or warranties relating to the labor or services being provided.

(7) The subcontractor is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(8) (A) Paragraph (2) shall not apply to a subcontractor providing construction trucking services for which a contractor's license is not required by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, provided that all of the following criteria are satisfied:

(i) The subcontractor is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.

(ii) For work performed after January 1, 2020, the subcontractor is registered with the Department of Industrial Relations as a public works contractor pursuant to Section 1725.5, regardless of whether the subcontract involves public work.

(iii) The subcontractor utilizes its own employees to perform the construction trucking services, unless the subcontractor is a sole proprietor who operates their own truck to perform the entire subcontract and holds a valid motor carrier permit issued by the Department of Motor Vehicles.

(iv) The subcontractor negotiates and contracts with, and is compensated directly by, the licensed contractor.

(B) For work performed after January 1, 2020, any business entity that provides construction trucking services to a licensed contractor utilizing more than one truck shall be deemed the employer for all drivers of those trucks.

(C) For purposes of this paragraph, "construction trucking services" mean hauling and trucking services provided in the construction industry pursuant to a contract with a licensed contractor utilizing vehicles that require a commercial driver's license to operate or have a gross vehicle weight rating of 26,001 or more pounds.

(D) This paragraph shall only apply to work performed before January 1, 2022.

(E) Nothing in this paragraph prohibits an individual who owns their truck from working as an employee of a trucking company and utilizing that truck in the scope of that employment. An individual employee providing their own truck for use by an employer trucking company shall be reimbursed by the trucking company for the reasonable expense incurred for the use of the employee owned truck.

(g) Subdivision (a) and the holding in *Dynamex* do not apply to the relationship between a referral agency and a service provider, as defined below, under the following conditions:

(1) If a business entity formed as a sole proprietor, partnership, limited liability company, limited liability partnership, or corporation ("service provider") provides services to clients through a referral agency, the determination whether the service provider is an employee of the referral agency shall be governed by *Borello*, if the referral agency demonstrates that all of the following criteria are satisfied:

(A) The service provider is free from the control and direction of the referral agency in connection with the performance of the work for the client, both as a matter of contract and in fact.

(B) If the work for the client is performed in a jurisdiction that requires the service provider to have a business license or business tax registration, the service provider has the required business license or business tax registration.

(C) If the work for the client requires the service provider to hold a state contractor's license pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, the service provider has the required contractor's license.

(D) The service provider delivers services to the client under service provider's name, rather than under the name of the referral agency.

(E) The service provider provides its own tools and supplies to perform the services.

(F) The service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed for the client.

(G) The service provider maintains a clientele without any restrictions from the referral agency and the service provider is free to seek work elsewhere, including through a competing agency.

(H) The service provider sets its own hours and terms of work and is free to accept or reject clients and contracts.

(I) The service provider sets its own rates for services performed, without deduction by the referral agency.

(J) The service provider is not penalized in any form for rejecting clients or contracts. This subparagraph does not apply if the service provider accepts a client or contract and then fails to fulfill any of its contractual obligations.

(2) For purposes of this subdivision, the following definitions apply:

(A) "Animal services" means services related to daytime and nighttime pet care including pet boarding under Section 122380 of the Health and Safety Code.

(B) "Client" means a person or business that engages a service contractor through a referral agency.

(C) "Referral agency" is a business that connects clients with service providers that provide graphic design, photography, tutoring, event planning, minor home repair, moving, home cleaning, errands, furniture assembly, animal services, dog walking, dog grooming, web design, picture hanging, pool cleaning, or yard cleanup.

(D) "Referral agency contract" is the agency's contract with clients and service contractors governing the use of its intermediary services described in subparagraph (C).

(E) "Service provider" means a person or business who agrees to the referral agency's contract and uses the referral agency to connect with clients.

(F) "Tutor" means a person who develops and teaches their own curriculum. A "tutor" does not include a person who teaches a curriculum created by a public school or who contracts with a public school through a referral company for purposes of teaching students of a public school.

(3) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs services for a client through a referral agency. The determination whether such an individual is an employee of a referral agency is governed by subdivision (a).

(h) Subdivision (a) and the holding in *Dynamex* do not apply to the relationship between a motor club holding a certificate of authority issued pursuant to Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code and an individual performing services pursuant to a contract between the motor club and a third party to provide motor club services utilizing the employees and vehicles of the third party and, instead, the determination whether such an individual is an employee of the motor club shall be governed by *Borello*, if the motor club demonstrates that the third party is a separate and independent business from the motor club.

(i) (1) The addition of subdivision (a) to this section of the Labor Code by this act does not constitute a change in, but is declaratory of, existing law with regard to wage orders of the Industrial Welfare Commission and violations of the Labor Code relating to wage orders.

(2) Insofar as the application of subdivisions (b), (c), (d), (e), (f), (g), and (h) of this section would relieve an employer from liability, those subdivisions shall apply retroactively to existing claims and actions to the maximum extent permitted by law.

(3) Except as provided in paragraphs (1) and (2) of this subdivision, the provisions of this section of the Labor Code shall apply to work performed on or after January 1, 2020.

(j) In addition to any other remedies available, an action for injunctive relief to prevent the continued misclassification of employees as independent contractors may be prosecuted against the putative employer in a court of competent jurisdiction by the Attorney General or by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association.

SEC. 3. Section 3351 of the Labor Code, as amended by Section 33 of Chapter 38 of the Statutes of 2019, is amended to read:

3351. "Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

(a) Aliens and minors.

(b) All elected and appointed paid public officers.

(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. An officer or member of a board of directors may elect to be excluded from coverage in accordance with paragraph (16), (18), or (19) of subdivision (a) of Section 3352.

(d) Except as provided in paragraph (8) of subdivision (a) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.

(f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability company. A general partner of a partnership or a managing member of a limited liability company may elect to be excluded from coverage in accordance with paragraph (17) of subdivision (a) of Section 3352.

(g) A person who holds the power to revoke a trust, with respect to shares of a private corporation held in trust or general partnership or limited liability company interests held in trust. To the extent that this person is deemed to be an employee described in subdivision (c) or (f), as applicable, the person may also elect to be excluded from coverage as described in subdivision (c) or (f), as applicable, if that person otherwise meets the criteria for exclusion, as described in Section 3352.

(h) A person committed to a state hospital facility under the State Department of State Hospitals, as defined in Section 4100 of the Welfare and Institutions Code, while engaged in and assigned work in a vocation rehabilitation program, including a sheltered workshop.

(i) Beginning on July 1, 2020, any individual who is an employee pursuant to Section 2750.3. This subdivision shall not apply retroactively.

SEC. 4. Section 606.5 of the Unemployment Insurance Code is amended to read:

606.5. (a) Whether an individual or entity is the employer of specific employees shall be determined pursuant to subdivision (b) of Section 621, except as provided in subdivisions (b) and (c).

(b) As used in this section, a "temporary services employer" and a "leasing employer" is an employing unit that contracts with clients or customers to supply workers to perform services for the client or customer and performs all of the following functions:

(1) Negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality, and price of the services.

(2) Determines assignments or reassignments of workers, even though workers retain the right to refuse specific assignments.

(3) Retains the authority to assign or reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer.

(4) Assigns or reassigns the worker to perform services for a client or customer.

(5) Sets the rate of pay of the worker, whether or not through negotiation.

(6) Pays the worker from its own account or accounts.

(7) Retains the right to hire and terminate workers.

(c) If an individual or entity contracts to supply an employee to perform services for a customer or client, and is a leasing employer or a temporary services employer, the individual or entity is the employer of the employee who performs the services. If an individual or entity contracts to supply an employee to perform services for a client or customer and is not a leasing employer or a temporary services employer, the client or customer is the employer of the employee who performs the services. An individual or entity that contracts to supply an employee to

perform services for a customer or client and pays wages to the employee for the services, but is not a leasing employer or a temporary services employer, pays the wages as the agent of the employer.

(d) In circumstances which are in essence the loan of an employee from one employer to another employer wherein direction and control of the manner and means of performing the services changes to the employer to whom the employee is loaned, the loaning employer shall continue to be the employer of the employee if the loaning employer continues to pay remuneration to the employee, whether or not reimbursed by the other employer. If the employer to whom the employee is loaned pays remuneration to the employee for the services performed, that employer shall be considered the employer for the purposes of any remuneration paid to the employee by the employer, regardless of whether the loaning employer also pays remuneration to the employee.

SEC. 5. Section 621 of the Unemployment Insurance Code is amended to read:

621. "Employee" means all of the following:

(a) Any officer of a corporation.

(b) Any individual providing labor or services for remuneration has the status of an employee rather than an independent contractor unless the hiring entity demonstrates all of the following conditions:

(1) The individual is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(2) The individual performs work that is outside the usual course of the hiring entity's business.

(3) The individual is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(c) (1) Any individual, other than an individual who is an employee under subdivision (a) or (b), who performs services for remuneration for any employing unit if the contract of service contemplates that substantially all of those services are to be performed personally by that individual either:

(A) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for their principal.

(B) As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, their principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(C) As a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by that person that are required to be returned to that person or a designee thereof.

(2) An individual shall not be included in the term "employee" under the provisions of this subdivision if that individual has a substantial investment in facilities used in connection with the performance of those services, other than in facilities for transportation, or if the services are in the nature of a single transaction not part of a continuing relationship with the employing unit for whom the services are performed.

(d) Any individual who is an employee pursuant to Section 601.5 or 686.

(e) Any individual whose services are in subject employment pursuant to an election for coverage under any provision of Article 4 (commencing with Section 701) of this chapter.

(f) Any member of a limited liability company that is treated as a corporation for federal income tax purposes.

SEC. 6. No provision of this measure shall permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to this measure's enactment.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CLIENT NEWS BRIEF

California Passes New Law To Increase Protection And Safety Of Special Education Students In Nonpublic Schools

January 2020
Number 3

Governor Gavin Newsom signed Assembly Bill (AB) 1172 this fall, which imposes additional requirements upon nonpublic schools (NPSs), as well as the local educational agencies (LEAs) that place students in NPSs, in order to increase the safety and protection of students in NPS placements. This legislation was passed following the high profile death of a 13-year-old special education student, who passed away after being placed in a prone restraint at an NPS.

AB 1172 places new monitoring requirements on LEAs that enter into contracts with NPSs, and places on NPSs, new documentation requirements related to administrator and staff training, as well as new notification requirements for any student-involved incident involving law enforcement. Most of the new requirements imposed by AB 1172 become effective beginning with the 2020-21 school year.

More specifically, AB 1172 amends Education Code section 51225.2 to include the following:

New requirements placed on LEAs

Beginning with the 2020-21 school year:

- LEAs that enter into master contracts with NPSs must conduct an onsite visit at the NPS before placing a student there if the LEA does not have any students enrolled at the school at the time of placement.
- LEAs must conduct at least one onsite monitoring visit each school year at each NPS in which the LEA has a student attending and with which it maintains a master contract. The monitoring visit should include, but is not limited to: a review of services provided to the student through the individual service agreement between the LEA and the NPS; a review of the progress the student is making towards his/her goals as set forth in their individualized education program and behavioral intervention plan, if applicable; an observation of the student during instruction; and a walkthrough of the facility. Additionally, LEAs will need to report the findings resulting from their monitoring visits to the California Department of Education (CDE) within 60 calendar days of each onsite monitoring visit.

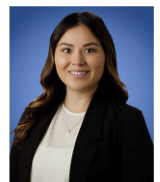
New requirements placed on NPS Sites

Beginning with the 2020-21 school year:

- Each NPS will need to provide documentation that it will train staff who will have contact or interaction with students during the school day in the use of evidence-based practices and interventions specific to the unique behavioral needs of the NPS's student population. The training will need to be provided within 30 days of employment to new staff, and annually to existing staff.



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CLIENT NEWS BRIEF

January 2020
Number 3

- For an NPS to be certified by the CDE, it will need to provide documentation that its administrator holds or is in the process of obtaining one of the special credentials or licenses specified in the law.
- NPSs serving students with significant behavioral needs or students on behavioral intervention plans, must certify in writing that they have an individual onsite during school hours who is qualified, and responsible for the design, planning, and implementation of behavioral interventions.
- NPSs must notify the CDE and the LEA of any student-involved incident in which law enforcement was contacted, in writing, no later than one business day after the incident occurred.

AB 1172 also allows the CDE to immediately suspend or revoke the certification of an NPS, if an investigation conducted by CDE results in a finding that student health or safety has been compromised, or is in danger of being compromised, at the NPS.

Takeaways

According to the Legislature, AB 1172 could result in unknown but potentially significant costs to LEAs in conducting the onsite visits of NPSs and the reporting of findings resulting from those visits to the CDE within the specified timeline. School districts should consider identifying or creating a position to conduct the NPS onsite visits, report to the CDE on those visits, and ensure NPS certification when entering into a master contract with an NPS. Training responsible staff on AB 1172 and the requirements identified in Education Code section 51225.2 is also recommended. School districts are also encouraged to consult with counsel regarding these new requirements, if needed.

For additional information regarding AB 1172, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

CLIENT NEWS BRIEF

School District Cannot Avoid Responsibility For Residential Placement Despite Availability Of Financial Assistance From A Non-Educational Agency

In a significant special education case published earlier this year, the California Court of Appeal ruled that a school district was responsible for funding the costs of residential placement for an adopted former foster child, despite funding assistance provided for the placement by the Department of Children and Family Services (DCFS).

Background

B.H., a former foster child with significant disabilities, lived with his adoptive parents within the boundaries of the Manhattan Beach Unified School District (MBUSD). B.H.'s parents arranged for his placement at a residential treatment facility and its affiliated nonpublic school in Sonoma County. MBUSD offered this placement to B.H. in an individualized education program (IEP) upon B.H. qualifying for special education. As adoptive parents of a child formerly under DCFS's supervision, B.H.'s parents applied for and received financial assistance for his residential placement through the Adoptive Assistance Program (AAP), administered through DCFS. Given this financial assistance from DCFS, MBUSD refused to fund the IEP placement. MBUSD's reasoning was two-fold: DCFS had placed the student—not the school district—and so MBUSD was not responsible for the costs of B.H.'s education; and, as DCFS was funding the placement, MBUSD had no need to do so.

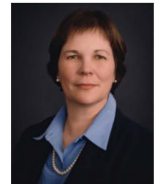
The parents initiated a due process hearing, with the sole issue being whether MBUSD was responsible for implementing B.H.'s IEP and paying the parents' travel expenses related to B.H.'s placement at the residential treatment center. The administrative law judge (ALJ) ruled in favor of MBUSD, finding that MBUSD was not responsible for the costs of B.H.'s education. In reaching this conclusion, the ALJ relied on Education Code sections 56155 and 56156.4, which provide that if a child with disabilities is placed in a licensed children's institution (LCI) . . . *by a public agency, other than an educational agency*, then the special education local plan area (SELPA) shall be responsible for providing special education to the child residing in the LCI, and not the district of parents' residence. (Ed. Code, § 56156.4, subd. (a); emphasis added.) The ALJ concluded that DCFS was a "public agency other than an educational agency" for purposes of Sections 56155 and that DCFS had placed B.H. in the residential treatment center.

On appeal, the trial court agreed with the ALJ's finding that MBUSD was not responsible for the costs of B.H.'s residential placement.

Analysis

The Court of Appeal reversed the trial court's decision, holding that because DCFS is not a "public agency, other than an educational agency" under Education Code section 56155 and that because DCFS did not in fact "place" B.H. in the residential facility but rather only offered AAP funding assistance, Education Code section 56156.4, subdivision (a), did not provide MBUSD with an exception to the rule that the school district of the parents' residence is responsible for the costs of education for a student with disabilities.

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Number 78



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CLIENT NEWS BRIEF

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In reaching these conclusions, the court first pointed out that B.H.'s educational placement was to be determined under the Individuals with Disabilities Education Act (IDEA), which required MBUSD to provide a free appropriate public education (FAPE), including placement, to B.H. Further, regardless of any other agency involvement, the statutory schemes of the IDEA and related provisions of the California Education Code do not provide an exception to a school district's obligation to provide residential placement services solely on the basis that such services or placement may be available through another agency.

Next, the court explained that for purposes of Education Code sections 56155 and 56156.4, subdivision (a), a "public agency" is defined, in part, as "... any other public agency under the auspices of the state or any political subdivisions of the state providing special education or related services to individuals." (Ed. Code, § 56028.5.) Because DCFS did not provide "special education or related services" to B.H. it was not a "public agency, other than an educational agency," and thus the exception under Education Code section 56156.4, subdivision (a) did not apply.

The court found that the purpose of AAP funding is to ease financial burdens on adoptive families in addressing a child's serious mental health or emotional problems that pre-existed the child's adoption. The court emphasized that the law does not authorize DCFS to facilitate a residential placement for the purposes of providing special education, noting that such authority arises only when a student is a dependent of the juvenile court, and the court orders or permits DCFS to make educational decisions on behalf of the child.

Takeaways

Under *B.H. v. Manhattan Beach Unified School District*, a residential placement financially facilitated by DCFS for a child no longer under DCFS's jurisdiction did not constitute "placement" by a non-educational public agency for purposes of determining the agency responsibility for funding the student's FAPE. As school districts take stock of the recent legislative season and evaluate their practices midway through the school year, they should bear the *B.H.* case in mind. Education Code provisions concerning residential placements and licensed children's institutions are nuanced, and legal counsel should be consulted when these issues arise.

For more information on this decision or to discuss any questions related to special education, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#). Over the next few weeks our housing experts will also be developing materials in response to the 2019 housing laws including sample checklists and preliminary applications to assist local governments in complying with SB 330. Keep an eye out for these resources.

CLIENT NEWS BRIEF

New Law Prohibits Barriers To Charter School Enrollment

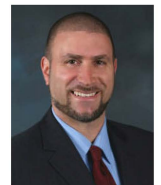
November 2019
Number 69

A new law is intended to discourage the improper recruitment and disenrollment of charter school students, particularly students who belong to certain protected classes. Recently signed by Governor Newsom, Senate Bill (SB) 75 adds a provision to California's Charter Schools Act to prohibit charter schools from discouraging a student from enrolling or continuing to enroll in the charter school.

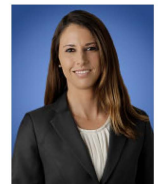
The law lists explicitly unlawful bases for "counseling out" students and their families, including nationality, race, ethnicity, sexual orientation, or if a student exhibits characteristics of: a disability; an academically low-achieving student; an English learner; a neglected or delinquent student; a homeless student; a student who is economically disadvantaged; or a foster youth. In furtherance of the law's purpose, charter schools are also prohibited from requesting a student's records, or requiring a parent, guardian, or student to submit the student's records to the charter school, prior to enrollment. Historically, charter schools have always been required to accept all students that are California residents, regardless of academic achievement, disability, economic status, etc. Here, the California Legislature recognizes problems that have arisen, where certain groups of students were being discouraged from enrolling, or encouraged to disenroll, in some charter schools.

Under the law, the California Department of Education (CDE) is directed to develop a notice and complaint form stating the new legal requirements, and charter schools are required to post the notice on their respective websites. Charter schools also now have an affirmative duty to provide a copy of the CDE notice to parents, guardians, and students over age eighteen when the parent, guardian, or student over age eighteen inquires about enrollment; before conducting an enrollment lottery; and before the disenrollment of any student. In order to ensure enforcement, any member of the public has a right to file a complaint with the charter school's authorizer, often the local school district, if the person suspects a charter school has violated the provisions of this law. CDE's notice and complaint form can be found at <https://www.cde.ca.gov/sp/ch/cscomplaint.asp>.

Although the law creates a process for aggrieved families to complain to charter authorizers, it is silent regarding exactly what action a charter authorizer must take when it receives a complaint. The recently revised statutes regarding charter school renewals, which go into effect in July 2020, shed some light onto the complaint review process (See [2019 Client News Brief No. 49](#)). The law now indicates that, when determining whether to renew a school's charter, an authorizer must consider, along with other criteria, any substantiated complaints that the charter school has not complied with the new enrollment requirements described above. The determination of whether a complaint is "substantiated" is left to the charter authorizer, and thus the law infers that charter authorizers must develop their own complaint investigation processes. Still, some questions remain unanswered. For example, if the authorizer investigates the complaint and discovers a potential legal violation, what action is the charter authorizer supposed to take, aside from considering whether to revoke the charter? The new law does not appear to create an



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CLIENT NEWS BRIEF

October 2019
Number 69

enforcement mechanism, aside from considering compliance during the charter renewal process.

Takeaways

Charter schools and charter authorizers should be careful to ensure that charter schools are not discouraging any student from attaining or maintaining charter school enrollment. Charter schools must be extra careful when dealing with students who are members of the groups specifically protected under the law. Since the law took immediate effect in July, charter schools should post the CDE notice and complaint form on their websites and implement clear policies for staff regarding the distribution of the CDE notice, in short order. Note that charter schools are still permitted to suspend or expel students for disciplinary reasons, so long as such discipline conforms to federal and state statutory and constitutional due process requirements, and is otherwise consistent with the law, and the processes laid out in the charter.

If you have any questions about SB 75, the amendments to the Education Code regarding charter schools, or charter school student enrollment in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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CAHELP JPA Desert/Mountain SELPA & Charter SELPA 2020 Local Plans Rewrite Schedule

Workgroup & Committees: Meetings & Approval Process

Draft Local Plans

Date	Group	Task
October 2019 thru January 2020	CAHELP CEO	Review CDE rewrite guidelines and write drafts of Local Plans
January 2020	CAHELP CEO	Organize Workgroup & solicit input

Committees' Readings

Date	Group(s)	Task
02/07/2020	Governance Council	Local Plans First Reading
02/20/2020	Community Advisory Committee (CAC)	Local Plans First Reading
02/20/2020 & 02/21/2020	Workgroup, Steering/Finance Committees, Charter SELPA Executive Council & CAHELP Program Team	Local Plans First Reading, Public Hearings, Workgroup Collaborative Meeting
03/19/2020 & 03/20/2020	Steering/Finance Committees & Charter SELPA Executive Council & CAHELP Program Team	Local Plans Second Reading, Public Hearings, Workgroup Collaboration and Approvals of Local Plans
03/20/2020 thru 03/27/2020	CAHELP CEO	Add input and recommendations to Local Plans from Workgroup & Committees
04/29/2020	Governance Council	Local Plans Second Reading, Public Hearing and Action to Approve Local Plans & Annual Service & Budget Plans
04/30/2020 thru 09/30/2020	CAHELP JPA Mngr. & Admin. Services Assistant	Send out and collect the LEA Governing Board approvals of Local Plans
June 2020	CEO & Admin. Services Assistant	Submit Local Plans to CDE for Approval

CAHELP's Log for Tracking Local Plans: Readings & Approvals

Committee	1 st Read Completed	2 nd Read Completed	Approval Date
CAHELP Program Team			
Community Advisory Committee (CAC)			
D/M SELPA Steering/Finance Committee			
D/M Charter SELPA Steering/Finance Committee			
D/M Charter SELPA Executive Council			
CAHELP Governance Council			

D/M SELPA – Dates of LEA Board Approval of Local Plan

LEA	Date Local Plan Approved by LEA's Board
Academy for Academic Excellence Charter School	
Adelanto Elementary School District	
Apple Valley Unified School District	
Baker Valley Unified School District	
Barstow Unified School District	
Bear Valley Unified School District	
Excelsior Charter School	
Excelsior Corona-Norco	
Health Sciences Middle	
Health Sciences High and Middle College Charter School	
Helendale Elementary School District	
Hesperia Unified School District	
High Tech Elementary Point Loma	
High Tech Explorer Elementary School	
High Tech High Media Arts	
High Tech High	
High Tech High International	
High Tech High Middle Media Arts	
High Tech High Middle School	
High Tech High Learning Statewide Benefit Charter School*	
Lucerne Valley Unified School District	
Needles Unified School District	
Norton Science and Language Academy Charter School	
Oro Grande Elementary School District	
San Bernardino County Superintendent of Schools	
Silver Valley Unified School District	
Snowline Joint Unified School District	
Trona Joint Unified School District	
Victor Elementary School District	
Victor Valley Union High School District	
*High Tech High Statewide Benefit Charter School sites:	
High Tech High Chula Vista High School	
High Tech High Chula Vista Elementary	
High Tech High Chula Vista Middle	
High Tech High North County High School	
High Tech High Middle North County	
High Tech High Elementary North County	
High Tech High Mesa	

D/M Charter SELPA – Dates of LEA Board Approval of Local Plan

LEA	Date Local Plan Approved by LEA's Board
Allegiance STEAM Academy- Thrive	
Aveson Global Leadership Academy	
Aveson School of Leaders	
Ballington Academy for the Arts and Sciences	
Desert Trails Preparatory Academy	
Elite Academic Academy – Lucerne	
Elite Academic Academy – Adult Work Force Investment	
Encore High School, Riverside	
Encore Junior/Senior High School	
Julia Lee Performing Arts Academy	
LaVerne Elementary Preparatory Academy	
Leonardo da Vinci Health Sciences Charter	
OCS - South	
Odyssey Charter School	
Pasadena Rosebud Academy	
Pathways to College	
Taylion High Desert Academy	

D/M CHARTER SELPA PROFESSIONAL LEARNING PARTICIPATION SUMMARY

DECEMBER 2019 - 48 PARTICIPANTS

289 YEAR-TO-DATE-PARTICIPANTS

■ Total Participants YTD by Content Area ■ On-Site Trainings ■ Regional Trainings



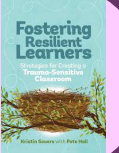
Fostering Resilient Learners: Creating a Safety Nest to **THRIVE AND SOAR**



Dave Pelzer
Keynote Speaker



Kristin Souers
Event Speaker



As the opening keynote speaker, Dave Pelzer brings a rare heartfelt message about a man whose life was saved by a system that many have ridiculed as being useless and incompetent. This highly emotional presentation pays tribute to those who have dedicated their lives to making a difference in the life of a child, while at the same time educating the general public of the challenges faced by those in their chosen field.

Following Dave Pelzer's powerful keynote, Kristin Souers, an expert in the field of childhood trauma, will present an engaging, relevant, and practical session with proven strategies on Fostering Resilient Learners. Through her session, Kristin will bring an understanding of what trauma is and how it hinders the learning environment. She will help create a safe space for students to learn at high levels while using a strength-based approach to help educators of all settings work with children of trauma. Kristin Souers is the lead author of the best-selling book *Fostering Resilient Learners: Strategies for Creating a Trauma-Sensitive Classroom*.

Date

February 26, 2020

Time

Registration begins at 7:30 a.m.
Training time is from 8:00 a.m. – 4:00 p.m.

Location

National Orange Show Events Center
689 South E Street
San Bernardino, CA 92408

Cost

\$200.00

Registration fee includes continental breakfast, lunch, and a book from one of the speakers.

Registration

Please register on-line at:
<https://sbcss.k12oms.org/52-179313>

Special Accommodations

Please submit accommodation request at least fifteen (15) working days prior to the training by notating your request when registering.

**SPACE IS LIMITED!
SIGN UP EARLY!**

#TRAUMAINVESTED



**Desert/Mountain Charter SELPA
Due Process Summary
July 1, 2019 - January 16, 2020**

D = Complaint Dismissed W = Complaint Withdrawn

DISTRICT										CASE ACTIVITY FOR CURRENT YEAR				
	13/14	14/15	15/16	16/17	17/18	18/19	19/20		Total	D/W	Resolution	Mediation	Settled	Hearing
Allegiance STEAM Acad - Thrive	N/A	N/A	N/A	N/A	N/A	0	0		0	0	0	0	0	0
Aveson Global Leadership Acad	N/A	N/A	2	1	5	1.5	2		11.5	2	0	0	0	0
Aveson School of Leaders	N/A	N/A	0	3	1	1.5	0		5.5	0	0	0	0	0
Ballington Acad for Arts & Sci	N/A	N/A	N/A	N/A	0	2	0		0	0	0	0	0	0
Desert Trails Prep Academy	0	0	0	0	0	0	0		0	0	0	0	0	0
Encore Junior/Senior High School	0	0	0	0	0	0	0		0	0	0	0	0	0
Encore High School, Riverside	N/A	N/A	0	0	0	1	1		2	0	0	0	1	0
Julia Lee Performing Arts Acad	N/A	N/A	N/A	N/A	N/A	0	0		0	0	0	0	0	0
LaVerne Elem Preparatory	0	0	0	0	0	0.5	0		0.5	0	0	0	0	0
Leonardo da Vinci Health Sci	0	0	0	0	0	0	0		0	0	0	0	0	0
Odyssey Charter School	N/A	N/A	0	0	0	0	0		0	0	0	0	0	0
Odyssey Charter School - South	N/A	N/A	N/A	N/A	N/A	0	0		0	0	0	0	0	0
Pasadena Rosebud Academy	N/A	N/A	N/A	N/A	N/A	1	0		1	0	0	0	0	0
Pathways to College	0	0	0	0	0	0	0		0	0	0	0	0	0
Taylison High Desert Academy	0	0	0	0	0	0	0		0	0	0	0	0	0
5														
SELPA-WIDE TOTALS	0	0	2	4	6	7.5	3		20.5	2	0	0	1	0

**Desert/Mountain Charter SELPA
Due Process Activity Summary
July 1, 2019 – January 16, 2020**

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
1. Encore HS Case No. 2019061207	1. Vision Therapy 2. Compensatory education local education agency (LEA): 1. Lack of parent consent to speech 2. Lack of parent consent to specialized academic instruction (SAI)	07/09/19	0	08/23/19			Settled; agreed to compensatory education at school site; agreed to provide Independent Educational Evaluation (IEE); agreed to omit speech from the Individualized Education Plan (IEP); CLOSED 8/23/19
2. Aveson Global Case No. 2019100871	1. Enrollment 2. NPS placement	10/23/19	10/28/19		11/22/19	12/03- 12/05/19	Insufficient filing. Dates vacated. Order of insufficiency; dismissed/CLOSED
3. Aveson Global Case No. 2019120202	1. Enrollment	12/03/19	12/16/19		01/17/20	01/28- 01/30/20	Claims outside jurisdiction of OAH. Vacated for insufficiency. CLOSED

Desert /Mountain Charter SELPA
Legal Expense Summary
As of January 16, 2020

2000-2001	
2001-2002	
2002-2003	
2003-2004	
2004-2005	
2005-2006	
2006-2007	
2007-2008	
2008-2009	
2009-2010	
2010-2011	
2011-2012	
2012-2013	
2013-2014	
2014-2015	
2015-2016	\$ 7,378.00
2016-2017	\$ 33,886.61
2017-2018	\$ 70,994.67
2018-2019	\$ 113,834.81
2019-2020	\$ 39,884.35

From: [Jamie Adkins](#)
To: [Arlani Harris](#); [Brenda Congo](#); [Callie Moreno](#); [Christina Roberts](#); [Craig Merrill](#); [Debbie Tarver](#); [Debra Taver](#); [Denise Griffin \(Encore Charters\)](#); [Doreen Mulz](#); [Eric Buries](#); [Gisella Wong](#); [Josh Steppner](#); [Kelly Jung](#); [Meghan Freeman](#); [Paula Giraldo](#); [Shawn Brumfield](#); [Susana Waisman \(Elite Academics\)](#); [Tina Fryberger](#); [ttaylor@jlpaschool.org](#)
Subject: FW: Call for November D/M Charter SELPA Steering Committee Items
Date: Thursday, December 5, 2019 11:19:00 AM
Attachments: [image004.png](#)
[River Spring IS OAH Decision 2018031003.pdf](#)
[River Spring IS OAH Decision 2018120978.pdf](#)
[image001.png](#)

Good Morning,

At the November D/M Charter SELPA Steering meeting, Kathleen shared information from attorney Megan Moore's response to questions regarding online student attendance. Below is Megan's full response for your reference.

Please contact Kathleen Peters via email Kathleen.Peters@cahelp.org or via telephone (760) 955-3568 if you have any additional questions.

Thank you,

Jamie Adkins

JPA Administrative Services Assistant

California Association of Health and Education Linked Professions

Direct: (760) 955-3555 | Office: (760) 552-6700 | www.cahelp.org



The Relentless Pursuit of Whatever Works in the Life of a Child

From: Megan Moore <megan@meganmoorelaw.com>
Sent: Tuesday, October 29, 2019 12:48 PM
To: Kathleen Peters <Kathleen.Peters@cahelp.org>
Subject: RE: Call for November D/M Charter SELPA Steering Committee Items

Hi Kathleen,

I am happy to discuss this with you prior to Steering committee. Although the email is lengthy, I have divided it for ease: (1) Hypothetical Question posed by Elite; (2) general legal requirement to provide FAPE; (3) strategies for evaluating students enrolled in online model program to determine offer of FAPE; and (4) some sample cases that, although not directly on point as to online charter schools, show the consideration of FAPE in an IS charter school.

1. Hypothetical Question

As I understand the hypothetical in Ms. Waisman's email, a parent enrolls a student into Elite charter school, a non-classroom-based independent study ("IS") charter school that provides online instruction to all students. Although not stated in Ms. Waisman's email, all IS charter schools require the parent and student sign a master agreement and the student is required to complete a specific

amount of work during a time period specified on the master agreement. Attendance is measured based on daily engagement and a review of the work completed. These processes are applicable to all students regardless of disability. (See Ed. Code The master agreement and IS policy must also provide for a review of the student's ability to participate in IS. In the hypothetical, the student is already eligible for special education and is not "attending." If there is an attendance issue, that means that student is not completing work or is not providing information on daily engagement (or both). Ms. Waisman is wondering how does an online charter school evaluate whether the lack of attendance is disability related and what options do they have to support the student.

2. General Obligation to provide FAPE in the LRE

Keep in mind, regardless of the type of program and parent's choice of that program, an IS charter school that provides online instruction remains obligated to provide FAPE in the least restrictive environment, including consideration of whether the student can actually benefit from the online model of instruction. If the student cannot benefit from the online instruction for disability-related reasons, Elite is responsible for identifying an appropriate placement and services. This can be a frustrating process for IS charter schools, particularly where it appears the parent has made a poor choice or is not assisting in the homeschool/IS portion of instruction, which is required for these types of schools. However, the outcome remains the same: an IEP team must meet to consider why the student is not accessing the program and change the offer of FAPE to address the student's needs.

3. Strategies for Evaluating Student and Offer of FAPE

Strategies for determining whether IS attendance is disability related include: offering to assess student; visiting the student's home by sending a teacher, administrator or other employee into the home to observe the parent and student; offering an FBA that includes a home visit(s) as part of the assessment; modifying the offer of FAPE to provide support for the parent; increasing the amount of SAI or other related services; providing some sort of accommodation to ensure the student participates in the SAI. If an IEP determines that the student cannot benefit from the IS model, even if it is because the parent cannot implement accommodations or supports in the home, the onus is on the IEP team to offer another placement.

4. Cases involving IS charter schools

For your edification, I am attaching a few OAH and OCR decisions involving IS charter schools. I did not find any cases where the online model was discussed; however, the attached provide a thorough review of what is expected of charter schools, regardless of their model of delivery.

- OAH Case No. 2018031003: Shows a series of placements and services offered by River Springs, an independent study charter school. Here, the ALJ determined that the last placement, offered in February 2018 provided FAPE in the least restrictive environment. This shows how much work goes into figuring out an appropriate placement for a student in an IS charter school program.
- OAH Case No. 2018120978: Also a River Springs case, which underscores the parent enrolling a child with behavior problems into an IS charter school. Here, the ALJ determined that the charter school could not implement the behavior plan in the home school setting, nor did it revise the behavior intervention plan to address student's needs in that setting. This resulted in a denial of FAPE. When I read this opinion, it shows to me that the parent elected to pursue

a homeschool setting that may not have been appropriate, but the ALJ still placed the onus on the charter school for addressing the student's needs, regardless of the parent choice. I highlighted Legal Conclusion 22, which includes a description of the parent not being equipped to implement the behavior plan.

Let me know if you want to discuss further.

Megan

^^

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From: Kathleen Peters <Kathleen.Peters@cahelp.org>
Sent: Thursday, October 24, 2019 4:23 PM
To: Megan Moore <megan@meganmoorelaw.com>
Subject: FW: Call for November D/M Charter SELPA Steering Committee Items

Hi again.
Please provide guidance to the concerns noted below regarding on-line charters and special education.
Thank you,
Kathleen
Kathleen K. Peters, Program Manager
Desert/Mountain SELPA and Charter SELPA
Direct: (760) 955-3568 | Office Assistant: (760) 955-3551 | www.dmselpa.org

From: Jamie Adkins <Jamie.Adkins@cahelp.org>
Sent: Thursday, October 24, 2019 3:07 PM
To: Kathleen Peters <Kathleen.Peters@cahelp.org>
Subject: FW: Call for November D/M Charter SELPA Steering Committee Items

Hi Kathleen,

Jenae would like you to address the below concerns of Susana (Elite) at the November 7 Charter Steering meeting.

Thank you,

Jamie Adkins

JPA Administrative Services Assistant

California Association of Health and Education Linked Professions

Direct: (760) 955-3555 | Office: (760) 552-6700 | www.cahelp.org



The Relentless Pursuit of Whatever Works in the Life of a Child

From: Susana Waisman <swaisman@hotmail.com>

Sent: Tuesday, October 22, 2019 9:20 AM

To: Jamie Adkins <Jamie.Adkins@cahelp.org>

Cc: michonne.taylor <michonne.taylor@waismanconsulting.com>

Subject: Re: Call for November D/M Charter SELPA Steering Committee Items

Hi Jamie,

One of the hot issues for Independent Study Charter Schools is how to deal with attendance issues. It is becoming harder to identify some of these kids as needing spec ed ,since we can't identify if the academic issues are due to lack of school attendance. If they are already in spec ed, we can't measure progress on goals, because they do not attend to the spec ed sessions.

Could we get the SELPA 's opinion in these matters? Further, we need advise on possible recommendations regarding steps to take.

Thanks.

Susana

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119 LRP 1460

**River Springs Charter School
California State Educational Agency**

2018031003

2018060667

January 14, 2019

Judge / Administrative Officer

Rommel P. Cruz, Administrative Law Judge

Full Text

Decision

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on March 22, 2018, naming Springs Charter Schools, also known as River Springs Charter School. On April 9, 2018, OAH granted Student's first motion to amend her complaint. On May 29, 2018, OAH granted Student's second motion to amend her complaint.¹

River Springs filed a due process hearing request on June 13, 2018, naming Student. On June 21, 2018, OAH consolidated Student's second amended complaint and River Springs' complaint. OAH continued the consolidated matters for good cause on July 3, 2018.

Administrative Law Judge Rommel P. Cruz heard this matter in Temecula, California, on September 25, 26, and 27, October 4, 5, 9, 10, 11, 16, and 23, and November 9, 2018.

Punam Grewal and Michelle Powers, Attorneys at Law, represented Student. Mother attended the hearing on all days. Father attended the hearing on most days.

Deborah Cesario, Attorney at Law, represented River Springs. Kenneth Bounds, Co-Counsel, attended three days of hearing and Molly Thurmond, Co-Counsel, attended one day of hearing. Kathy Cox, Ed.D., Director of Special Education, attended the hearing on all days on behalf of River Springs.

OAH granted a continuance at the parties'

request for the parties to file written closing arguments. On December 14, 2018, upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

Issues²

Student's Issues

1. Did River Springs deprive Student of a free appropriate public education from March 21, 2016, to August 2017, by failing to provide appropriate present levels of performance, goals, instruction and services to address Student's unique needs in the following areas: (a) occupational therapy; (b) speech; (c) specialized academic instruction; (d) educationally related mental health; (e) behavior; and (f) social skills?

2. Did River Springs deprive Student of a FAPE from March 2016 through May 21, 2018, by reason of a material failure to implement the following services:

a) The specialized academic instruction offered in the individualized education programs of March 30, 2016, April 26, 2016, January 12, 2017, March 23, 2017, April 28, 2017, and May 12, 2017; and

b) The specialized academic instruction, occupational therapy, speech and language, and counseling services offered in the August 4, 2017 IEP, during the period from April 19, 2018, through May 21, 2018?

3. Did River Springs deprive Student of a FAPE by failing to provide all of Student's educational records in response to Parents' requests, including the requests made in March and September 2016, and May 2018?

4. Did River Springs deny Student a FAPE by offering placement at Flabob Airport Preparatory Academy in the February 9, 2018 IEP?³

5. Did River Springs deny Student a FAPE by predetermining the February 9, 2018 IEP's offer of placement?

River Springs' Issue

6. Did the February 9, 2018 IEP offer Student a

FAPE in the least restrictive environment, such that River Springs may implement the IEP without Parents' consent?

Summary of Decision

This Decision holds that Rivers Springs denied Student a FAPE by failing to provide Student the specialized academic instruction called for in the December 4, 2015 IEP. During the 2016-2017 school year, River Springs failed to provide the 180 minutes a week of specialized academic instruction for over five months. River Springs further denied Student a FAPE in the December 4, 2015 IEP, as amended on April 26, 2016, and the January 12, 2017 IEP, by failing to offer an appropriate amount of specialized academic instruction to address Student's math deficits. Student significantly regressed in math over the

2016-2017 school year and extended school year. The approximately one hour a week of specialized academic instruction dedicated to math was inadequate due to Student's worsening math deficits. Furthermore, River Springs denied Student a FAPE by failing to implement the specialized academic instruction and related services at The Prentice School required by the August 4, 2018 IEP Amendment.

However, Student did not meet her burden of proving she was denied a FAPE resulting from a lack of goals and services in the areas of occupational therapy, speech, educationally related mental health, behavior, and social skills. The evidence did not demonstrate Student had deficits in those areas that warranted goals and services through her IEP. When River Springs did receive information necessitating goals and services in occupational therapy and speech and language, River Springs offered appropriate goals and services to address those needs. Moreover, Student did not establish that River Springs denied her a FAPE by failing to provide Parents the records they sought pursuant to their records requests.

Furthermore, Student did not meet her burden of proving River Springs predetermined the February 9,

2018 IEP offer of placement at Flabob Airport Preparatory Academy and failed to demonstrate that Flabob was not an appropriate placement in the least restrictive placement. River Springs proved by a preponderance of the evidence that the February 9, 2018 IEP, with placement at Flabob, offered Student a FAPE in the least restrictive environment. Accordingly, River Springs may implement the February 9, 2018 IEP without parental consent if Student seeks to receive special education and related services from River Springs.

Factual Findings

Background

1. Student was 13 years old at the time of the hearing. She was eligible for special education under the category of Specific Learning Disability. At the time of hearing, Student was attending eighth grade at The Prentice School, a nonpublic school in North Tustin, California.

2. In 2011, at the age of six, Student was assessed by William Britt III, Ph.D., of Loma Linda University to determine whether she had an autism spectrum disorder and/or attention deficit hyperactivity disorder. Dr. Britt found Student's perception to be either at or above the expected level. He found this to be inconsistent with high functioning autism. Student was also determined to be in the low average range on social skills in the home environment, but in the average range in the school environment. Dr. Britt concluded that these findings were inconsistent with autism spectrum disorder. Dr. Britt did diagnose Student with attention deficit hyperactivity disorder and oppositional defiant disorder.

3. Entering the 2015-2016 school year, Parents sought updated information about Student to assist them in planning her educational program in anticipation of a change in school. In July and August 2015, Student was assessed by David Libert, Ph.D., who authored a neuropsychological report. Dr. Libert diagnosed Student to be on the low end of the autism spectrum, which accounted for her sensory sensitivity.

He also opined that her autism affected her emotional responses in social interactions. Student was confused as to how to respond in typical situations. Dr. Libert diagnosed Student with attention deficit hyperactivity disorder; autism spectrum disorder without intellectual impairment, but with speech and language impairment; and social anxiety disorder. He recommended a psychotropic medication evaluation; individual and family therapy to address behaviors and appropriate self-expression; and a social skills program to help her ease her stress when engaging with peers.

4. River Springs speech-language pathologist Marissa Miller testified at hearing. Ms. Miller was a licensed speech-language pathologist for 18 years and joined River Springs in August 2007. She possessed an American Speech-Language-Hearing Association Certificate of Clinical Competence. Ms. Miller conducted an average of 15 to 20 speech and language assessments each year and attended 70 to 75 IEPs a year. Ms. Miller testified persuasively; her responses were careful and confident.

5. Ms. Miller determined Dr. Libert's finding as it related to the speech and language impairment as unreliable, as Dr. Libert did not specifically assess Student in the area of speech and language. Ms. Miller pointed out that Dr. Libert did not use any testing instruments associated with assessing a speech and language disorder.

6. River Springs Director of Special Education Dr. Kathy Cox testified at hearing and offered a description of River Springs' educational programs. River Springs was an independent study charter school, authorized by the Riverside County Office of Education as a county-wide benefit charter school. As an independent study charter school, River Springs accounted for a student's daily attendance based on the time the student spent on an educational activity and the work produced, as opposed to whether a student was seated in a classroom. River Springs offered several independent study programs. One such program was its Homeschool program, in which parents provided the day-to-day instruction. A

credentialed general education teacher, identified as an education specialist was assigned to the student to oversee the home instruction. The education specialist met with the student and parent a minimum of every 20 days to review the student's work, review the curriculum, and develop the learning plan for the next 20 days. Students in the Homeschool program had the option of attending one of River Springs' "student centers" one or more days a week for enrichment classes. Classes included art, drama, or more intensive instruction in core subjects. Other programs River Springs offered were Academy programs, which resembled more traditional educational settings. Academies offered onsite classes three to five days a week, where students received instruction from credentialed teachers.

7. Parents enrolled Student at River Springs in the summer of 2015 for Student's fifth grade year and chose to participate in the Homeschool program. Mother was Student's homeschool instructor. Student attended enrichment classes at the Riverside student center twice a week and homeschooled the other three days. Mother was also homeschooling Student's two siblings.

8. Prior to the start of the 2015-2016 school year at River Springs, Keri Gillette met with the family in the home and briefly assessed Student's reading abilities. Ms. Gillette was an education specialist for River Springs and the credentialed teacher assigned to Student for the 2015-2016 and 2016-2017 school years.

9. Ms. Gillette possessed a clear multi-subject teaching credential and a Cross-Cultural, Language, and Academic Development (CLAD) credential. As an education specialist, Ms. Gillette was the credentialed teacher who signed off on the work parents did in the home with their children. Ms. Gillette provided some instruction to Student from time to time as needed, but Mother provided the day-to-day instruction. Ms. Gillette was at times argumentative and evasive in her response during her examination at hearing, which diminished the persuasiveness of her testimony.

10. Mother requested River Springs assess Student for special education and related services. On September 15, 2015, River Springs administered i-Ready diagnostic tests to Student in the areas of math and reading. Student's overall math score was 469, placing her at a fourth grade level. Her overall reading score placed her at a third grade level.

11. River Springs school psychologist Robin Aghbashian prepared a psychoeducational assessment report dated December 4, 2015. Ms. Aghbashian had been a school psychologist since 2009. She joined River Springs in October 2015. She conducted around 70 assessments per year. Ronda Escalera, resource specialist program teacher, conducted the academic assessments portion of the evaluation. Ms. Aghbashian took into account Dr. Britt's 2011 and Dr. Libert's 2015 neuropsychological reports. Ms. Aghbashian observed Student in the classroom and administered, among other tests, the Woodcock-Johnson Tests of Achievement, Third Edition; Beery-Buktenica Development Test of Visual-Motor Integration; the Test of Visual-Perceptual Skills; Wechsler Intelligence Scale for Children, Fourth Edition; and Asperger Syndrome Diagnostic Scale. Mother and Ms. Gillette provided input.

12. The December 4, 2015 psychoeducational assessment did not assess Student specifically in the area of speech and language. However, Ms. Aghbashian did administer the Asperger Syndrome Diagnostic Scale (ASDS), which Mother completed. The ASDS was a diagnostic instrument to measure behaviors associated with Asperger Syndrome. The ASDS provided scores that demonstrated that no follow up assessments were needed in the area of pragmatics.

13. Ms. Miller opined that the results of the ASDS, coupled with the results from the Wechsler Abbreviated Scale of Intelligence administered by Dr. Libert, demonstrated there was no reason to suspect a need to further evaluate Student in the area speech and language. Student scored a 103 in verbal comprehension on the Wechsler, which Ms. Miller

explained was an uncharacteristically high score for a child with a speech and language disorder.

14. Occupational therapist Corey Whigham provided occupational therapy services for River Springs, including direct services and assessments of students. Mr. Whigham was certified by the National Board of Certification for Occupational Therapy. Since 2007, he conducted approximately 25 to 30 occupational therapy assessments a year for students with special needs and attended approximately 50 to 60 IEP team meetings annually.

15. Mr. Whigham provided thoughtful, detailed responses in his examination and his testimony was persuasive. Mr. Whigham opined that the findings and test protocols provided by the Beery-Buktenica Development Test of Visual-Motor Integration, the Test of Visual-Perceptual Skills, and the Woodcock-Johnson Tests of Achievement, Third Edition, administered as part of Ms. Aghbashian's evaluation demonstrated that Student's visual-motor skills warranted monitoring but not to the degree that occupational therapy service were needed. In addition, Mr. Whigham opined that Student's written entries in the Woodcock-Johnson raised no concerns as it related to Student's occupational therapy needs.

16. The December 4, 2015 psychoeducational assessment report concluded that Student had deficits in attention processing and sensory-motor processing. Ms. Aghbashian found a statistically significant discrepancy between Student's estimated cognitive ability and academic scores in the areas of basic reading, reading comprehension, math calculation, and math reasoning. She opined that this made it hard for Student to work through grade-level curriculum in those areas. The psychoeducational assessment report was provided to Parents prior to the December 4, 2015 IEP team meeting.

17. In her testimony, Ms. Aghbashian opined Dr. Libert's diagnosis of autism spectrum disorder was not reliable, as Dr. Libert relied solely on parental input without administering any standardized assessment tools to provide an objective measure. Ms. Aghbashian explained that the result of her

psychoeducational evaluation, along with the findings of the neurological assessment reports did not warrant further assessments in the areas of speech, occupational therapy, behavior, mental health, or social skills.

December 4, 2015 Initial Individualized Education Program

18. The IEP team reviewed Student's initial IEP over two days, on December 4 and 18, 2015. Mother, Father, Ms. Aghbashian, Ms. Gillette, and Ms. Escalera were among those who attended. Ms. Aghbashian presented her December 4, 2015 psychoeducational assessment report and the IEP team discussed Student's present levels of performance. The IEP team determined that Student was eligible for special education under the category of Specific Learning Disability. The IEP team identified Student's areas of need to be in basic reading, reading comprehension, written expression, math calculation, and math reasoning. Six annual IEP goals were developed to address those areas, with the following service offered: 60 minutes three times per week for a total of 180 minutes of specialized academic instruction in a group setting. The resource specialist program teacher and teacher were responsible for each of the goals. Parents chose to continue Student in the Homeschool program. Extended school year was not offered as the IEP team did not have sufficient information at the time to determine that extended school year was necessary. However, the IEP team agreed that if Student significantly regressed and could not recoup her learning within a reasonable amount of time, the IEP team would reconvene to discuss the need for extended school year services. The IEP did not offer goals, accommodations, and services in the areas of occupational therapy, speech, educationally related mental health, behavior, and social skills. Mother consented to the IEP by her signature dated December 17, 2015.⁴

March 30, 2016 IEP Amendment

19. On March 30, 2016, an Amendment to the

December 4, 2015 IEP was developed. Parents and River Springs agreed that no IEP team meeting was required for the amendment. The Amendment was for the sole purpose of amending the Special Factors page of the December 4, 2015 IEP to indicate Student's participation in the California Assessment of Student Performance and Progress in the subject of science with "CMA with Designated Supports" and "CMA with Accommodations" was noted in the IEP. However, Parents did not consent to the IEP Amendment.

April 26, 2016 IEP Amendment

20. Student struggled to retain new information that was presented, which necessitated the addition of extended school year services. On April 26, 2016, an IEP Amendment was developed to address the concern of regression over the summer. Parent and River Springs agreed that no IEP team meeting was required for the amendment. The IEP Amendment's extended school year worksheet stated that Student had been progressing in reading, but her ability to recoup in the areas of basic math and math reasoning was a concern. Student had great difficulty recalling what she had been previously taught in the area of math computation, specifically multiplication and division. The IEP was amended to include extended school year services to provide Student 60 minutes once a week of specialized academic instruction in a group setting from June 13, 2016, to July 15, 2016. Mother consented to the IEP Amendment on May 4, 2016.

21. At hearing, Mother testified that she repeatedly told Ms. Escalera and Ms. Gillette about her struggles to teach Student in the areas of math, reading, and writing. Ms. Escalera was providing Student with specialized academic instruction. Mother shared that Student was not making the progress Mother was hoping for. Ms. Gillette suggested Mother give it more time as Student was making progress. Ms. Gillette recommended the curriculum Student's younger brother was using. However, using the same curriculum as her younger brother was hard on Student, as Student's younger brother teased her

about her inability to work at grade level. Mother also shared with Ms. Gillette that communicating with Student was difficult as Student yelled and screamed at her.

22. Mother testified that the specialized academic instruction for the 2015-2016 extended school year was limited to math. Ms. Escalera explained to her that math was the only area of concern identified for regression and one hour per week was all that would be provided. Ms. Escalera did not provide Mother with an explanation as to why more hours could not be provided. At hearing, Mother expressed her concern that one hour of instruction time was insufficient as Student required time to adjust once she got to the session, thereby limiting the actual amount of specialized academic instruction she actually received. During the extended school year of 2016, Student was provided three out of the four sessions of specialized academic instruction.

2016-2017 School Year: Sixth Grade

23. The 2016-2017 school year began on August 29, 2016. On September 4, 2016, Mother emailed River Springs inquiring who would be providing Student with specialized academic instruction as Ms. Escalera was no longer available to do so. On or about September 12, 2016, resource specialist program teacher Kristina Mason replaced Ms. Escalera and began instruction with Student.

24. In September 2016, River Springs administered two i-Ready diagnostic tests to Student in reading and math. Student's overall reading score was 502, placing her at a third grade level. The test concluded that Student had not acquired fundamental decoding skills and needed instruction in phonics. The testing also identified vocabulary as another area of concern. The i-Ready score indicated Student had gaps in grade-level word knowledge that needed to be addressed. For math, Student scored 423 overall, placing her at a second grade level. Student's math score demonstrated regression in math compared to her September 5, 2015 i-Ready math scores.

25. At hearing, Ms. Gillette testified that i-Ready

math results demonstrating regression was not a new concern at the time, as the concern was already there. Neither she nor anyone else from River Springs sought to revisit the December 4, 2015 IEP to evaluate whether the goals and services to address Student's math deficits remained appropriate, specifically whether Student required more weekly specialized academic instruction in the area of math.

26. On September 16, 2016, Mother emailed Ms. Gillette informing her that a math curriculum needed to be selected. Mother expressed that she felt there was no structure or consistency with math. In her email, Mother expressed the need for a math curriculum with structure, and guidance for Mother. During the 2016-2017 school year, Student was introduced to five different math curriculums. Mother and River Springs struggled to find an appropriate curriculum for Student. Ms. Gillette suggested Mother visit a "curriculum warehouse" containing various math curriculums to choose. At hearing, Mother explained she was not qualified to select an appropriate math curriculum.

27. Student became more resistant to instruction, refusing to leave the home and car to attend specialized academic instruction at the student center. Mother informed Ms. Gillette of the behaviors and Student's feeling that the specialized academic instruction was not helping. Student's behaviors towards Mother, siblings, and family friends worsened. However, the negative behaviors did not occur at the student center.

28. During September 2016, Ms. Mason provided Student five, 60-minute sessions of specialized academic instruction. However, Ms. Mason went out on maternity leave the following month. River Springs emailed Parents on October 23, 2016, informing them of Ms. Mason's maternity leave.

29. River Springs program specialist Sheri Kosmal testified at hearing. As a program specialist for three years, Ms. Kosmal was responsible for overseeing the implementation of IEPs for River Springs students. Prior to becoming a program

specialist, she was an education specialist and resource specialist program teacher. She possessed a multi-subject teaching credential and a special education mild/moderate teaching credential. One of Ms. Kosmal's primary responsibilities was to support Student's specialized academic instruction teachers. When Ms. Mason left on maternity leave, Ms. Kosmal took the lead in finding a new instructor for Student.

30. Parents obtained an evaluation from the Stowell Learning Center, which prepared a Functional Academic and Learning Skills Assessment report dated November 14, 2016.⁵ Stowell's Educational Director, Jill Stowell, authored the report. The purpose of the assessment was to identify any weaknesses in Student's underlying learning skills or basic academic skills that impeded Student from learning and functioning as comfortably and independently as she could, and to determine the best course of action for improving or correcting these challenges. Mother intended to have Stowell Learning Center provide the make-up specialized academic instruction and to continue providing instruction until River Springs found a specialized academic instruction teacher for Student. Parents paid \$500 for the assessment. Parents did not request an academic assessment from River Springs or notify River Springs they would be seeking reimbursement from River Springs for the cost of the Stowell Learning Center assessment report.

31. Following Ms. Mason's departure, Parents hired Paul Eisenberg to assist them in advocating for Student's educational program. On November 9, 2016, Mr. Eisenberg emailed a letter to Dr. Cox, pointing out that Student had been without specialized academic instruction for eight weeks, amounting to 24 hours of compensatory services owed. Mr. Eisenberg requested that River Springs fund 24 hours of compensatory academic instruction to be provided by the Stowell Learning Center. Furthermore, the letter indicated Parents' disagreement with River Springs' December 2015 psychoeducational and academic assessments and requested independent educational

evaluations in the areas of psychoeducation, speech, and occupational therapy.

32. On November 16, 2016, Dr. Cox emailed Parents and Mr. Eisenberg a letter stating that special education teacher Terry Owens had been assigned to provide Student with specialized academic instruction beginning November 28, 2016. River Springs acknowledged that Student did not receive specialized instruction from September 19, 2016, through November 18, 2016, a total of 27 hours over that nine-week span.

33. River Springs denied the request to fund compensatory education services through the Stowell Learning Center, as River Springs believed it had qualified staff to provide the compensatory education services. Dr. Cox explained in her letter that Ms. Owens was available to provide an additional one to two hours each week, until the end of the 2016-2017 school year, to make up the lost instruction time. River Springs agreed to fund independent educational evaluations in the areas of psychoeducation, speech, and occupational therapy. On November 28, 2016, Mr. Eisenberg emailed Dr. Cox a letter requesting that River Springs provide Parents logs to verify dates and times specialized academic instruction was provided for that school year.

34. On November 28, 2016, Ms. Owens emailed Parents introducing herself as Student's new resource specialist program teacher. Mother asked if the missed sessions for the past 10 weeks would be made up; Ms. Owens responded that by the end of the school year the missed time would be made up, with a little of the time made up each week.

35. On December 2, 2016, Dr. Cox sent Mother and Mr. Eisenberg service logs for the 2016-2017 school year. Dr. Cox calculated that Student had received only five out of 34 sessions of specialized academic to that point. The 29 missed sessions, at 60 minutes per session, amounted to 1,740 minutes.

January 12, 2017 Annual IEP

36. The IEP team met on January 12 and March 23, 2017, to review Student's Annual IEP. Mother,

Mr. Eisenberg, Dr. Cox, Ms. Gillette, Ms. Kosmal, and Ms. Owens attended both meetings. River Springs offered Parents a copy and an explanation of their procedural safeguards, which they declined.

37. The IEP team identified Student's strengths and interests. Vocabulary and comprehension of literature were areas of relative strength. Mother shared that Student could retain information when it was read to her, but had difficulty retaining the information when it was not. Student's auditory comprehension was an area of strength. Student had a good attitude even when things were difficult. Mother remained concerned about Student's delays in math, reading, writing, and spelling and shared that the lack of specialized academic instruction was taking a toll on Student's emotional state.

38. The IEP team reviewed Student's progress on the prior IEP annual goals. Student partially met two goals in reading fluency and reading comprehension. Student did not meet her goals in reading and writing irregular words, writing accuracy, math calculation, and math reasoning.

Present Levels of Academic and Functional Performance

39. Student enjoyed reading and discussing stories that interested her. She independently read and understood at a second- to third-grade level. She answered 10 out of 10 comprehension questions correctly when asked about what she read. Student read slowly and sounded out words she did not know. Her reading fluency and rate was improving. However, Student only accurately gave key details and retold a story 60 percent of the time after independently reading a passage. According to her Lexile level of 570, her reading comprehension was only at a second- to third-grade level.⁶ Furthermore, Student only read grade level passages at 80 to 85 correct words per minute, when 120 correct words per minute was typical for a sixth grader.

40. Student's writing lacked organization. She wrote run-on sentences with no punctuation when free writing. At the IEP team meeting, Mother shared that

Student understood basic editing rules, but did not consistently apply them. Student could fill out a graphic organizer but was unable to translate the information to a complete paragraph. She had good ideas, but required support in putting her thoughts into detailed sentences.

41. Student performed basic addition and subtraction, identified greater, lesser, or equal values, and determined measurements. She identified and named the value of coins and dollar bills. However, Mother shared that Student could only identify and write place value up to three digits (hundreds) and did not understand place value beyond that. In addition, she could only multiply single digit numbers (up to four digits by one digit), with the use of auditory and visual supports. She did not know multiplication facts and required a multiplication chart. Student could not divide independently without the use of manipulatives. Student preferred not to use computers to complete math assignments. Mother explained to the IEP team that she did not understand how Student best learned in math.

42. Student was in good health. No concerns were noted regarding her communication or gross and fine motor development. She carried on conversations with adults and peers on various topics, and could make her wants and needs known. She had good penmanship and could run, jump, and kick and catch a moving ball. Student was organized and cared for her own personal needs.

43. At the IEP team meeting, Mother shared that Student was respectful to adults and peers at school, but disrespectful to her family in the home. Mother explained that Student was physically and verbally aggressive to family and close family friends. However, Student displayed no frustration or anger while playing tennis or riding horses. Student interacted with her peers appropriately, was social in class, and kind and polite to her peers. She followed classroom rules. The IEP team identified Student's areas of need to be in basic reading fluency, independent reading comprehension, math, writing, language processing, and spelling.

Annual Goals

44. The January 12, 2017 IEP offered seven annual goals; three in the area of reading, three in mathematics, and one in writing. The first reading goal addressed comprehension. The annual goal for Student was to read an article, answer quiz questions, and cite evidence from the text when given a grade-level non-fiction article of a current event at a Lexile level of 950 or higher. Student needed to complete the task with 80 percent accuracy to meet the goal. The special education and general education teachers were responsible for this goal, measuring progress using data collected and reviewing Student's work.

45. The second reading goal focused on comprehension of a fictional passage. The annual goal had Student read a fictional passage, answer comprehension questions, and cite evidence from a grade-level passage at a Lexile level of 950 or higher. Student had to be 80 percent accurate to meet the goal. The special education and general education teachers were responsible for overseeing this goal, measuring progress using data collected by the teachers and reviewing Student's work.

46. The third reading goal addressed fluency. The annual goal sought to improve Student's fluency using a sixth-grade level Dynamic Indicators of Basic Early Literacy Skills (DIBELS) assessment, with a goal to reach a level of at least 110 correct words per minute. The goal sought to improve her fluency a minimum of three words per minute each month. The responsible people for this goal were the parent, education specialist, and resource specialist program teacher. Observations and teacher charted data were used to measure progress.

47. The writing goal required Student to successfully fill out a graphic organizer and write an explanatory paragraph with at least five sentences that included an opening sentence, supporting sentences, and a conclusion, using correct capitalization and punctuation. She would receive instruction on how to complete the graphic organizer. Student had to be 70 percent accurate in four out of five trials, measured by

work samples or curriculum-based assessments to meet the goal. The special education and general education teachers were responsible for overseeing this goal, measuring progress using data collected through observations and teacher charts.

48. The first math goal addressed multiplication to improve Student's ability to solve problems involving multiplication of multi-digit numbers up to three digits with regrouping. Student would be provided visual supports. Student had to correctly solve the problems with at least 70 percent accuracy in three out of five trials to meet the goal. The special education and general education teachers were responsible for overseeing this goal, measuring progress using teacher-made tests, chapter tests, and reviewing Student's work samples.

49. The second math goal focused on computation. Student had to use place value understanding and properties of operations to perform multi-digit arithmetic and solve 20 multi-digit problems involving a combination of operations, with 80 percent accuracy in four out of five opportunities. The goal was measured through teacher observation and student work samples. The IEP offered two benchmark goals; the first benchmark called for Student to perform the task with 65 percent accuracy when given 10 multi-digit problems by May 12, 2017. The second benchmark sought 70 percent accuracy when given 10 multi-digit problems by November 12, 2017.

50. The third math goal centered on Student's understanding of money. The goal called for Student to demonstrate her understanding by adding dollar value items and demonstrate an understanding of "dollar up" strategy, such as paying \$4.75 with a five dollar bill. She was expected to correctly demonstrate this on four opportunities. The goal was measured through teacher observations and data collected by the special education and general education teachers.

Placement, Accommodations, and Services

51. Parents opted for Student to continue in the

Homeschool program. The IEP offered 90 minutes twice a week of individual specialized academic instruction during the regular school year. For the extended school year, the IEP offered 60 minutes once a week of specialized academic instruction. The instruction would take place at a River Springs location. Collaboration between the specialized academic instruction teacher and educational specialist would occur monthly for 15 minutes. Either the teacher or a parent could read materials aloud to Student, or she could use audio books as needed. The use of visuals, graphic organizers, multiplication tables, and notes, among other things, were to be used to support instruction as needed. Demonstration of understanding of skills via multi-modalities was available as needed. Furthermore, consultation between the specialized academic instruction teacher and the parent would occur twice a month for 15 minutes at a time.

52. At the conclusion of the IEP team meeting on March 23, 2017, River Springs provided Mother with a copy of the proposed IEP for her review. Mother consented to the IEP on April 5, 2017, initialing her agreement to all parts of the IEP.

Specialized Academic Instruction in the Spring of 2017

53. On February 2, 2017, Mother emailed Dr. Cox expressing concern about the quality of instruction Student received from Ms. Owens. Mother shared that she learned that all of the hours provided by Ms. Owens was spent either playing the game Scrabble for the entire duration or having Student read a book of her choice to Ms. Owens for the entire duration.

54. On February 2, 2017, River Springs emailed Parents informing them that Ms. Owens was unexpectedly unavailable to provide further services. River Springs was actively searching for a qualified teacher and any missed services would be made up in accordance with Student's IEP. The next day, Dr. Cox emailed a letter to Parents regarding the status of specialized academic instruction. Dr. Cox explained

she did not have enough facts to ascertain whether some or all of the specialized academic instruction had been provided that school year. Regardless, Dr. Cox explained that River Springs would agree to provide hour-for-hour make-up sessions from the first day of the 2016-2017 school year, even though Student may have received some instruction that school year. Dr. Cox also explained that River Springs was vetting teachers to hire or contract with through a nonpublic agency to provide the make-up specialized academic instruction hours.

55. On February 15, 2017, Mother emailed Dr. Cox following up on her February 2, 2017 email requesting copies of all logs completed by Ms. Owens regarding the instruction she provided Student, the number of hours owed to Student as determined through Dr. Cox's investigation into the specialized academic instruction hours provided to Student, and the status of nonpublic agency instruction to be hired to provide the make-up specialized academic instruction. Dr. Cox responded to Mother by email on February 21, 2017, informing her that Ms. Owens did not maintain service logs, and that River Springs would provide specialized academic instruction from the beginning of the 2016-2017 school year, equivalent to the amount of hours Student would have received regardless of whether or not Student was provided specialized academic instruction. However, no persuasive evidence was offered to establish that Ms. Owens was required to create and maintain the service logs Parents sought or that River Springs was required to maintain such logs as part of Student's school records.

56. On February 23, 2017, Parents received an email prepared by Dr. Cox regarding the status of Student's specialized academic instruction. Dr. Cox expressed concern that Student did not receive the specialized academic instruction as called for in her IEP. Dr. Cox explained that though Student may have received some specialized academic instruction during the 2016-2107 school year, River Springs offered to provide hour-for-hour make-up sessions to Student for the total time that she was to receive

specialized instruction from the start of the school year through March 6, 2017, excluding the Thanksgiving and winter breaks. Dr. Cox calculated that school had been in session for 24 weeks to that point, and Student was to receive 180 minutes per week. Accordingly, Dr. Cox offered to provide Student 72 hours of specialized academic instruction to make up lost instruction time for the school year. The make-up instruction would be available before, during, and after school hours, as well as during the summer of 2017.

57. River Springs special education teacher Teresa Moran testified at hearing. Ms. Moran had been employed by River Springs for 16 years, the first 14 years as an education specialist and the last two years as a special education teacher. Ms. Moran was a credentialed special education teacher since 1980.

58. Ms. Moran began providing Student specialized academic instruction on March 6, 2017. On a few occasions, Tanya Croom provided instruction to Student. Ms. Croom's qualifications were not clarified at hearing. Ms. Moran described Ms. Croom as more than an instructional aide, but not a teacher. Ms. Croom used the lesson plans prepared by Ms. Moran. The amount of instruction Ms. Croom provided was not documented. Ms. Moran recorded Student's attendance and collected work samples. Her notes, as well as Ms. Croom's, were used to complete a River Springs progress report. That report was submitted to River Springs' special education department. However, their notes and the work samples they collected remained in Ms. Moran's possession and were not provided to River Springs.

59. The instruction Ms. Moran provided Student was generally allocated one hour for English language arts and 30 minutes for math for each 90-minute session. She did not use a specific math curriculum. For reading, she began with the REWARDS program for Student, but stopped using the program after one month. Student did not possess the reading skills to benefit from the REWARDS program. Ms. Moran switched to another curriculum to work on fundamental reading skills. During her time with

Student, she explained that Student was reading at a third grade level, and with support could read fourth grade and some fifth grade level passages. Ms. Moran had no concerns regarding Student's fine motor skills, attention to task, and conversational skills. Student communicated with her in an age-appropriate manner.

Independent Educational Evaluations

Independent Psychoeducational Evaluation

60. Perry Passaro, Ph.D. was licensed in clinical psychology and educational psychology. At the time of hearing, his practice consisted of providing cognitive behavioral therapy and conducting independent educational evaluations. Dr. Passaro testified at hearing, and though his testimony was internally consistent, his responses conflicted with more credible testimony and evidence, which diminished the persuasiveness of his testimony and written opinions.

61. Dr. Passaro and his daughter Claire Passaro, an educational specialist, conducted an independent psychoeducational evaluation of Student at the request of Parents. Dr. Passaro authored a psychoeducational assessment report dated April 28, 2017. Jamie Lesser, Ph.D., a licensed psychologist, observed Student in her writing class at River Springs for one hour on March 28, 2017. The purpose of the evaluation was to determine Student's developmental levels, identify her unique needs, and provide recommendations to address her needs, including the appropriateness of the services and placement offered by River Springs. Student was tested on four occasions from February 17, 2017, to March 6, 2017.

62. Mother provided input and described Student as emotional, argumentative, and difficult. Student at times showed intense highs of energy, followed by periods of sadness or depression. Mother opined that Student's social interaction skills were typical for a girl her age. Student was often angry with her siblings and was verbally and physically aggressive towards them. Mother observed behaviors consistent with obsessive compulsive disorders, which had worsened

the past several months before Dr. Passaro's assessment. Mother further shared that Student was easily distracted and had difficulty sustaining attention to tasks or play activities. Student did not seem to listen when spoken to directly and she often avoided and disliked engaging in difficult tasks.

63. Ms. Gillette also provided input into the evaluation. Ms. Gillette opined that Student needed more one-to-one attention based on her observations during the previous month. Student completed less assignments compared to students her age. Ms. Gillette described Student as being extremely attentive to details regarding her school assignments, and Ms. Gillette believed this occasionally interfered with Student's classroom performance. She shared that Student typically listened when spoken to directly, remembered what she was asked to do, followed instructions, and finished her work.

64. Ms. Gillette rated Student's listening comprehension as advanced and oral expression as average. She also rated her levels of reading skills and comprehension, and mathematics calculation and reasoning as limited. In addition, Ms. Gillette rated Student's basic writing skills and written expression as limited. At the time, Student was receiving fourth grade level math calculation and reasoning instruction, third grade level basic reading skills and comprehension instruction, and second grade level basic writing skills and written expression instruction. Dr. Passaro diagnosed Student with autism spectrum disorder, depressive disorder, attention deficit hyperactivity disorder, oppositional defiant disorder, social phobia (social anxiety disorder), obsessive compulsive disorder, and a learning disorder in reading, mathematics, and written expression.

65. Dr. Passaro's report recommended, among other things, that Student be placed in a highly structured and individualized learning environment and provided support in the acquisition of basic academics. Dr. Passaro opined an instructional format of a very small group of no more than four students was the most appropriate intervention for instruction in reading, mathematics, and writing. Dr. Passaro

recommended direct pull-out instruction for one hour each day in each area of academic need, totaling three hours of daily pull-out services. He proposed annual goals in the areas of reading, written language, mathematics, and social emotional functioning. Furthermore, Dr. Passaro recommended Student receive a speech and language evaluation and participate in speech and language therapy at least one hour a week to focus on pragmatic skills.

66. At hearing, Dr. Passaro opined that the increased intensive intervention of specialized academic instruction minutes individually or in a small group was necessary to meet the January 12, 2017 IEP's proposed academic goals. He opined that 180 minutes a week was not enough to close the gap considering how far behind Student was academically. Dr. Passaro also criticized the goals, accommodations, and services offered in the December 4, 2015 IEP as inadequate and failing to address all areas of Student's need, basing his opinion on his findings along with the findings of Drs. Britt and Libert.

Independent Speech and Language Evaluation

67. Brock Tropea was the owner and clinical director of Stepping Stones Therapy, Inc., a nonpublic agency. Mr. Tropea had been a speech-language pathologist for 17 years. He was licensed by the Speech-Language Pathology and Audiology Board of California, possessed a Professional Clear Clinical and Rehabilitative Services credential and a Certification of Clinical Competence by the American Speech-Language-Hearing Association.

68. Mr. Tropea conducted an independent speech and language evaluation of Student at Parents' request. The testing took place on February 5 and 26, 2017. Mr. Tropea administered the Oral and Written Language Scale, Second Edition assessment tool to assess Student's receptive and expressive language. It measured lexical (vocabulary), syntactic (grammar), and pragmatic (function) structures of oral language in addition to those requiring higher-order thinking

(supralinguistics). In the listening comprehension subtest, Student scored an 84, placing her in the below average range compared to same-aged peers. Student scored higher in oral expression, in the average range.

69. Mr. Tropea administered the Test of Narrative Language to measure Student's ability to tell stories using various levels of picture support. Mr. Tropea opined that Student's overall language skills ranged between below average to average compared to same-aged peers. Student displayed the ability to use words and construct sentences of adequate length to convey a message. She struggled with the ability to include the context of the message in most of her responses; the meaning of the essential component was not present.

70. Regarding pragmatics, Mother and Father completed the Social Skills Improvement System Rating Scales to evaluate Student's ability to effectively and appropriately use communication in relation to varying social and situational contexts, intent, and conversational rules. Parents rated Student in the average range in communication, assertion, responsibility, empathy, engagement, and self-control. Parents rated Student below average in cooperation. Their overall rating scales placed Student in the average range.

71. Mr. Tropea examined Student's expressive and receptive language abilities. Student scored below average in expressive and receptive vocabulary skills. Mr. Tropea opined that Student was slightly below average in expressive and receptive language, as well as semantics. Student's social and critical thinking skills were in the average range compared to same-aged peers. Narrative recall was also a deficit. At hearing Mr. Tropea explained that Student could answer questions adequately when told a story, but struggled to repeat/retell the story.

72. Mr. Tropea determined that Student did not meet the legal criteria for special education eligibility as a student who was speech and language impaired. However, Mr. Tropea opined Student could still benefit from speech and language therapy once a

week for 60 minutes individually or in small group to focus on improving her expressive language and pragmatic/social skills. Mr. Tropea proposed four goals in his assessment report.

Independent Occupational Therapy Assessment

73. Richard Furbush was an occupational therapist since 1996 who conducted independent educational evaluations in the area of occupational therapy. Mr. Furbush conducted an independent occupational therapy assessment of Student and prepared an assessment report. Student was assessed in one, three-hour session in a quiet clinical setting. Student was cooperative and diligent in her attempts to provide accurate and skilled responses to the assessment items. Mr. Furbush reviewed Dr. Britt's 2011 Neuropsychological Report, Dr. Libert's 2015 Neuropsychological Report, the December 4, 2015 IEP, and the December 2015 River Springs psychoeducational and academic assessment reports.

74. Mr. Furbush administered the Sensory Integration and Praxis Test. The Sensory Integration and Praxis Test provided a performance-based standardized assessment of sensory processing. The test evaluated areas of sensory and motor performance that may affect a person's ability to perform structured academic and related tasks in school. It provided insight into why some children have difficulty learning or behaving as expected.

75. The results of the Sensory Integration and Praxis Test demonstrated that praxis and visual skills were areas of strength for Student. Praxis is a person's ability to figure out how to use their hands and body in skilled tasks like playing with toys, using a pencil or fork, building a structure, straightening up a room, or engaging in many occupations. The results did show that Student had difficulty sustaining visual attention. Student demonstrated poor tactile perceptual functioning as well as vestibular/postural concerns. Mr. Furbush opined that tactile perceptual processing difficulties may lead to difficulties with emotional regulation. Testing results identified

visual-motor skills as an area of need.

76. Mr. Furbush also found Student's grasp inconsistent during the assessment. Her writing pressure varied, and at times her writing was difficult to read as she wrote with decreased pressure, making the letters light. Her writing was legible; however, her writing speed was below age expectations. Mr. Furbush opined that this would impact her productivity.

77. The Sensory Processing Measure was a standardized questionnaire that provided information on sensory responsiveness, social participation, and planning. Mother completed the "Home" version. Her responses rated Student as "typical" in the areas of social participation, vision, body awareness, balance and motion, and planning and ideas, signifying those areas were not areas of concerns. "Hearing" was rated as an area of definite dysfunction and "touch" as an area of some problems. Student was frequently bothered by ordinary household sounds and responded negatively to loud noise by running away or covering her ears with her hands. She did not like the feel of new clothes, was bothered when someone touched her face, and had difficulty finding things in her backpack or purse through her sense of touch.

78. Mr. Furbush identified the following areas of need: speed of written work/productivity, visual motor accuracy and precision, emotional regulation, visual attention, sustaining attention to tasks, laterality concerns, tactile perceptual functioning, sensory sensitivities, vestibular/postural concerns, adaptive skills performance, and executive functions. Mr. Furbush opined these areas of need impacted her success and performance skills in her academic functioning.

79. Mr. Furbush recommended Student receive 60 minutes a week of direct one-to-one occupational therapy services for six months, at which time she should be re-evaluated to assess progress. In addition to direct services, Mr. Furbush recommended 30 minutes a week of collaboration between an occupational therapist and Student's educational staff to develop and implement accommodations and

adaptations to support her learning.

80. Mr. Furbush proposed goals for the IEP team's consideration. Among the proposed goals was for Student to self-identify sensory strategies that increased her level of alertness and helped her sustain her attention to task and regulate her emotions.

81. At hearing, Mr. Furbush opined that Student likely presented during the 2015-2016 school year with many of the deficits he identified. He thought Student should have received occupational therapy services at that time. However, Mr. Furbush referenced only Dr. Britt's 2011 neuropsychological report to support his opinion.

82. On or about March 2017, River Springs occupational therapist Mr. Whigham observed Student in a classroom at River Springs' student center. He was advised that he could potentially be providing occupational therapy services to Student. Student was hand writing during the observation. His observation lasted approximately 10 minutes.

Mr. Whigham explained at hearing that he was paying attention to Student's grasp of the pencil, whether Student used her non-dominant hand to stabilize the paper, her seated posture, any signs of discomfort, sensory deficits, movements, and Student's ability to maintain a sedentary task. He did not observe any occupational therapy concerns warranting a formal occupational therapy assessment.

April 28, 2017 IEP Amendment

83. On April 28, 2017, the IEP team convened to review the independent educational evaluations. Parents, Mr. Eisenberg, Dr. Cox, Ms. Gillette, Ms. Kosmal, Ms. Miller, Mr. Whigham, Ms. Moran, and school psychologist Eric Beam attended in person. Dr. Passaro, Mr. Tropea, and Mr. Furbush attended by phone.

84. Dr. Passaro shared his psychoeducational assessment report. At the meeting, he opined that Student was in the average range of cognitive functioning but demonstrated deficits in attention and visual motor processing. Student also demonstrated deficits that indicated a learning disorder in reading,

writing, and mathematics. Dr. Passaro recommended a highly structured and individualized learning environment for one hour of daily intensive intervention in the each of the following areas: reading, writing, and math. Dr. Passaro opined that Student's grade-level equivalencies were significantly below grade level at the time.

85. Mr. Tropea presented his speech and language assessment report. Mr. Tropea shared at the meeting that Student did not meet eligibility criteria for a speech and language impairment. He opined that Student demonstrated deficits in the areas of speech and language warranting services of 60 minutes per week to address the areas of expressive language skills and to improve her pragmatic and social language skills.

86. Mr. Furbush shared his occupational therapy assessment report. Mr. Furbush recommended direct and collaborative services to address sensory integration, vestibular, and tactile issues. He opined that Student required access to appropriate equipment to support her movement needs.

87. At the meeting, Ms. Moran opined that Student was making progress but struggled with reading higher-level passages. Student had shown some improvement in her engagement and anxiety. Mother disclosed that Student did not like attending specialized academic instruction services because Student did not find it helpful, and was embarrassed about attending school because of her struggles. Mother stated that Student resisted going to school on days she knew difficult assignments would be covered. Mother shared that Student participated in social activities outside of the home. Mother expressed her concerns that Student's social anxiety stemmed from being with other students with disabilities. Mr. Eisenberg proposed Student be placed at Prentice.

88. River Springs amended the January 12, 2017 IEP to offer placement at a nonpublic school for the 2017-2018 school year to include therapeutic mental health services 50 minutes per week, speech and language services for 60 minutes per week, and

occupational therapy services for 60 minutes per week. Mental health services would begin with individual therapy once a provider was identified. Ms. Miller and Mr. Whigham would develop goals in the areas of speech and occupational therapy for the IEP team to consider and approve. Dr. Cox would provide Parents with a list of nonpublic school to consider and an IEP team meeting would be convened to include staff of the selected nonpublic school to finalize the placement. Dr. Cox testified that River Springs' decision to offer placement at a nonpublic school was based on Dr. Passaro's recommendation to place Student in a more therapeutic setting.

89. On April 28, 2017, River Springs mailed to Parents a form to complete to confirm Student's attendance for extended school year services from June 14, 2017, to July 21, 2017. The form indicated Student would receive one, 60-minute specialized academic instruction session weekly. On May 5, 2017, Mother signed the form indicating Student would be attending the extended school year for specialized academic instruction.

May 12, 2017 IEP Amendment and Prior Written Notice

90. On May 12, 2017, an IEP Amendment was developed without a meeting as agreed upon by River Springs and Parents. A Prior Written Notice regarding Parents' nonpublic school request and the request for a lump sum payment for compensatory education services was incorporated in the IEP Amendment document. The IEP Amendment added four additional goals in the areas of speech and language and one additional goal in the area of sensory integration. All four speech and language goals were consistent with the goals proposed by Mr. Tropea in his independent speech and language evaluation.

91. A speech-language pathologist was responsible for all four speech and language goals. Each goal was measured through observations and data collection. Student had to successfully accomplish each task in four out of five opportunities over three sessions.

92. The first two speech and language goals addressed pragmatics. No baseline information was provided for the first pragmatics goal. The goal called for Student to interpret and describe the meaning of body language and facial expression of a person or tell what a person may be feeling when presented with a picture or video prompt. The second pragmatics goal noted a "interpersonal negotiations standard score of 76," as a baseline. Student had to identify a problem and brainstorm two appropriate solutions to the given problem when presented with a social situation.

93. The third speech and language goal addressed expression. No baseline was given for the goal. Student had to correctly sequence a short narrative giving six to eight details when presented with a picture.

94. The fourth speech and language goal addressed both pragmatics and expression. No baseline for the goal was identified. As an annual goal, Student was expected to improve her conversational speech by demonstrating the ability to make three comments and/or three on-topic follow-up questions to a pre-selected topic.

95. Student had one goal to address sensory integration. The IEP Amendment did not provide a baseline. The goal called for Student to utilize sensory strategies that increased her level of alertness and allowed her to sustain attention to task with fewer than three prompts in two out of three trials. The occupational therapist was responsible for the goal, but the IEP Amendment did not identify how the goal was to be measured.

96. The May 12, 2017 IEP Amendment did not modify the supplemental aids, services, or other supports offered in the January 2017 IEP. As for special education and related services, the May 12, 2017 IEP Amendment offered 314 minutes of daily specialized academic instruction in a group setting to be provided at a nonpublic school from June 14, 2017, to January 12, 2018. The IEP Amendment also offered related services at a nonpublic school consisting of individual counseling 30 minutes

weekly, weekly speech and language services once for 60 minutes, and 60 minutes of occupational therapy services once a week. The IEP Amendment offered those services to begin on June 14, 2017, and to end on January 12, 2018. The IEP Amendment offered transportation services between Student's home and the nonpublic school twice a day for 30 minutes each way for a total of 60 minutes daily, to begin on July 5, 2017, and to end on January 12, 2018.

97. The May 12, 2017 IEP Amendment also offered individual specialized academic instruction twice a week for 90 minutes a session to be provided at River Springs' facilities from January 12, 2017, to June 13, 2017. Individual counseling once per week for 50 minutes was offered at a location to be determined once a specific provider and intervention was determined.

98. The May 12, 2017 IEP Amendment offered extended school year services that began on July 5, 2017, and ended on August 1, 2017. The academic instruction and related services would be provided by a nonpublic school. The IEP Amendment offered

314 minutes of specialized academic instruction each day, 60 minutes of weekly speech and language services, 60 minutes of weekly occupational therapy services, 30 minutes of weekly individual counseling, and transportation from Student's home to the nonpublic school twice a day for a total of 60 minutes.

99. The May 12, 2017 IEP Amendment's Prior Written Notice section indicated River Springs' proposal to place student at Somerset Educational Services, a nonpublic school in Riverside, California. River Springs proposed Student begin at Somerset at the start of the extended school year on July 5, 2017. An IEP team meeting would be held with Somerset staff prior to the start of the extended school year, and would be scheduled once Parents consented to the IEP Amendment. River Springs also offered to coordinate a visit of Somerset for Parents if Parents requested to do so. Parents did not consent to the May 12, 2017 IEP Amendment.

100. On May 15, 2017, Mother emailed Ms. Moran requesting Ms. Moran provide all logs she and Ms. Croom completed for each day they instructed Student. Ms. Moran replied the next day seeking clarification as to whether Mother was requesting a record of Student's attendance, notes, and/or copies of Student's work.

101. On May 31, 2017, Mother emailed Prentice's admission office. Mother shared Student "only exhibits minimal behavioral issues and those are ONLY present at home when she gets frustrated. Those have never been exhibited in public or at school."

June 10, 2017 Progress Reports

102. On June 10, 2017, Ms. Moran provided a written summary of Student's progress toward her annual academic goals. In the non-fiction reading comprehension goal, Student read Newsela⁷ passages at various Lexile levels ranging from 450 to 1,030, or second to seventh grade level. Student required support when reading higher level passages, but was able to discuss the story, provide main ideas and details, and answer quizzes with 80 percent accuracy. Student's improved reading allowed her to read higher level passages. In addition, Student silently read fifth grade passages and answered comprehension questions with 100 percent accuracy, which demonstrated improvement in reading comprehension as Student was only reading at a second to third grade level based on her Lexile level five months earlier.

103. Student's reading fluency also improved. In March 2017, she read 57 correct words per minute on a DIBELS Grade Six Benchmark. Reading the same passage later that month, she read 85 correct words per minute. On June 9, 2017, Student read 93 correct words per minute using a different passage. At hearing, Ms. Moran opined that by June 10, 2017, Student had progressed from her January 12, 2017 IEP baseline of 80 to 85 correct words per minute.

104. By June 10, 2017, Student had nearly mastered identifying and naming the value of coins and dollar bills. However, Ms. Moran's progress

summaries for the remaining math goals addressing multiplication and computation reflected no progress.

105. On June 11, 2017, Mr. Eisenberg emailed a letter to Dr. Cox in response to River Springs' Prior Written Notice. After touring Somerset, Parents did not believe Somerset was an appropriate placement for Student. Mr. Eisenberg noted that Student did not require an educational program that focused on emotional, behavioral, or social skills development. Mr. Eisenberg pointed out that Dr. Passaro's recommendations all centered on academic remediation being the primary focus. Mr. Eisenberg opined that Somerset's program focused on students who had significant emotional and behavioral needs, "neither of which are primary for [Student]." Parents also toured Prentice. Student was accepted into the program and Parents believed Prentice offered the best possible opportunity for Student to succeed. Mr. Eisenberg requested that River Springs fund Student's placement at Prentice to begin over the summer, including funding for transportation. In addition, Mr. Eisenberg renewed Parents' request for a lump sum payment for compensatory education services to allow Parents more flexibility in choosing a program. Finally, Mr. Eisenberg proposed River Springs and Parents participate in an informal dispute resolution or mediation to work out their differences.

106. On June 23, 2017, Mother informed Dr. Cox by email that Student would not be attending extended school year that summer. Mother explained that a new instructor would not have sufficient time to familiarize herself with Student, Student's IEP, and the work that was done over the school year. Mother opined that the four hours of specialized academic instruction over the extended school year would be consumed with the new instructor familiarizing themselves with Student and her program, essentially denying Student any meaningful instruction.

107. On July 19, 2017, Dr. Cox emailed a letter to Parents and Mr. Eisenberg in response to Mr. Eisenberg's June 11, 2017 letter. River Springs did not agree to fund an educational program at Prentice based on River Springs' understanding that Prentice

could not provide the necessary behavior interventions and counseling services to address Student's behavioral needs. Additionally, Dr. Cox stated that not all classes at Prentice were taught by a credentialed teacher able to provide specialized academic instruction and that only some of the teachers had special education credentials. The letter also noted the potential impact on Student of the distance from Student's home in Riverside County to North Tustin.

108. In the July 19, 2017 letter, River Springs denied the request for a lump sum payment to cover the 72 hours of compensatory specialized academic instruction. River Springs reiterated its offer to fund 72 hours of supplemental instruction by a provider of Parents' choosing.

109. On July 28, 2017, River Springs provided Parents a Notice of Meeting, Individualized Education Program for a proposed meeting date of August 4, 2017. The Notice checked the purpose box of the meeting as "Other" indicating "Alternative Dispute Resolution (ADR): The ADR meeting is NOT an IEP meeting. ADR offers the opportunity to resolve disputes collaboratively. All components of the ADR are confidential." Mother signed the Notice of Meeting on July 29, 2017.

August 4, 2017 IEP Amendment

110. On August 4, 2017, River Springs developed an amendment to the January 12, 2017 IEP based on the discussions that took place in an alternative dispute resolution meeting. The IEP was amended to reflect placement at Prentice as a nonpublic school for the first semester of the 2017-2018 school year. The following services would be provided at Prentice: three hours weekly of push-in specialized academic instruction to be provided by a credentialed special education teacher; 60 minutes weekly of individual speech and language services; 60 minutes weekly of individual occupational therapy services; and 30 minutes weekly of individual counseling services. In addition, River Springs would reimburse Parents for transportation of Student to and

from Prentice in lieu of transportation being provided by River Springs. No changes were made to the IEP goals at the time.

111. Prentice was a California certified nonpublic school staffed with credentialed general and special education teachers, a full-time school psychologist, two full-time speech-language pathologists, one full-time speech-language pathologist assistant, a full-time education technology specialist, and a part-time occupational therapist. Prentice offered small group instruction, with a focus on serving students with low to average IQs, with language-based learning disabilities.

112. The August 4, 2017 IEP Amendment also called for the IEP team to meet within 30 days of the start of the school year and to review Student's progress at the January 12, 2018 Annual IEP team meeting. At the Annual IEP team meeting, the IEP team would determine if services should continue and/or if any changes were necessary. The Amendment noted that River Springs was not offering Prentice as the specified school for purposes of stay put. The Amendment also indicated that continued placement at Prentice was contingent on whether or not Student was making sufficient progress based on her unique needs as indicated on the data provided. River Springs continued to offer Parents 72 hours of compensatory educational services to be provided by a provider of Parents' choice. On August 4, 2017, Parents consented to the August 4, 2017 IEP Amendment.

113. On August 22, 2017, River Springs and Prentice entered into a Service Vendor Agreement for Prentice to provide educational services to Student only for the first semester of the 2017-2018 school year. River Springs agreed to fund Prentice for the fall semester starting on August 24, 2017, and ending on January 26, 2018, in the amount of \$11,250. River Springs agreed to pay Prentice to provide specially designed instruction for three hours weekly at \$75 per hour, counseling and guidance services for 30 minutes per week at \$63 per hour, language and speech development and remediation for one hour each week

at \$63 per hour, and occupational therapy services for one hour each week at \$60 per hour.

2017-2018 School Year: Seventh Grade

114. Prentice's Director of Program and Nonpublic School Coordinator Sabrina Clark testified at hearing. Ms. Clark oversaw all the programs at Prentice. She was responsible for ensuring proper implementation of IEPs. She possessed a clear multi-subject credential and special education mild/moderate credential.

115. On August 31, 2017, Prentice administered an i-Ready diagnostic test in reading. Student's overall score of 534 placed her at a third grade level. Though this was an improvement from her August 2016 i-Ready reading score of 502, Student was now four grade levels behind in reading at the start of her seventh grade year.

116. Cindy Shaw was a junior high math teacher and the head of Prentice's math department. She was credentialed in special education with over 21 years of teaching experience. During the 2017-2018 school year, she was a math resource specialist providing supplemental math instruction for students in the elementary and junior high grades. She provided push-in instruction in the general education classroom, as well as outside on a pull-out model.

117. Linda Nguyen was Student's math teacher for the first semester of the 2017-2018 school year. At the start of the school year, Ms. Nguyen used a seventh grade level common core math curriculum with Student. Ms. Nguyen used scaffolding to help Student, and took time during class to provide one-to-one instruction to her. In addition, Ms. Shaw came into the classroom to provide support to Student. However, Student struggled in math, and Prentice decided to lower the grade level of her math instruction. On September 5, 2017, Student was administered an i-Ready diagnostic test in math and scored a 415, which placed her at a second grade level.

118. During the first semester, Student was provided extra math support to learn concepts that

Student had not yet mastered. Ms. Shaw came into Student's math class twice a week to provide additional support to Student. On two different days a week, Ms. Shaw supported Student outside the general education classroom at the end of the school day to help Student understand her homework and review concepts.

119. During the second semester of the 2017-2018 school year, Student received math instruction solely from Ms. Shaw on a pull-out basis. Ms. Shaw provided math instruction in small groups of two to three students, and at times five students.

120. During the 2017-2018 school year, Prentice did not have a credentialed special education teacher to provide specialized academic instruction to Student in the area of English language arts. Furthermore, the English language arts teacher for junior high that year was not available to provide specialized academic instruction. Instead, Student was taught English language arts in the general education classroom. Ms. Clark testified that the assessments conducted by Prentice indicated that Student's greatest area of academic need was in math, and therefore Prentice and Parents decided to dedicate the entire 180 minutes a week of specialized academic instruction as called for in the vendor agreement to the area of math only. Ms. Clark testified that the vendor agreement did not specify what academic areas were to be addressed through specialized instruction.

October 6, 2017 IEP Amendment

121. On October 6, 2017, River Springs held an IEP team meeting to review Student's progress at Prentice. Mother, Mr. Eisenberg, Dr. Cox, Ms. Kosmal, Ms. Clark, River Springs school psychologist Jeremy Warren, Ph.D., Prentice school psychologist Steve Barnes, and Prentice general education teacher Michelle Garner attended.

122. Mother and Prentice staff indicated no changes to the IEP were needed regarding Student's strengths and preferences. Mother's previous concerns remained, with a renewed emphasis on Student's struggles in math.

123. The IEP team reviewed Student's progress in the areas of reading, writing, and math. A comparison of Student's i-Ready reading scores from August 2016 to September 2017 demonstrated progress. At the time of the meeting, Student was reading 65 words per minute with 95 percent accuracy, which reflected a fifth grade reading level. For math, Student demonstrated second grade level skills based on i-Ready scores obtained by River Springs in August 2016 and Prentice in September 2017. Her overall math score dropped from August 2016 to September 2017. As for writing, Student could express her point of view and purpose throughout her writing. She continued to work on improving capitalization, punctuation, word usage, and paragraphing. She benefited from the use of a graphic organizer to organize her thoughts and to add details to her writing.

124. Behaviorally, Student was doing well. Mr. Barnes expressed no concerns regarding Student's behavior at Prentice. When asked if there were any indications in the classroom that Student had any school work-related anxiety, Mr. Barnes shared that most of Student's anxiety stemmed from her tendencies to be meticulous and perfect with her assignments. Mother shared that Student had difficulty expressing her frustration at home. Student had outbursts, often targeting Mother and her sister. Mother shared that Student's behaviors diminished over the summer break, with less stressors without school.

125. As to the IEP goals, the IEP team agreed to change one of the goals to a general reading fluency goal and to amend the speech and language goals by adopting the speech and language goals proposed by Prentice's speech-language pathologist. Parents did not consent to the IEP Amendment.

November 7, 2017 IEP Amendment

126. The IEP team reconvened telephonically on November 7, 2017, to amend the IEP. The IEP team agreed to modify Student's speech and language services from individual to group sessions. The IEP

was amended to provide two, 45-minute speech and language group sessions each week. Parents did not consent to the IEP Amendment.

Preparation for the Annual IEP Review

127. Since River Springs was not providing direct services to Student, it was River Springs' standard practice to collect information from teachers and service providers to prepare for an annual IEP. Accordingly, on December 13, 2017, Ms. Kosmal emailed Ms. Clark, requesting data, Student's current grades, and teacher feedback to assist Ms. Kosmal in preparing for the upcoming annual IEP on January 10, 2018. Ms. Kosmal suggested Prentice administer i-Ready diagnostic tests to obtain data on Student's progress. On December 21, 2017, Ms. Clark provided teacher surveys and work samples to Ms. Kosmal.

128. On January 8, 2018, Prentice occupational therapist April Simpson emailed Mother and shared that Student was doing very well and demonstrated no difficulties in any of the goals proposed in the independent occupational therapy evaluation. Furthermore, Ms. Simpson did not see any clinical concerns, including the area of bilateral motor coordination. Although, Ms. Simpson noted that Student's typed words per minute were low for her age, Ms. Simpson opined that clinically Student simply needed more practice, which did not need to be addressed in an occupation therapy session. Ms. Simpson recommended that Student be discharged from school-based occupational therapy services, as it was no longer clinically needed.

129. On January 9, 2018, Mother emailed the IEP team requesting to reschedule the annual IEP review due to being ill. River Springs provided Parents with an IEP team meeting notice dated January 17, 2018, for an annual IEP team meeting on February 9, 2018.

130. On January 12, 2018, Prentice administered another i-Ready diagnostic test in math. This time Student scored a 455, which placed her at a fourth grade level. On January 12, 2018, Prentice administered an i-Ready test in reading. Student's

overall reading performance was at fourth grade, with a score of 550, an improvement of one grade level since August 2017. The results indicated that Student was decoding accurately, however, her third grade-level vocabulary score suggested that substantial gaps in word knowledge made it very hard for her to read for meaning.

February 9, 2018 Annual IEP

131. The February 9, 2018 Annual IEP was reviewed over two days, February 9 and March 2, 2018. Parents, Mr. Eisenberg, Dr. Cox, Ms. Kosmal, Mr. Barnes, Ms. Clark, Dr. Warren, Ms. Garner, Ms. Shaw, and Prentice speech-language pathologist Julianna Clark attended the IEP team meeting on February 9, 2018. Procedural safeguards were offered to Parents, who declined a copy and an explanation.

132. The IEP team noted Student's relative strengths were in vocabulary and comprehension of literature when read aloud or discussed. She had a good attitude and made an effort when faced with a difficult assignment. She retained information that was read to her, but had difficulty retaining information otherwise. Her auditory comprehension was an area of strength. Her reading significantly improved, but math and writing remained a struggle. Student had close friends, was social with her peers, and was more confident. Mother continued to be concerned about Student's delays in writing, math, and spelling.

Present Levels of Academic and Functional Performance

133. The IEP team reviewed progress on prior annual goals. Student met all her annual goals with the exception of her writing, reading fluency, non-fiction reading, and three math goals. The team reviewed and considered the results from diagnostic testing, Student's work samples, and feedback from her teachers and Mother in identifying Student's present levels of academic and functional performance. Ms. Garner explained that Prentice had not provided Student specialized academic instruction in English language arts and that English language

arts was only taught in the general education classroom.

134. At the meeting, members from Prentice shared that Student made significant progress academically, emotionally, and socially. At hearing, Ms. Shaw described Student at the start of the 2017-2018 school year as quiet, unengaged, and making little eye contact. However, Student soon came out of her shell as the semester progressed. It did not take long for her to adjust to Prentice. At the time of hearing, Ms. Shaw described her as a leader, confident, opinionated, engaged, and happy. At hearing, Ms. Clark and Mother shared the same opinion.

Academics

Reading

135. Student read and decoded at the sixth grade level. She also responded to who, what, where, when, and how questions in grade-level text with the support of a teacher or when a story was read aloud to her. With some prompting, she could restate facts and details of a text, independently predict the next event, and explain the plot and conflict of a story. Student was working on finding the main idea and supporting details of a text, as well as identifying cause or effect and fact or opinion.

136. Student was reading at fifth grade Lexile level, with 95 percent accuracy. As of December 2017, Student was reading sixth grade level material at a speed of 87 words per minute, an improvement of 22 words per minute. She read the material with 97 percent accuracy. The IEP team identified reading fluency as her primary reading deficit.

137. Student's January 17, 2018 i-Ready reading score of 550 reflected an overall reading level of fourth grade, vocabulary level of third grade with a score of 502, a comprehension literature level of fourth grade with a score of 542, and comprehension informational text level of early fourth grade with a score of 615. Student demonstrated the ability to distinguish individual sounds in spoken words (phonological awareness), could accurately decode

written words (phonics), and accurately recognized frequently occurring words (high-frequency words); and therefore, she did not require taking the relevant i-Ready subtests in those areas.

Writing

138. Student could write and spell words from common word families and sight words. She could write complete sentences and identify incomplete sentences. She used punctuation marks correctly, and with support, could write a paragraph. Student could write multi-paragraph essays with the help of visual and teacher supports. When her written work was read back to her, she could edit her writing to correct punctuation and flow.

139. Student demonstrated early stages of establishing context, point of view, and purpose in her writing. She could express her point of view and purpose throughout her writing. Graphic organizers helped her organize her thoughts and add detail to her sentences. Using a graphic organizer, Student could complete a five-sentence explanatory paragraph with minimal staff support. She needed assistance with concluding sentences. She needed to improve her use of capitalization, punctuation, word usage, and paragraphing.

Math

140. At the IEP team meeting, Ms. Shaw shared that Student was not receiving a majority of her math instruction at the seventh grade level, however Student made significant progress in math. From September 2017 to January 2018, Student improved two grade levels, from second to fourth, according to her mathematics i-Ready diagnostic tests. Ms. Shaw shared her opinion as to Student's present mathematical abilities. Student could perform basic addition and subtraction, identify greater or lesser than, and equal to, and calculate problems involving money. She could add, subtract, multiply, and divide positive and negative integers with the support of a visual model with the steps outlined. She needed support to complete problems involving subtraction with regrouping, finding measurements, solving

multi-step word problems, multiplying and dividing large numbers, and memorizing multiplication facts with automaticity. Student also required support from the teacher to follow the order of operations and converting fractions into decimals and percentages.

141. Student could solve two-digit multiplication problems independently with the use of a multiplication chart. However, she was only 50 percent accurate when solving three-digit multiplication problems. She understood how to regroup, but became confused about the place value when regrouping. At hearing, Ms. Shaw testified that the baselines as to the proposed math goals accurately reflected Student's math skills at the time the IEP was developed.

Communication

142. Student's ability to interpret visual and written cues in social situations improved with the help of teacher prompts. Student could verbally explain how a person was feeling in reference to facial expressions, body language, and contextual cues with verbal prompting. Student could successfully analyze pictures, short video clips, and social thinking stories to answer the following questions: "What were they thinking?", "What do they mean?", and "Who said it?" When using only video clips, she was accurate 80 percent of the time.

143. She performed well using whole-body listening, asking people one to two questions on their topic of interest and experiences, and commenting on the topic in structured settings with the help of verbal prompts. Student needed additional prompting to start conversations, bridge to new topics, and to elaborate on her personal experiences.

144. Student developed independent thinking skills. When given structured tasks and choices, she could brainstorm possible situations to solve a problem and justify a logical solution. Student could do this with 60 percent accuracy with three to four prompts.

145. Student could enunciate and project her voice better. In one-to-one or small group situations,

Student could ask and answer questions with improved mouth posture, enunciation, and loudness when given an initial verbal prompt and occasional visual prompt. This diminished the need for the listener to ask Student to repeat what she said. Student could do this with 60 percent accuracy in a small group and classroom setting with prompting.

146. Student could correctly sequence a short narrative, giving six to eight details when presented with a four to six sequenced picture card, and able to provide a personal narrative with verbal prompts. She required prompt cards of who, what, where, when, how, and why to verbalize a complete event in her personal narratives.

Gross and Fine Motor Skills

147. The IEP team had no concerns regarding Student's gross and fine motor skills. Student participated in horseback riding and tennis. She could run, jump, kick a moving ball, and catch a ball. Her penmanship was good. According to Prentice's occupational therapist, Student's typing improved.

Social/Emotional/Behavioral

148. At the IEP team meeting, Mr. Barnes shared that Student was a model citizen. He described her as kind to others, with no behavioral issues, and socially appropriate. She followed classroom rules. Mother shared that Student began seeing a psychiatrist outside of the school setting and it was going well. Student was also attending a small group counseling session once a week for the past two months.

149. Student was respectful to adults and peers at school. Her frustration and anger with her family at home improved. She did not display frustration and anger while playing tennis or horseback riding.

Health, Vocational, and Adaptive/Daily Living Skills

150. The IEP team did not identify any concerns regarding Student's health, vocational skills, or daily living skills. She was in good health and could care for her own needs. She was organized and followed simple and multi-step directions.

Annual Goals

151. The IEP team identified the following areas of need: basic reading fluency, independent reading comprehension, math, writing, language processing, and expressive language pragmatics. The IEP proposed 12 annual goals: three in the area of social pragmatics, one in speaking, one in expressive language, three in reading, one in writing, and three in math. The social pragmatics, speaking, and expressive language goals offered two short-term objectives, the first to be met in May 2018 and the other in November 2018.

152. The first goal in the area of social pragmatics required Student to determine what a person may be thinking or feeling when analyzing characters in literature, longer video clips, or through discussing conflict situations. The annual goal called for Student to verbally explain how a person was feeling or what they were thinking by referencing facial expressions, body language, and contextual cues. This would occur in structured language tasks when shown a video clip of a social situation, or when reading a social story, or discussing a social conflict situation. To meet the annual goal, Student had to be 90 percent accurate over two trial days. The first short-term objective required 70 percent accuracy, with the second short-term objective increasing to 80 percent accuracy. The speech-language pathologist was responsible for this goal, using clinician records and data collected to measure progress.

153. The second social pragmatics goal required Student to independently demonstrate whole body listening, start small talk, and provide an appropriate amount of information to the conversation during a 10 minute unstructured conversation. She could add to the conversation by providing on-topic comments, asking novel and reciprocal questions, and initiating new conversation topics using topic-bridging techniques on each conversational turn. Student's present level of performance was doing these things with 60 percent accuracy. To meet the annual goal, Student had to accomplish this task in eight out of 10 opportunities over two trial days. The first short-term

objective required her to accomplish the task in seven out of 10 opportunities during a five minute unstructured conversation. The second short-term objective asked for eight out of 10 opportunities during a five minute unstructured conversation. The speech-language pathologist was responsible for this goal, using observations and work samples to measure progress.

154. The third social pragmatics goal aimed to improve Student's independent thinking skills by brainstorming possible solutions to a problem and justify with elaboration the logical, mutually beneficial solution based on more than one perspective using age/grade curriculum information. The annual goal required 80 percent accuracy with minimal (one to two) prompts from the teacher. The speech-language pathologist was responsible for this goal. The first short-term objective required 70 percent accuracy with three to four teacher prompts, and the second short-term objective asked for 80 percent accuracy with two to three teacher prompts. The goal was to be measured using clinician records, observations, and work samples.

155. The annual goal to improve Student's speech required Student to independently use open versus closed mouth production in relation to intelligibility, enunciate all word parts, and use appropriate loudness and pausing, during reading, speaking, oral presentations, and class discussions. She had to accomplish this task with 90 percent accuracy given no more than one visual prompt over three consecutive sessions to meet the annual goal. The first short-term objective called for 70 percent accuracy, the second short-term objective required 80 percent accuracy to be met. The speech-language pathologist was responsible for this goal. The goal was to be measured using data collected through observations and work samples.

156. The expressive language goal asked Student to independently demonstrate increased expressive language skills by stating a topic, using specific core vocabulary on expressive language tasks, in a logical, sequential manner. She would be asked to do this

when given a topic or using core eighth grade curriculum, re-telling current events, or when describing a personal narrative. To meet the annual goal, Student had to perform the task successfully in eight out of 10 opportunities. The first short-term objective required success in seven out of 10 opportunities, increasing to eight out of 10 opportunities for the second short-term objective. The goal was to be measured using clinician data and observations, as well as work samples.

157. The first reading goal required Student to independently read a passage, answer the comprehension questions, and cite evidence from the text with at least 80 percent accuracy. Student would be provided a seventh grade fiction reading passage. Progress would be measured through teacher observations and Student's work samples.

158. The second reading goal focused on improving Student's reading fluency. To meet the annual goal, Student had to improve her reading fluency using a Basic Reading Inventory assessment at a seventh grade level, improving a minimum of three words per month, with a goal of reading at least 140 correct words per minute. The special education and general education teachers were responsible for the goal. Progress was to be measured using data collected through teacher observations and Student's work samples.

159. The third reading goal asked Student to independently read a sixth grade non-fiction passage, answer the comprehension questions, and cite evidence from the text with at least 80 percent accuracy. The goal was to be measured using data collected by the teacher and Student's work samples.

160. The writing goal required Student to successfully fill out a graphic organizer and write a multi-paragraph essay, to include a topic sentence, supporting sentences, transition, and concluding sentences. She had to use correct capitalization and punctuation. To support Student, the teacher would provide a graphic organizer and instruct Student how to complete the organizer. To meet the annual goal, Student had to be 70 percent accurate in four out of

five trials. The special education and general education teachers were responsible for the goal. The goal would be measured through Student's work samples, teacher observations, and curriculum-based assessments.

161. Student would be supported by visual models and a math notebook for the three math goals. The first of three math goals aimed to improve Student's ability to multiply and divide. The "math calculation" goal required Student to solve division problems of one to two divisors, with three digit dividends, using strategies based on place value, the properties of operations, and/or the relationship between multiplication and division. To meet this goal, Student had to be 80 percent accurate in four out of five opportunities. The special education and general education teachers were responsible for the goal. Progress would be measured by teacher records, Student's work samples, and teacher observations.

162. The second math goal, "applied problems," asked Student to solve two-step word problems involving all operations: addition, subtraction, multiplication, and division. To meet the goal, Student had to be 80 percent accurate in four out of five trials. The annual goal was to be measured through teacher observations and work samples. The individuals responsible for the goal were not identified.

163. The third math goal addressed fractions. The annual goal called for Student to be 80 percent accurate in four out of five trials when asked to simplify fractions, make equivalent fractions, and solve fractions problems involving addition, subtraction, multiplication, and division. The goal would be measured through teacher observations and work samples. The individuals responsible for the goal were not identified.

164. Crystal Vu was a special education teacher who provided specialized academic instruction at River Springs' Flabob Airport Preparatory Academy. She had been at Flabob for four years. Prior to Flabob, Ms. Vu provided specialized academic instruction for students enrolled in River Springs'

Homeschool program. She possessed a special education mild/moderate credential, with an autism certificate. Ms. Vu also possessed a general education multi-subject credential allowing her to teach grades kindergarten through eight. As part of obtaining a multi-subject teaching credential, Ms. Vu successfully completed the Reading Instruction Competency Assessment, demonstrating knowledge in effectively teaching reading. At hearing, Ms. Vu testified confidently throughout her examination. Her responses were measured and thoughtful, and her testimony was credible.

165. At hearing, Ms. Vu opined the goals as written were clear and measurable. She offered strategies she would utilize to implement the goals. For example, in implementing the math fraction goal, Ms. Vu would use tactile fraction circles or strips Student could manipulate, drawing pictures of fractions, then move to solving fraction problems abstractly. Ms. Vu opined that students with disabilities were proven to do well with manipulatives.

Supplemental Aids, Services and Supports

166. The IEP team reconvened on March 2, 2018, to complete the development of the annual goals, and to determine the appropriate services, accommodations, and placement. Mother, Mr. Eisenberg, Ms. Clark, Dr. Cox, Ms. Kosmal, and Dr. Warren attended the meeting. Ms. Clark excused the other members from Prentice because she believed they would not be needed to address the remaining parts of the IEP.

167. The February 9, 2018 IEP offered Student the following accommodations and supports: access to instructional technology, the use of visuals, graphic organizers, multiplication tables, notes to support instruction, and demonstration of understanding of skills via multi-modalities, all available as needed. The following services were offered: collaboration between the specialized academic instruction teacher and the general education teacher 15 minutes each month, consultation between the specialized academic

instructor and parent 15 minutes twice a month, and monthly consultation with an occupational therapist for staff and parent for 15 minutes.

168. At the IEP team meeting, Mother opined that Student no longer required occupational therapy services. However, Mother shared that Student still sought out self-regulation activities. The IEP team determined that the sensory regulation goal was no longer necessary, but agreed to provide some level of occupational therapy support through consultation.

Special Education and Related Services

169. The IEP offered the following special education and related services from February 9, 2018, to March 29, 2018, to be provided by River Springs at one of its locations: 45 minutes twice a week of group speech and language services; group specialized academic instruction consisting of 210 minutes of pull-out services and 60 minutes of push-in services to be provided by a credentialed special education teacher; and individual counseling in an individual setting for 30 minutes once a week. Though the IEP identified River Springs as the location for the services through March 29, 2018, as noted in the IEP's "Special Education and Related Services" section, the discussion at the meeting and as reflected in the IEP team meeting notes was for Student to remain at Prentice through March 29, 2018, and to begin at Flabob following Prentice's spring break to allow for a smoother transition.

170. From April 2, 2018, to February 2, 2019, the IEP offered the following services at a River Springs location: 45 minutes twice a week of group speech and language services; group specialized academic instruction consisting of 210 minutes of pull-out services and 60 minutes of push-in services to be provided by a credentialed special education teacher; and individual counseling in a group setting once a week for 30 minutes.

171. At the IEP team meeting, Prentice recommended that the 210 minutes of specialized academic instruction address only math, as Prentice could only provide specialized academic instruction

in the area of English language arts on a consultative model. At the time, Prentice did not have a credentialed special education teacher to provide specialized academic instruction to Student. River Springs recommended an additional 60 minutes of specialized academic instruction in the area of English language arts to address the proposed reading and writing goals. Ms. Clark was not in agreement with the additional 60 minutes of specialized academic instruction in English language arts based on Prentice's view that Student was making progress through a consultative model.

172. At hearing, Ms. Kosmal testified that pull-out specialized academic instruction was needed in the areas of reading and writing to address the English language arts goals as proposed. She opined that it was very difficult to work on reading strategies in the general education classroom. When a student was more than two grade levels behind in reading, pull-out instruction was best to allow a special education teacher to work closely with the student to learn reading strategies and skills. The pull-out model would allow Student to receive small group or one-to-one instruction to learn new skills Student could apply in the regular classroom. Ms. Kosmal also opined that a teacher credentialed in special education was crucial in working with Student on the reading goals, as they had the necessary training to teach specific reading strategies and techniques.

173. Crystal Vu testified at hearing. Ms. Vu shared the same opinion, that pull-out specialized academic instruction in reading, writing, and math would offer Student more intensive instruction in a small group or individual setting, which was necessary to achieve the proposed academic goals. She explained that the goals regarding fractions, applied problems, math calculation, and reading fluency would require pull-out instruction. Ms. Vu opined that the nature of the goals as written required specific instruction that would be difficult to do in a regular classroom.

174. At hearing, Dr. Passaro continued to recommend that Student receive one hour a day of

instruction in each of the following areas: reading, writing, and math. He opined that ideally the instructor should be credentialed in special education, as they are familiar with appropriate and empirically based strategies. He recommended that the instruction be provided on a pull-out basis. In the area of reading, Dr. Passaro opined that a teacher trained in teaching reading was more important than whether the teacher was credentialed in general education or special education.

175. The February 9, 2018 IEP offered extended school year services from June 18, 2018, to July 20, 2018. The services consisted of 314 minutes a day of specialized academic instruction in a group setting and 30 minutes a week of individual counseling in an individual setting once a week.

Placement

176. Following the discussion of special education and related services, the IEP team turned to placement, and for the first time during the annual IEP review, River Springs proposed that Student be placed at Flabob. At the meeting, Dr. Cox explained the offer of placement at Flabob was based on River Springs' belief that Prentice could not implement the proposed IEP. Specifically, Prentice could not provide the pull-out specialized academic instruction in the area of English language arts that the IEP required. Furthermore, River Springs did not believe Student required a nonpublic school placement. River Springs stated it would be terminating its funding of Prentice on March 29, 2018, and proposed Student begin attending Flabob on April 2, 2018, after the spring break. In the meantime, Student would remain in Prentice.

177. At hearing, Ms. Vu explained that Flabob had roughly 100 students, serving grades six to 12. It was an Academy program which meant direct instruction would be provided on campus by credentialed teachers. Classes were held on Tuesdays, Wednesdays, Thursdays, and Fridays. Mondays were home study days, where students could remain at home to work on assignments. However, on

Mondays, students had the option of coming to campus for study hall. Ms. Vu, an aide, and Flabob's vice principal were present for study hall. Study hall was available for all students the entire school day. Flabob's middle school program consisted of core curriculum instruction on Tuesdays, Wednesdays, and Fridays. Elective classes were held on Thursdays. Flabob's special education program offered push-in specialized academic instruction as well as pull-out individual or small group instruction. Flabob served students with a wide variety of disabilities which included among others, autism spectrum disorder, specific learning disability, and attention deficit hyperactivity disorder.

178. At the IEP team meeting, Mother became upset and highly emotional when River Springs proposed to move Student to Flabob. Mother and Mr. Eisenberg stepped outside the meeting to gather themselves and when they returned, the team briefly discussed the proposed change in placement. The conversation became heated. Mother questioned when the change would occur. Dr. Cox proposed Student begin at Flabob after the spring break. Mother, upset, questioned the appropriateness of the timing of the change, concerned that it would set Student back. Dr. Warren attempted to explain the transition to Flabob, but Mother interrupted. Mother requested contact information of Flabob and was provided a phone number. River Springs attempted to pull up Flabob's website on a laptop but could not access the website during the meeting. No further details of Flabob's middle school program were provided to Mother at the meeting.

179. At hearing, Mother testified that she felt blindsided by the proposed removal of Student from Prentice. She expected the IEP team to discuss and develop goals and services, but it did not dawn on her that River Springs would consider changing Student's placement from Prentice in light of the progress Student had made at Prentice. She understood the agreement made in August 2017, and memorialized in the August 4, 2017 IEP Amendment, was for Student to be placed at Prentice and should Student progress,

Student would remain at Prentice for the remainder of the 2017-2018 school year. It upset her deeply for River Springs not to warn her of the possibility of a change in placement and to not offer her an opportunity to investigate Flabob prior to the IEP team meeting. River Springs' proposal to end funding on March 29, 2018, only solidified Mother's belief that River Springs had already made up its decision to remove Student from Prentice regardless of the concerns Parents may have had. At hearing, Mother explained that though she was upset, she did not walk away from the meeting or end the meeting abruptly; she testified that she was able to ask questions and engage River Springs.

180. At the IEP team meeting, River Springs reiterated its offer of FAPE, and, feeling the meeting had reached a standstill, Dr. Cox suggested the team review the IEP team meeting notes to draw the meeting to a close. Mother requested changes to the notes to reflect her disagreement with the proposed placement at Flabob and her concern that changing placement in the middle of the school year would not be beneficial to Student. Those changes were made to the notes. At hearing, Mother opined that she believed she contributed and participated in the IEP process. No additional IEP team meeting was requested by either River Springs or Parents.

181. Ms. Kosmal testified that prior to the March 2, 2018 IEP team meeting, she researched potential placement options for the IEP team to explore. Ms. Kosmal reviewed various programs River Springs had to offer and arrived at Flabob as a viable option to present once the IEP team was prepared to discuss placement.

182. On March 2, 2018, Mother emailed River Springs requesting a copy of Student's "complete file." On March 7, 2018, Ms. Kosmal emailed Prentice requesting documents to update Student's pupil records in response to a records request River Springs was obligated to provide. On March 8, 2018, Ms. Clark emailed Student's fall report card and attendance dated January 18, 2018, to the present to Ms. Kosmal. On March 9, 2018, at 2:30 p.m., Ms.

Riley emailed Mother informing her that the copy of the records were ready for pick up. On March 16, 2018, Father picked up the copies.

183. Mother testified that the records Parents sought through her records request was quite broad. At hearing, she explained that documents she referred to as "report cards" were expected to be produced. She described these "report cards" as forms that listed categories and grade level scores. She was familiar with these "report cards" through the records prepared for her other two children. Additional records she expected were specialized academic instruction service logs, progress updates, works samples collected by Ms. Gillette, any assessments conducted on Student, and work samples maintained by the specialized academic instruction teachers. Dr. Cox testified that Parents were provided with Student's progress reports after the first and second semesters, which were also made a part of an IEP.

March 21, 2018 Prior Written Notice

184. On March 21, 2018, River Springs, through its attorneys, mailed and emailed a prior written notice to Parents in response to Parents' request to maintain Student's placement at Prentice. The prior written notice reflected River Springs' understanding that the agreement to fund only the first semester of the 2017-2018 school year at Prentice was pursuant to a settlement agreement and according to the settlement agreement, Prentice was not stay put.

185. The prior written notice explained that River Springs was denying Parents' request to continue Student's placement at Prentice because Prentice was neither stay put nor could Prentice provide Student with a FAPE in the least restrictive environment. River Springs opined that Prentice could not offer Student the same general education exposure, both academically or socially, was not the least restrictive environment for Student, and could not implement Student's then-current and proposed IEPs, specifically the specialized academic instruction.

186. On March 22, 2018, Student filed a Motion

for Stay Put seeking an order from OAH designating Prentice as Student's stay put placement. On April 11, 2018, OAH denied Student's request to designate Prentice as her stay put placement.

187. On April 3, 2018, Michelle Nelson, M.D. prepared a letter on Student's behalf that Parents provided to River Springs.⁸ Dr. Nelson was a child and adolescent psychiatrist who was treating Student for attention deficit hyperactivity disorder, autism spectrum disorder, oppositional defiant disorder and unspecified anxiety disorder, unspecified depressive disorder, and generalized anxiety disorder. She opined Student was doing well at Prentice academically, psychologically, and socially. In her opinion, Student would suffer negative ramifications psychologically, socially, behaviorally, and academically if suddenly removed from her current placement.

188. On April 28, 2018, Dr. Passaro prepared a letter to Parents in response to Parent's request that he review Student's educational record, including River Springs' current offer of FAPE, to observe Student at Prentice, and to observe Flabob.

189. In his letter, Dr. Passaro opined that Student had regressed during the two years she attended River Springs. Dr. Passaro testified at hearing that this further supported his contention that 180 minutes a week of intensive intervention instruction was insufficient to close Student's academic gap. Dr. Passaro further opined that Student made significant progress while at Prentice. Dr. Passaro noted Student's improvements in the areas of reading comprehension, reading fluency, written expression, math calculation, and applied problems skills.

190. Dr. Jeremy Warren, River Springs lead school psychologist testified at hearing. Dr. Warren questioned the appropriateness of Dr. Passaro's assessment of Student's progress at Prentice, specifically Dr. Passaro's reliance on the February 9, 2018 IEP's baselines in comparison to Student's Woodcock-Johnson IV Tests of Achievement results in April 2017. Dr. Warren opined that it was not best practice to compare grade level equivalents as reflected in the baseline with standardized scores

from the Woodcock-Johnson. However, neither Dr. Warren nor any other witness disputed that Student did make academic progress during her time at Prentice.

191. Dr. Passaro observed Student at Prentice for about an hour on April 12, 2018. He interviewed Mr. Barnes, who shared that Student had made significant progress academically, socially, and emotionally while attending Prentice. Student was happy and enjoyed coming to school. Student was observed in science class, where Dr. Passaro saw no signs of anxiety, aggression, withdrawal, or any other inappropriate behaviors.

192. At hearing, Dr. Passaro shared that Mr. Barnes reported to him that Student had some difficulty transitioning into Prentice, but settled in quickly and was doing well. Dr. Passaro opined that Student's academic success helped her build her confidence and improve her self-esteem.

193. On Friday, April 27, 2018, Dr. Passaro toured Flabob for an hour. Flabob's principal Robin Davis escorted Dr. Passaro. Ms. Davis shared that Flabob was designed for either college entrance or vocational education. According to Dr. Passaro's letter, Ms. Davis reported that 84 students were then enrolled between grades seven and 12, with the eighth grade class having only eight students. Flabob did not have classes scheduled on Mondays, but students were allowed to come to school to complete assignments or seek remedial help from teachers.

194. Dr. Passaro described Flabob as having an open architecture, with no walls. Rather, large portable dividers separated the classrooms. According to Dr. Passaro, Ms. Davis explained the reading program that Student would receive was the i-Ready computer-aided instructional program, as well as the REWARDS program. Dr. Passaro opined Student required instruction from a trained staff and not a computer.

195. During his observation of Flabob, Dr. Passaro interviewed Ms. Vu. According to Dr. Passaro, Ms. Vu could not confirm whether any of the

reading programs offered at Flabob were empirically validated, but Ms. Vu believed there was research to support their use and evidence to support its effectiveness for students with dyslexia. According to Dr. Passaro, Ms. Vu disclosed that she had no specialized training in the i-Ready, REWARDS, or Reading Plus programs and no specific training in any validated reading program. Dr. Passaro stated in his letter that Ms. Vu disclosed that students with the most intensive needs in her program received only three hours per week of pull-out services. Dr. Passaro opined this to be insufficient and inconsistent with the California Department of Education Guidelines.

196. In his April 28, 2018 letter, Dr. Passaro offered the same recommendations as those in his April 2017 independent psychoeducational evaluation, adding that Student's reading intervention should be empirically based, such as the Orton Gillingham/Slingerland program used at Prentice. Dr. Passaro opined that Student should remain at Prentice in light of her significant progress. He opined that the current offer of FAPE at Flabob was not fundamentally different from her previous program at River Springs in which she regressed. Dr. Passaro opined that moving Student would likely result in a significant regression in the social, emotional, and behavioral progress she made at Prentice.

197. However, Dr. Passaro's conclusion regarding the required amount of specialized academic instruction Student required and the manner in which it should be delivered was inconsistent to what Prentice provided. Though Dr. Passaro recommended two hours of daily pull-out services in the area of English language arts, Prentice did not provide any pull-out specialized academic instruction to Student to address reading and writing. Furthermore, Dr. Passaro recommended one hour of daily pull-out services in the area of math, yet Prentice only provided three hours of pull-out instruction in math for the entire week. Student did make progress in reading and math while at Prentice despite not adhering to Dr. Passaro's recommendations. Dr. Passaro offered no explanation

for the discrepancy between what he recommended, what Prentice offered, and the progress Student made. Accordingly, his opinion was not persuasive due to these inconsistencies.

198. Dr. Passaro prepared a declaration in support of Plaintiff's Ex Parte Application for a matter before the United States District Court, Central District of California, Eastern Division. It was signed by Dr. Passaro on May 10, 2018. In his declaration, Dr. Passaro stated that Flabob was not a nonpublic school placement, consisted mainly of home instruction, and was not equipped to address Student's extensive and complex needs resulting from her conditions. Dr. Passaro further declared that Flabob did not employ credentialed teachers, did not provide the necessary specialized academic instruction or other services, including cognitive behavioral therapy or any treatment in Student's areas of need, and that Flabob's reading intervention was computer-based. Dr. Passaro also opined in his declaration that placement at Flabob would result in the elimination of Student's academic instruction, speech therapy, occupational therapy, counseling, and socialization opportunities.

199. At hearing, Ms. Vu persuasively challenged the accuracy of Dr. Passaro's accounts regarding Flabob, further diminishing the weight of Dr. Passaro's testimony and written opinions. When asked to review Dr. Passaro's declaration, Ms. Vu shared her disagreement to a number of his statements. Ms. Vu testified that Flabob did employ credentialed teachers, both in general education and special education. Ms. Vu also explained that Flabob did provide specialized academic instruction and other services, and utilized evidenced-based reading programs, such as the REWARDS Secondary program for the middle school grade levels. She taught the REWARDS reading program for five years. Furthermore, Ms. Vu explained that Flabob employed a licensed speech-language pathologist, a licensed occupational therapist, credentialed counselors, and offered socialization opportunities on campus. She indicated that Flabob's counselors were trained in cognitive

behavior therapy.

200. Student appealed the OAH stay put order to the United States District Court, Central District of California, Eastern Division. River Springs stopped funding Student's placement at Prentice on March 29, 2018. Prentice sent Parents invoices for tuition for part of March, April, and 14 days of May 2018 seeking payment totaling \$4,291.98. At hearing Student presented invoices marked paid for the total amount. In addition, Parents paid Prentice \$265.00 for speech and language services for five sessions in the months of April and May 2018.

201. On April 25, 2018, Mother emailed Ms. Clarke and Prentice Director of Enrollment Devon Green, informing them under the advice of Student's attorneys, Student would need to stop attending Prentice "to be successful in federal court getting the injunction against" River Springs that would require River Springs to continue funding Student's placement at Prentice until the due process hearing. Mother explained that Parents would be unsuccessful in District Court in obtaining the injunction if Student was attending Prentice under Parents' funding when they appeared in District Court later that week, thus Student needed to "be out of placement." Furthermore, Mother indicated that if Parents were unsuccessful in obtaining the injunction, they would notify River Springs that Parents would "privately pay and [Student] would immediately return to Prentice." If Parents succeeded in obtaining the injunction in District Court, Mother stated Student would immediately return to Prentice under River Springs' funding.

202. Though Student was permitted to attend Prentice at all times following March 29, 2018, Student did not attend on April 23, 24, and 25, 2018, due to illness. Parents chose to not have Student attend from April 26 through May 11, 2018. Her absences were marked excused and Student offered no credible evidence that Student could not attend Prentice during that period. Parents again did not have Student attend from May 16 through 18, 2018. Student's absences were marked unexcused for those

days. She attended Prentice all day on April 19 and May 15, 2018, and half the day on May 14, 2018. On May 18, 2018, the District Court granted Student's Ex Parte Application for Temporary Restraining Order, designating Prentice as the school for stay-put purposes under title 20 United States Code section 1415. Student returned to Prentice on May 21, 2018, and has continued to attend Prentice since.

203. On September 7, 2018, Prentice administered an i-Ready diagnostic math test.⁹ Student's overall score was 463, placing her at a fourth grade level.

Legal Conclusions

Introduction - Legal Framework under the IDEA¹⁰

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)¹¹ et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. §

1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an individualized education program is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.)

4. The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as

"educational benefit," "some educational benefit" or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

5. In *Andrew F. v. Douglas County School Dist.* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000] (*Andrew F.*), the Supreme Court held that a child's "educational program must be appropriately ambitious in light of his circumstances." "[E]very child should have a chance to meet challenging objectives." (*Ibid.*) *Andrew F.* explained that "[t]his standard is markedly more demanding than the 'merely more than de minimis' test ... [¶] ... The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Id.* at pp. 1000-1001.) However, the Supreme Court did not define a new FAPE standard in *Andrew F.*, as the Court was "[m]indful that Congress (despite several intervening amendments to the IDEA) has not materially changed the statutory definition of a FAPE since *Rowley* was decided, we decline to interpret the FAPE provision in a manner so plainly at odds with the Court's analysis in that case." (*Id.* at p. 1001.) The Court noted that "[a]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." (*Id.* at p. 999 [italics in original].) The Ninth Circuit affirmed that its FAPE standard comports with *Andrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th 2018) 726 Fed.Appx. 535.)

6. 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, evaluation, 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, 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. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Student and River Springs requested the hearing in this matter, and therefore Student has the burden of proof related to her issues and River Springs has the burden of proof as to its sole issue.

Issue 1: Did River Springs Fail to Provide Appropriate Present Levels of Performance, Goals, and Services in the Areas of (a) Occupational Therapy, (b) Speech, (c) Specialized Academic Instruction, (d) Educationally Related Mental Health, (e) Behavior, and (f) Social Skills from March 21, 2016, to August 2017?

7. Student contends the IEPs dated March 30, 2016, through May 12, 2017, did not adequately address all of Student's areas of need. Student argues that those IEPs failed to offer appropriate goals and services in the areas of academics, educationally related mental health, social skills, occupational therapy, speech, behavior, and attention.¹² Student claims that as early as December 2015, River Springs was aware of Student's deficits as reported in Drs. Britt's and Libert's neuropsychological reports, and River Springs failed to develop an educational program designed to address those deficits.

8. River Springs contends that Student's only deficits were in English language arts and mathematics during the 2015-2016 and 2016-2017 school years, until the April 28, 2017 IEP team meeting. River Springs argues the amount and frequency of specialized academic instruction offered during that period was reasonably calculated to address her academic deficits. River Springs alleges that the information available at the time did not warrant IEP goals and services in the areas of occupational therapy, speech, educationally related mental health, behavior, and social skills prior to April 28, 2017. River Springs argues that the IEP was

appropriately amended in light of the independent educational evaluations presented at the April 28, 2017 IEP team meeting and Student had no other areas of need that warranted additional goals and services not addressed in the May 12, 2017 IEP Amendment.

9. An IEP is a written document for each child with a disability that includes a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).) 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 result 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).) The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467 .) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500.)

10. The IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) Annual goals operate as a mechanism for determining whether the totality of the services

provided pursuant to the child's IEP is appropriate to the child's unique needs. (Letter to Hayden, OSEP October 3, 1994.) The development of measurable annual goals is a procedural requirement under the IDEA.

11. Additionally, the IEP must contain statements of how the child's goals will be measured and the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3), (4).) The IEP shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.)

12. In *Rowley*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (458 U.S. at pp 205-206.) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decisionmaking process regarding the provision of a FAPE to the parent's child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).)

13. 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 K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)) It must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Fuhrmann v. East Hanover Bd. of Educ.*, (3d Cir. 1993) 993 F.2d 1031 (*Fuhrmann*)). An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*)).

14. The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) Education Code section 56505, subdivision (l) provides as follows: "A request for due process hearing arising under subdivision (a) of Section 56501 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. In accordance with Section 1415(f)(3)(D) of title 20 of the United States Code, the time period specified in this subdivision does not apply to a parent if the parent was prevented from requesting the due process hearing due to either of the following: (1) Specific misrepresentation by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or (2) The withholding of information by the local educational agency from the parent that was required under this part to be provided to the parent."

15. A claim under the IDEA accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action; that is, when the parent knows that the education provided is inadequate. (*M.D. v. Southington Bd. of Ed.* (2d Cir. 2003) 334 F.3d 217, 221.) In other words, the statute of limitations begins to run when a party is aware of the facts that would support a legal claim, not when a party learns that he or she has a legal claim. (See *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1032, 1039.) In *Miller v. San Mateo-Foster City Unified School District* (N.D.Cal. 2004) 318 F.Supp.2d 851, 860, the court held the cause of action accrued when parents received notice of their procedural rights in connection with a school district's assessment of their child, even if the assessment's findings were later found to be incorrect.

16. The Ninth Circuit in the case of *Avila v. Spokane School Dist. 81* (9th Cir. 2017) 852 F.3d 986, interpreted the 2004 addition of a statute of limitations in the IDEA, and affirmed that the statute of limitations is governed by the "discovery rule." Common law or equitable exceptions to the statute of

limitations do not apply to IDEA cases. (*D.K. v. Abington School Dist.* (3d Cir. 2012) 696 F. 3d 233, 248.) In particular, the common law exception to the statute of limitations that applies when a violation is continuing is not applicable in IDEA cases. Thus, a party may not challenge the appropriateness of an IEP created outside of the statute of limitations period even though the IEP's provisions were in effect within the limitations period. (*K.P., etc., v. Salinas Union High School Dist.* (N.D. Cal. April 8, 2016, Case No.5:08-cv-03076-HRL) 2016 WL 1394377, which interpreted the California statute limitations, Ed. Code, § 56505, subd. (l) (*K.P.*))

17. In *K.P.*, the District Court upheld the ALJ's decision to exclude claims challenging the appropriateness of an IEP as time-barred by the two-year statute of limitations. (2016 WL 1394377) The student during the administrative hearing challenged an IEP that was developed and consented to prior to the two-year statute of limitations, based on alleged deficiencies in the IEP as written. (*Ibid.*) Specifically, the student claimed the IEP was not based on relevant information about her deficits, failed to give due weight to available information from prior assessments, failed to properly address all of her deficits, failed to address safety concerns, and did not have an appropriate transition plan. (*Ibid.*) The student further claimed at hearing that the IEP's offer of placement denied her a FAPE. (*Ibid.*) However, the parent signed her consent to that IEP and initialed the plan to indicate that she received a copy of a document advising her of the parents' and child's procedural due process rights and that these rights were explained to the parent. (*Ibid.*) ALJ properly concluded that the parent knew or should have known about the deficiencies in the IEP as of that date. (*Ibid.*) The District Court held that the ALJ appropriately time-barred the student's claims challenging the IEP's placement offer as an attack on the IEP as written. (*Id.* at p. 11.)

18. Both federal statute and subsequent case law inform that continuing violations are not cognizable in due process proceedings. In its commentary on the

2006 version of the Code of Federal Regulations written in response to the reauthorized IDEA, the United States Department of Education directly addressed the issue of continuing violations. A commentator to the proposed 2006 regulations suggested that the regulations should allow extensions of the statute of limitations when a violation is continuing. The United States Department of Education rejected the suggestion, stating, "Section 615(f)(3)(D) of the Act [IDEA] provides explicit exceptions to the timeline for requesting a due process hearing. Section 300.511(f) [of the then-proposed regulations] incorporates these provisions. These exceptions do not include when a violation is continuing Therefore, we do not believe that the regulations should be changed." (71 Fed.Reg. 46697 (Aug. 13, 2006).

Non-Academics

19. The December 4, 2015 IEP was consented to by Parents on December 17, 2015, more than two years before Student filed this case and rendering it outside the two-year statute of limitations. The initial IEP team meeting was held on December 4, 2015. Parents were provided a copy of their procedural safeguards and rights on that date. The December 4, 2015 IEP took into consideration input from Ms. Gillette and Mother, Dr. Britt's 2011 neuropsychological report, Dr. Libert's 2015 neuropsychological report, and River Springs' December 4, 2015 psychoeducational and academic assessment reports. The IEP team identified Student's areas of need and present levels of performance, developed annual goals, designed accommodations and services, and identified a placement.

20. Student's contention that River Springs should have offered goals and services in the areas occupational therapy, speech, educationally related mental health, behavior and social skills from March 21, 2016, through August 2017 based on the findings and recommendations of the neuropsychological reports by Drs. Britt and Libert is misplaced. The neuropsychological reports were already considered in developing the December 4, 2015 IEP, which

Parents consented to on December 17, 2015. Student cannot now challenge the adequacy of the December 4, 2015 IEP as written, since Student failed to request a due process hearing within two years of that IEP. Furthermore, any allegations for failure to offer appropriate goals and services based solely on the inadequacy of the December 4, 2015 IEP as written cannot be sustained because the continuing violation doctrine does not apply in special education law.

21. At the start of the hearing, Student voluntarily withdrew any claims against River Springs alleging a failure of River Springs to assess Student in the areas of academics, occupational therapy, speech and language, mental health, behavior, and socialization from March 21, 2016, to August 2017. Accordingly, an analysis of the appropriateness of River Springs' offer of goals and services during that time period can only consider the information that was available at the time the IEPs were developed, and not information that could have been obtained through additional assessments.

22. Student did not offer any persuasive evidence that prior to the April 28, 2017 IEP Amendment team meeting, River Springs should have revised the December 4, 2015 and January 12, 2017 IEPs to offer goals and services in the areas occupational therapy, speech, educationally related mental health, behavior, and social skills. There were no concerns identified by Mother, Student's teachers, or any other professional or assessor following Mother's consent to the December 4, 2015 IEP that warranted a revision to the IEP's nonacademic goals and services.

23. Mother's accounts regarding the severity of Student's behaviors were inconsistent. Mother reported Student became more aggressive toward family members and friends and her behaviors at home were challenging. In addition, Mother shared at the January 12, 2017 IEP team meeting that Student was respectful to adults and peers as school, but disrespectful to her family at home. However, Mother's email to Prentice on May 31, 2017, painted a different picture. In that email, Mother indicated that Student "only exhibits minimal behavioral issues and

those are ONLY present at home when she gets frustrated. Those have never been exhibited in public or at school."

24. The January 12, 2017 IEP also noted that Student was kind, polite, and interacted with her peers appropriately, was social in class, and followed classroom rules. Furthermore, despite the numerous communications exchanged between River Springs and Parents, through their advocate Paul Eisenberg, not once did Mr. Eisenberg raise any specific concerns in his communications regarding Student's occupational therapy, speech, educationally related mental health, behavior, and social skills needs apart from Parents' request for independent educational evaluations. Student did not present any persuasive evidence that she manifested any deficits in areas of occupational therapy, speech, educationally related mental health, behavior, and social skills, which gave reason to offer goals and services in those areas from March 21, 2016, to April 27, 2017.

25. During the April 28, 2017 IEP team meeting, Mother shared that Student participated socially outside of the home. She did not report any concerns about Student's social skills. Furthermore, River Springs considered the findings and recommendations of the independent educational evaluators and offered Student a nonpublic school placement, with occupational therapy, speech and language, and individual counseling services. The proposed goals in the areas of sensory integration and speech and language were memorialized in the May 12, 2017 IEP Amendment. Though the Amendment failed to include baselines in the speech and language and sensory integration goals, Student offered no evidence as to how that procedural defect denied Student an educational benefit or impeded Parents from meaningfully participating in the IEP process, or that the goals themselves were not adequate to meet her unique needs. By January 2018, Student had met her sensory integration goal and no longer required school-based occupational therapy services. Furthermore, the IEP team determined during the February 9, 2018 IEP team meeting that Student had

met all her speech and language goals. Therefore, Student failed to meet her burden of proving that River Springs denied her a FAPE by failing to offer appropriate goals and services in the areas of occupational therapy, speech, mental health, behavior, and social skills from March 21, 2016, to August 2017.

Academics

26. The operative IEPs offered 180 minutes a week of specialized academic instruction to address reading, writing, and math goals from March 21, 2016, through April 28, 2017. For the 2016-2017 school year and extended school year, Student did not establish the academic goals and specialized academic instruction offered to address Student's reading and writing deficits were inadequate. Student's writing improved. By June 2017, she could use a graphic organizer to write a coherent paragraph. In addition, by June 2017, Student had improved in reading comprehension and reading fluency. Furthermore, her overall i-Ready scores increased by 32 points from September 2016 to August 2017. Hence, despite the limited specialized academic instruction she received that school year, Student did benefit in the area of reading and writing. The lack of further progress was attributable to River Springs' failure to provide the specialized academic instruction called for in her IEP, not in the inadequacy of the goals and specialized academic instruction offered to address her English language arts deficits.

27. Student offered no credible evidence to give reason for amending the December 4, 2015 IEP between March 21, 2016, through the 2016 extended school year to add or tweak the academic goals or to modify the amount and frequency of the specialized academic instruction. In the April 26, 2016 IEP Amendment, River Springs offered 60 minutes a week, for four weeks, of specialized academic instruction to address math during the 2016 extended school year. At the time the 2016 extended school year offer was made and consented to, there was no persuasive evidence to demonstrate that River Springs should have known that 60 minutes weekly was

insufficient.

28. However, it became apparent following the 2016 extended school year that the specialized academic instruction offered to address Student's math deficits was inadequate. Student regressed significantly in the area of math. A comparison of Student's September 2015 and September 2016 i-Ready diagnostic math scores revealed that Student declined two grade levels. Furthermore, by January 12, 2017, Student had not met any of her annual math goals. Student's math deficits worsened, and at the start of her sixth grade year, she was four grade levels behind in math.

29. Moreover, Mother reported to River Springs her frustration from the lack of an appropriate math curriculum for Student. Student was introduced to five different math curriculums during the 2016-2017 school year. Mother advised River Springs she did not feel she was equipped to teach Student at home. Mother requested from River Springs a math curriculum that had structure, consistency, and offered her more guidance as an instructor. Mother needed guidance and support from River Springs in selecting a math curriculum as she did not feel qualified to make that selection. The significant regression in math, the inability to identify an appropriate math curriculum, and Mother's frustration and sense of inadequacy to provide instruction to Student were further reasons for River Springs to revisit the appropriateness of the December 4, 2015 IEP's offer of math goals, specialized academic instruction, and placement in the Homeschool program soon after the September 2016 i-Ready math scores were received.

30. Furthermore, River Springs failed to increase its offer of specialized academic instruction in the January 12, 2017 IEP to address Student's worsening math deficit. The January 12, 2017 IEP continued to offer an inadequate amount of specialized academic instruction to address Student's math deficit. Though the May 12, 2017 IEP Amendment did offer increased specialized academic instruction for 314 minutes daily at a nonpublic school, it was not expected to

begin until the 2017 extended school year. River Springs did not offer to increase the specialized academic instruction for math for the remainder of the 2016-2017 school year, ending on June 13, 2017. Therefore, the weight of the evidence established that River Springs failed to offer an adequate level of specialized academic instruction in the area of math from October 1, 2016, to June 13, 2017. The failure to offer an adequate amount of specialized academic instruction to address the area of math from October 1, 2016, to June 13, 2017, denied Student an educational benefit, in violation of the IDEA.

Issue 2(a): Did River Springs Fail to Provide Student the Specialized Academic Instruction Pursuant to the March 30, 2016, April 26, 2016, January 12, 2017, March 23, 2017, April 28, 2017, and May 12, 2017 IEPs?

31. Student contends River Springs failed to implement the specialized academic instruction as called for by the IEPs during the 2015-2016 and 2016-2017 school years. Student not only argues she was denied a significant amount of specialized academic instruction, but the instruction she received did not comply with the IEP. Student claims she received specialized academic instruction from an instructional aide who lacked the qualifications to provide such instruction. In its closing brief, River Springs did not offer an argument as to this issue.

32. A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822.) However, "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*)

33. The evidence established that River Springs failed to provide the specialized academic instruction as required in the IEPs between March 30, 2016 and May 12, 2017. Student was entitled to 180 minutes of specialized academic instruction each week. In the month of September 2016, student received only five,

60-minute sessions of instruction. River Springs failed to provide Student a substantial amount of specialized academic instruction in the months of October, November, December, January, and February of the 2016-2017 school year. In addition, River Springs could not verify the instruction Ms. Owens had supposedly provided. However, River Springs did offer an adequate amount of specialized academic instruction for the 2017 extended school year, which Parents did not accept.

34. Ms. Moran, along with her instructional aide Ms. Croom, began providing Student specialized academic instruction on March 6, 2017. There were periods of time that Student received instruction solely from Ms. Croom and though the amount of instruction Ms. Croom provided was not clearly established at hearing, the evidence suggested the amount of instruction she provided was not substantial. Therefore, Student did not meet her burden in proving the instruction Mr. Croom provided was a material failure to implement the specialized academic instruction provided by the December 4, 2015 IEP, as amended on April 26, 2016.¹³

35. The December 4, 2015 IEP, as amended on April 26, 2016, and consented to by Parents on May 4, 2016, called for 180 minutes of weekly specialized academic instruction during the regular school year. Failing to provide the weekly specialized instruction for over five months during the 2016-2017 school year was more than a minor discrepancy from what the December 4, 2015 IEP required. Thus, Student proved by a preponderance of the evidence that River Springs denied her the benefits of specialized academic instruction by failing to implement the December 4, 2015 IEP, in violation of the IDEA.

Issue 2(b): Did River Springs Fail to Provide the Specialized Academic Instruction and Related Services Pursuant to the August 4, 2017 IEP from April 19, 2018, Through May 21, 2018?

36. Student contends River Springs denied her the instruction and services she was entitled to from April 19, 2018, to May 21, 2018. Student alleges River Springs was obligated to continue funding

Prentice to allow Student to access the special education and related services as called for in the August 4, 2017 IEP Amendment as Student's stay put. Rivers Springs offered no arguments on this issue in closing.

37. Student filed her initial due process hearing request on March 22, 2018, and concurrently filed a motion for stay put with OAH. On April 11, 2018, OAH found Prentice not to be Student's stay put educational program. In reliance of OAH's finding, River Springs continued to deny funding for Prentice until the United States District Court, Central District of California determined on May 18, 2018, that Student's stay put placement was Prentice. The District Court found Student entitled to the instruction and services as called for in the January 12, 2017 IEP, as amended in the August 4, 2017 IEP Amendment. River Springs immediately resumed funding for Prentice, and Student returned to Prentice on May 21, 2018. The failure to fund Prentice, equating to a failure to implement the August 4, 2017 IEP Amendment for 22 school days, from April 19, 2018, through May 21, 2018, was material. (*See Alexis R. v. High Tech Middle Media Arts School* (S.D. Cal. Aug. 3, 2009, No. 07cv830 BTM (WMc.) 2009 WL 2382429 [Failure to provide stay put is a FAPE violation for which a school district may be ordered to provide compensatory education] (Alexis R.)) Therefore, Student met her burden in proving by a preponderance of the evidence that River Springs violated the IDEA by failing to implement the January 12, 2017 IEP, as amended in the August 4, 2017 IEP Amendment, from April 19, 2018, through May 21, 2018.

Issue 3: Did River Springs Impede Parents from Meaningfully Participating in the Development of Student's IEP by Failing to Provide the Records Parents Requested?

38. Student contends River Springs failed to provide Parents the records they requested, impeding Parents' ability to participate in the decisionmaking process regarding the provision of a FAPE for Student. Student claims River Springs failed to

provide records related to the specialized academic instruction, data regarding behavioral observations, progress reports, transcripts, or any documentation related to general or special education Student received. Student claims Parents were denied documentation regarding Student's specialized academic instruction that described the times, dates, services providers, curriculum, subject matter, frequency, duration, delivery model, location, or progress. River Springs contends it timely provided Parents the records they requested and the absence of any records Parents expected to receive did not deny Parents the opportunity to meaningfully participate in the IEP process.

39. Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044 (Doug C.)) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of a free appropriate public education to the child. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).)

40. A school district is required to conduct not just an IEP team meeting, but also a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d at p. 1485; *Fuhrmann, supra*, 993 F.2d at p. 1036.) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 960 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and

whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

41. California Education Code section 56504 states in relevant part, "The parent shall have the right and opportunity to examine all school records of his or her child and to receive copies ... within five business days after the request is made by the parent, either orally or in writing."

42. Pupil records are "any information directly related to an identifiable pupil, other than directory information, that is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm, or other means." (Ed. Code, § 49061, subd. (b).) "Pupil records does not include informal notes related to a pupil compiled by a school officer or employee that remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute." (*Ibid.*) A substitute is a person who performs the duties of the individual who made the notes on a temporary basis, and does not refer to a person who permanently succeeds the maker of the notes in his or her position. (*Ibid.*)

43. Certain pupil records must be permanently maintained by a school district. (Cal. Code Regs., tit. 5, § 432, subd. (b)(1).) These records include the pupil's legal name, date of birth, method of verification of birth date, sex of pupil, place of birth, names and address of a parent of a minor pupil, the dates of each school year and summer session when the pupil leaves and enters, subjects taken during each year, half-year, summer session, or quarter; marks or credits given; verification or exemption for required immunizations; and date of high school graduation or equivalent. (*Ibid.*)

44. Mandatory interim pupil records are those records which schools are required to compile and maintain for stipulated periods of time and are then destroyed in accordance with California statute or regulations. (Cal. Code Regs., tit. 5, § 42, subd. (b)(2).) Such records include a log or record identifying those persons or organizations requesting

or receiving information from the record; health information; participation in special education programs including required tests, case studies, authorizations, and actions necessary to establish eligibility for admission or discharge; language training records; progress slips and/or notes required under Education Code sections 49066 and 49067;¹⁴ parental restrictions regarding access to directory information or related stipulations; parent or adult pupil rejoinders to challenged records and to disciplinary action; parental authorizations or prohibitions of pupil participation in specific programs; and results of standardized tests administered within the preceding three years. (*Ibid.*)

2016-2017 School Year

45. The weight of the evidence did not demonstrate that River Springs impeded Parents' ability to meaningfully participate in the development of the January 12, 2017 Annual IEP by failing to provide Parents with records regarding Terry Owen's specialized academic instruction. The evidence did not establish that the service logs Parents sought were records Ms. Owens, or any other specialized academic instruction teacher was required to create and River Springs was required to maintain as part of Student's school records. Therefore, Student did not prove by a preponderance of the evidence that River Springs denied Student a FAPE by failing to provide Parents with service logs.

2017-2018 School Year

46. Student failed to establish that the records Parents were expecting, but did not receive pursuant to a March 2, 2018 records request, were records required to be collected and maintained by River Springs, either permanently or in the interim. Parents made a broad request for a copy of Student's "complete file." On March 9, 2018, River Springs provided Parents copies of Student's records it did maintain, along with the records Prentice provided to River Springs on March 8, 2018. Student did not establish at hearing that the records Parents did not receive were proper "pupil records" that would be

maintained in Student's file. Furthermore, Student did not demonstrate how any of the records Parents sought and not provided, impeded their ability to meaningfully participate in the IEP process. Accordingly, Student did not meet her burden to prove River Springs failed to provide Parents Student's records pursuant to their March 2, 2018 request, resulting in a denial of a FAPE.

Issues 4 and 6: Did the February 9, 2018 IEP, with placement at Flabob and related services, constitute a FAPE in the least restrictive environment?

47. Student contends she required continuous placement at Prentice to make appropriate progress. Student argues that placement at Flabob was more restrictive than Prentice. Student claims Flabob could not offer Student daily access to typical peers and the general education classroom due to the required home study day and pull-out specialized academic instruction, and thus Flabob was not the least restrictive environment.

48. River Springs contends it complied with all procedural and substantive requirements of the IDEA in developing the February 9, 2018 IEP. River Springs argues the February 9, 2018 IEP's offer of FAPE, with placement at Flabob, was designed to address Student's unique needs, reasonably calculated to allow Student to meaningfully benefit from her education, and offered placement in the least restrictive environment.

49. When a school district seeks to demonstrate that it offered a FAPE, there are two parts to the legal analysis. First, the tribunal must determine whether the district complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) Whether a school district offered a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams, supra*, 195 F.3d at p. 1149, citing *Fuhrmann, supra*,

993 F.2d at p. 1041.)

Procedural Compliance

50. The IEP team is required to include as part of the team one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in the regular education environment; a special education teacher; and a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about available resources. (34 C.F.R. § 300.321(a).) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and, at the discretion of the parent or school district, include other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).) Finally, whenever appropriate, the child with the disability should be present. (34 C.F.R. § 300.321(a).)

51. The Annual IEP review team meetings held on February 9 and March 2, 2018, were attended by all required team members, including Mother on both days, and Father on February 9, 2018. River Springs offered Parents a copy of their procedural safeguards and rights, but Parents declined a copy and an explanation. Parents were active and welcomed participants at the meeting. Mother opined that the small setting of Prentice allowed Student to make friends and gain confidence. Furthermore, Mother shared that Student's behaviors at home had improved and Student had recently seen a psychiatrist twice. Mother expressed her concerns regarding the offer of placement at Flabob and vigorously engaged River Springs on the issue of placement. The IEP team considered her input and concerns. At hearing, Mother testified she participated and contributed to the IEP process. Parents were afforded an opportunity to meaningfully participate in the development of Student's IEP. Hence, the IEP team meeting was conducted in accordance with the IDEA's procedural requirements.

Contents of the IEP

52. The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) It is the "modus operandi" of the IDEA, "a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." (*School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996] (*Burlington*)).

53. 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 result 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).) The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467 .) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S., supra*, 82 F.3d at p. 1500.)

54. An IEP is a written document for each child with a disability that includes a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).) The IEP must also include a statement of measurable annual goals,

including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).)

55. Additionally, the IEP must contain statements of how the child's goals will be measured and the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3), (4).) It must also contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and activities, as well as a statement of any individual appropriate accommodations necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments. (20 U.S.C. § 1414(d)(1)(A)(i)(V), (VI); 34 C.F.R. § 300.320(a)(5), (6); Ed. Code, § 56345, subd. (a)(5), (6).) Furthermore, the IEP must contain the projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).)

56. River Springs' written IEP offer was comprehensive and contained all required information. The IEP team considered Student's strengths and identified areas of concerns. Student's areas of strength were in vocabulary and literature comprehension. She was successful in retaining the information when passages were read to her, but struggled to do so otherwise. She was more social, made new friends at Prentice, and her overall confidence had grown. She had a good attitude and did not back down from challenging assignments. Student had met her previous sensory integration goal and no longer needed school-based occupational

therapy services. However, Student was still performing below grade level in the areas of reading, writing, and math and required support in social pragmatics and speech.

57. The IEP properly identified Student's areas of need to be basic reading fluency, independent reading comprehension, math, writing, language processing, and expressive language pragmatics. Student's present levels of performance in each of those areas were clearly explained in the IEP. Student could read and decode at a sixth grade level, and could successfully explain a plot and conflict within a story. However, she required support to answer who, what, where, when, and how questions, to restate facts and details, and to independently predict the next event. As for reading fluency, she could read sixth grade level material at a speed of 87 words per minute as of December 2017.

58. Student wrote complete sentences and punctuated her sentences correctly. With support she could write a paragraph, but required visual and teacher support to write multi-paragraph essays. She needed the help of graphic organizers to provide details to her sentences. In mathematics, Student needed support to complete problems involving subtraction with regrouping, finding measurements, solving multi-step word problems, multiplying and dividing large numbers, and memorizing multiplication facts with automaticity. Student also required support from the teacher to follow the order of operations and converting fractions into decimals and percentages.

59. Student required support to start conversations, transition to new topics, and elaborate on her personal experiences. Student needed prompting to accurately explain a person's feelings when asked to examine a person's facial expressions, body language, and contextual cues. Student still needed help speaking. She continued to need verbal and visual prompting to use an open mouth posture, improve enunciation, and increase her volume.

Measureable Annual Goals

60. The IEP also provided appropriate, measureable annual goals in the areas of reading, writing, math, speaking, and social pragmatics, and such goals were appropriately challenging based on Student's abilities. Academically, Student's annual goals sought to strengthen her reading comprehension skills by asking Student to read seventh grade fiction and sixth grade nonfiction passages independently. Her reading fluency was expected to improve to 140 words per minute. The annual goals aimed to improve Student's ability to solve two-step mathematical word problems, her understanding of fractions, and to calculate more complicated multiplication and division problems involving larger digits. Her writing goal aimed to improve Student's ability to write multi-paragraph essays.

61. The IEP provided these academic goals would be measured through teacher observations, collected data, and Student's work samples. They were measurable in that Student was expected to improve her reading comprehension by successfully answering comprehension questions and citing evidence with at least 80 percent accuracy. Her reading fluency was measured using the Basic Reading Inventory assessment, tracking the words per minute Student was able to read. To measure her writing progress, Student had to write a multi-paragraph essay correctly as called for in the goal, with 70 percent accuracy. The math goals required Student to successfully achieve the tasks with 80 percent accuracy in four out of five trials. The goals were an appropriate means of tracking progress in Student's academic areas of need.

62. The goals for social pragmatics aimed to increase Student's ability to better understand another person's thoughts and feelings, to improve her conversational skills, and to think independently. They were measurable in that Student had to complete the task successfully in eight out of 10 opportunities. The goals were an appropriate means of measuring her progress in social pragmatics, and could be appropriately measured through clinician records, observation, and work samples.

63. The speaking goal was an appropriate means of tracking progress and designed to improve Student's speech. The goal could be appropriately measured by asking Student to accomplish the task with 90 percent accuracy with no more than one visual prompt in three consecutive sessions. The goal could be accurately measured using data collected through observations and work samples.

64. Though a number of the goals did not specify the responsible persons, a fair reading of the entire IEP provides an understanding of who would be responsible. The IEP was sufficiently clear in that the teachers would be responsible for the reading, math, and writing goals, and the speech-language pathologist for the social pragmatics, speech, and expressive language goals, and Student did not establish that Parents did not understand who would be responsible to implement Student's goals.

Appropriateness of Related Services and Accommodations

65. California law defines special education as instruction designed to meet the unique needs of the pupil coupled with related services as needed to enable the pupil to benefit from instruction. (Ed. Code, § 56031.) "Related services" include transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401.) In California, related services are called designated instruction and services, and must be provided "as may be required to assist an individual with exceptional needs to benefit from special education" (Ed. Code, § 56363, subd. (a).)

66. The February 9, 2018 IEP's proposed instruction, related services and supports were appropriate in light of Student unique needs and reasonably calculated to enable Student to make progress appropriate in light of her circumstances. The IEP described the academic instruction, related services and supports; setting forth the projected start date, length, frequency, and duration of instruction, services, and supports. The IEP provided an

appropriate level of specialized academic instruction of 210 minutes of pull-out instruction and 60 minutes of push-in instruction to be provided by a credentialed special education teacher; 45 minutes twice a week of group speech and language services; and individual counseling in a group setting for 30 minutes a week. Ms. Vu and Ms. Kosmal persuasively testified that the appropriate means of addressing the proposed academic goals was through a pull-out model, with instruction from a credentialed special education teacher. Student made up substantial ground in math while at Prentice, improving two grade levels in about five months. She continued to be three grade levels behind, but the weekly 270 minutes of specialized academic instruction was reasonable to address her academic deficits.

67. Furthermore, the IEP offered adequate supports and accommodations that consisted of access to instructional technology, the use of visuals, graphic organizers, multiplication tables, notes to support instruction, demonstration of understanding of skills via multi-modalities, collaboration between the teachers, and consultation by the specialized academic instructor and occupational therapist with Parents.

Placement in the Least Restrictive Environment

68. School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities 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.) The IDEA also requires, to the maximum extent appropriate, that a child with a disability must be educated with children who are not disabled. (*Ibid.*)

69. School districts, as part of a special education local plan area, must have available a continuum of program options to meet the needs of individuals with

exceptional needs for special education and related services as required by the IDEA and related federal regulations. (34 C.F.R. § 300.115; Ed. Code, § 56360.) 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 in the home, hospitals or institutions. (34 C.F.R. § 300.115; Ed. Code, § 56361.) A nonpublic, nonsectarian school is a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an IEP and certified by the California Department of Education. (Ed. Code, § 56034.)

70. The Ninth Circuit has stated a four factor evaluation to determine whether a placement is the least restrictive environment. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*)) The four factors are: (1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of interaction with children who were not disabled; (3) the effect the child will have on the teacher and children in the regular class; and (4) the costs of mainstreaming the student. (*Ibid.*)

71. The weight of the evidence established that Student's needs could have been met in a less restrictive setting such as Flabob. While at Prentice, Student spent a majority of her day in the general education classroom, and received only three hours a week of instruction outside the regular classroom. Though Student needed time to adjust to Prentice, she quickly came out of her shell, and transitioned fairly easily. As of March 2018, Student no longer required a nonpublic school placement to meet her needs.

72. Student would have access to a regular class with non-disabled peers for most of her time at Flabob. Flabob's middle school program allowed Student to receive instruction and support on campus five days a week. Though one day a week was

dedicated for home study, Student could receive support during study hall on campus for the entire school day. Ms. Vu was available onsite on those days. In addition, no credible evidence was offered to indicate Student would regress, or in any way not receive any educational benefit if she did not receive direct academic instruction five days a week. Furthermore, no credible evidence was offered that Student could not work on assignments successfully in study hall.

73. Furthermore, Flabob also offered opportunities for Student to interact and socialize with non-disabled peers. In addition, she was social and outgoing, with no behavioral issues that would impede her or her peers' ability to access their education. Student did not require prompting to remain on task or accommodations to help her maintain attention to tasks. If Student needed guidance and support, Ms. Vu was available, along with an instructional aide and Flabob's vice-principal.

74. Ms. Vu and Ms. Kosmal offered credible testimony as to Flabob's ability to meet Student's needs as identified in the February 9, 2018 IEP. Ms. Vu possessed the credentials, training, and experience to implement the academic goals as offered. She was qualified to teach Student reading using an evidence-based reading program, REWARDS Secondary. At hearing, she offered specific strategies to address each of the academic goals. She could provide the pull-out specialized academic instruction in the areas of English language arts and math. Furthermore, Flabob employed a licensed speech-language pathologist who could address the IEP's proposed goals in the areas of social pragmatics, speech, and expressive language.

75. River Springs complied with the IDEA's procedural requirements in developing the February 9, 2018 IEP and the IEP itself was designed to meet Student's unique needs. It was reasonably calculated to enable Student to receive an educational benefit appropriate in light of her circumstances. Therefore, River Springs proved by a preponderance of the evidence that the February 9, 2018 IEP offered

Student a FAPE in the least restrictive environment. Accordingly, Student did not meet her burden in proving the offer of placement at Flabob denied Student a FAPE.

Issue 5: Did River Springs Predetermine Its Offer of Placement at Flabob?

76. Student contends River Springs came into the March 2, 2018 IEP team meeting with a predetermined offer of placement at Flabob. Student claims that no other placement options were explored by the IEP team and the lack of information provided to Parents as to Flabob's programs and services denied Mother meaningful participation in the IEP process. Student alleges that River Springs' proposal for placement at Flabob was a "take it or leave it" offer. River Springs contends it did not predetermine its offer of placement at Flabob and determined the appropriateness of placement only after the IEP discussed the IEP's proposed goals and services. River Springs claims that it was during the March 2, 2018 IEP team meeting, after River Springs determined Prentice was unable to implement the goals developed and instructional models recommended by the IEP team that River Springs offered Flabob as a placement.

77. Predetermination is a procedural violation of the IDEA that occurs in connection with an IEP team meeting, when a district has decided on its offer prior to the meeting, such as when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*H.B. v. Las Virgenes* (9th Cir. 2007) 239 Fed.Appx. 342, 344-345.) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.) However, district staff do not have to arrive at an IEP meeting with a blank mind; they "can, and should, have given some thought" to placement before the meeting. (*Doyle v. Arlington County School Board* (E.D.Va. 1992) 806 F.Supp. 1253, 1262; see *K.D. v. Department of Education* (9th Cir. 2011) 665 F.3d 1110, 1123.) They do not predetermine an IEP simply by meeting to discuss a child's programming in

advance of an IEP team meeting. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693, fn. 3.)

78. District team members also may form opinions prior to IEP meetings. However, if the district goes beyond forming opinions and becomes "impermissibly and deeply wedded to a single course of action," this amounts to predetermination. (*P.C. v. Milford Exempted Village Schools* (S.D. Ohio, Jan. 17, 2013, No. 1:11-CV-398) 2013 WL 209478.) Staff may bring a draft of the IEP to the meeting as long as parents are provided an opportunity to discuss their questions, concerns, and recommendations, before the IEP is finalized. (*Fuhrmann, supra*, 993 F.2d at p. 1036.) Developing an IEP that does not fully conform to a parent's wishes does not mean the district engaged in predetermination. (*Gregory K., supra*, 811 F.2d at p. 1314.)

79. Predetermination causes a deprivation of educational benefits where, absent the predetermination, there is a strong likelihood that alternative educational possibilities for the student would have been better considered. (*M.S. v. Los Angeles Unified School Dist.* (C.D. Cal. September 12, 2016, Case No. 2:15-cv-05819-CAS-MRW) 2016 WL 4925910 (citing *Doug C., supra*, 720 F.3d at p. 1047).) A student is not required to prove that his placement or services would have been different but for the predetermination. (*Ibid.*)

80. Predetermination is an automatic violation of a parent's right of participation under the IDEA. Where predetermination has occurred, "regardless of the discussions that may occur at the meeting, the school district's actions would violate the IDEA's procedural requirement that parents have the opportunity 'to participate in meetings with respect to the identification, evaluation, and educational placement of the child.'" (*H.B. v. Las Virgenes, supra*, 239 Fed.Appx. at p. 344, quoting 20 U.S.C. § 1415(b)(1).)

81. River Springs did not predetermine its proposed placement offer at Flabob. Ms. Kosmal's research into possible River Springs programs and her

determination of Flabob as a viable placement option to propose at the IEP team meeting was reasonable. Only after the IEP team discussed special education services on March 2, 2018, did River Springs realize that Prentice could not implement the proposed goals and specialized academic instruction services. Prentice at that time could not provide the pull-out specialized academic instruction required by the reading and writing goals. Ms. Kosmal and Ms. Vu persuasively opined that pull-out instruction to be provided by a credentialed special education teacher was the appropriate method of instruction, especially one who was trained in teaching reading. Dr. Passaro also opined that was an ideal approach. Accordingly, River Springs ruled out Prentice and offered placement at Flabob.

82. The weight of the evidence demonstrated that River Springs did not arrive at the March 2, 2018 IEP team meeting with one offer of placement in mind. The question as to whether Prentice could implement the IEP as proposed, specifically the specialized academic instruction to address the proposed English language arts (reading fluency, reading comprehension, and writing) goals, was debated by the team. When River Springs concluded Prentice could not, it offered Flabob as a placement. Therefore, Student did not meet her burden of proving River Springs denied Student a FAPE by predetermining its offer to place her at Flabob.

Remedies

1. Student did not prevail on Issues 1(a), 1(b), 1(d), 1(e), 1(f), 3, 4, or 5. Student did not prove by a preponderance of the evidence that River Springs denied her a FAPE by failing to offer her appropriate goals and services in the areas of occupational therapy, speech, educationally related mental health, behavior, and social skills. In addition, Student failed to prove she was denied a FAPE by River Springs' inability to provide the records Parents sought pursuant to their records request. Furthermore, Student failed to meet her burden of proving River Springs denied her a FAPE by offering placement at Flabob in the February 9, 2018 IEP or predetermining

the placement offer of Flabob.

2. Student prevailed on Issues 1(c), 2(a), and 2(b). River Springs' failure to offer an appropriate amount of specialized academic instruction to address Student's math deficits and its failure to provide the specialized academic instruction for a majority of the 2016-2017 school year deprived Student of an educational benefit. Moreover, River Springs committed a violation of the IDEA by failing to implement the August 4, 2017 IEP Amendment from April 19, 2018, to May 21, 2018, pursuant to stay put.

3. River Springs prevailed on its sole issue, Issue 6. The February 9, 2018 IEP offered Student a FAPE in the least restrictive environment.

4. As a remedy, Student requests compensatory academic services, and reimbursement for tuition and related expenses associated with Student's attendance at Prentice from March 30 to May 21, 2018. Student also seeks reimbursement for costs associated with the Stowell Learning Center's November 14, 2016 Functional Academic and Learning Skills Assessment report. In addition, Student requests that River Springs be ordered to provide 50 hours of training to its staff to better familiarize the staff regarding their duties and obligations to provide a FAPE. Student further requests that River Springs provide Student's entire educational file to Parents. Lastly, Student seeks an order that Student continue to be placed at Prentice for the remainder of the 2018-2019 school year.

5. River Springs contends that Student should not be placed at Prentice as Prentice is unable to implement the February 9, 2018 IEP. In addition, River Springs argues that Student is not entitled to any compensatory education services beyond the 72 hours River Springs offered to provide. As a remedy for prevailing on its issue, River Springs requests an order that River Springs may implement the February 9, 2018 IEP without parental consent.

6. Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20

U.S.C. § 1415(i); see *Burlington, supra*, 471 U.S. 359, 369.) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) When a school district fails to provide a FAPE to a pupil with a disability, the pupil is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. 359, 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at the hearing. (*Id.* at p. 374.)

7. Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the school district has failed to provide a FAPE. (*Burlington, supra*, 471 U.S. at p. 374; *Parents of Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496 (Puyallup).) A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and that the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *Burlington, supra*, 471 U.S. at pp. 369-370 [reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE].) The private school placement need not meet the state standards that apply to public agencies to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 11, 14 [114 S.Ct. 361, 126 L.Ed.2d 284] [despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement found to be reimbursable where it had substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade, and where expert testimony showed that the student had made

substantial progress].)

8. The IDEA does not require that a private school placement provide all services that a disabled student needs as a condition to full reimbursement. To qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child's potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction. (*C.B. v. Garden Grove Unified Sch. Dist.* (9th Cir. 2011) 635 F.3d 1155, 1158-1159; see also, *S.L. v. Upland Unified Sch. Dist.* (9th Cir. 2014) 747 F.3d 1155, 1159; *Doug C., supra*, 720 F.3d at p. 1048.)

9. An ALJ can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist., supra*, 464 F.3d at p. 1033.) Compensatory education is a prospective award of educational services designed to catch up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. Bd. of Educ.* (D.Conn. 2008) 531 F.Supp.2d 245, 265.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) Compensatory education awards depend upon the needs of the disabled child, and can take different forms. (*R.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1126.) Typically, an award of compensatory education involves extra schooling, in which case "generalized awards" are not appropriate. (*Puyallup, supra*, 31 F.3d at p. 1497.) "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Ibid.*) Compensatory education may be a remedy for a violation of a stay put provision. (See *Alexis R., supra*, 2009 WL 2382429)

Compensatory Education and Reimbursement

10. Student received only five of the specialized academic instruction hours to which she was entitled from the start of the 2016-2017 school year through the time Ms. Moran began providing it on March 6, 2017. In addition, the offer of specialized academic instruction to address Student's significant math deficits during the 2016-2017 school year was inadequate as Student was only receiving one hour a week of specialized math instruction when it was provided. Student lost out on significant instruction time to address her reading and writings deficits, and even more instruction time in the area of math.

11. The evidence established that one hour a week of specialized academic instruction to address Student's math deficit was inadequate, which became apparent at the start of the 2016-2017 school year. The weight of the evidence demonstrated that approximately three hours a week was a sufficient amount of specialized math instruction. Student received three hours a week of pull-out specialized academic instruction in math at Prentice from Ms. Shaw, which resulted in marked improvement in just a span of about five months. Accordingly, Student should have been provided additional specialized academic instruction in the area of math for the 2016-2017 school year. Three hours per week is a fair estimation of what should have been offered to address her significant regression and ongoing math delays. Student was not provided approximately 22 hours of specialized academic instruction in math for about 22 weeks as called for in the December 4, 2015 IEP.¹⁵ Furthermore, Ms. Moran provided only one hour each week of math instruction for the remainder of the 2016-2017 school year.

12. As of January 2018, Student was only reading at a fourth grade level. Furthermore, as of the September 7, 2018 IEP, in her eighth grade year, Student remained at fourth grade-level math based on her i-Ready diagnostic test. Student continued to require specialized academic instruction and is entitled to compensatory educational services.

Accordingly, Student is awarded 45 hours to compensate her for lost English language arts instruction and 83 hours to compensate her for math instruction that should have been offered to address River Springs' failure to provide Student appropriate specialized academic instruction during the 2016-2017 school year.¹⁶

13. However, Parents did not request River Springs to assess Student in the area of academics during the 2016-2017 school year. In addition, Parents did not inform River Springs they would be seeking reimbursement for an independent educational evaluation in the area of academics. Accordingly, Student is not entitled to reimbursement for costs associated with the Stowell Learning Center's November 14, 2016 Functional Academic and Learning Skills Assessment report.

14. Furthermore, though compensatory education may be a remedy for a violation of a stay put provision, a balancing of the equities in this case does not support compensatory education services and reimbursement of tuition and related costs for lost instruction and services at Prentice. River Springs relied in good faith on OAH's April 11, 2018 Order determining that Prentice was not Student's stay put educational program. River Springs continued to deny funding for Prentice in reliance on OAH's determination, and resumed funding once the District Court determined on May 18, 2018, Prentice to be Student's stay put placement. Furthermore, River Springs' February 9, 2018 IEP offer of FAPE was reasonably calculated to enable Student to make progress appropriate in light of the her circumstances.

15. More importantly, Student's claim for failure to implement the August 4, 2017 IEP Amendment was limited to April 19, 2018, through May 21, 2018, not the entire stay put period. From April 19, 2018, to May 21, 2018, Student attended Prentice for 3 1/2 days, and Parents chose for Student not to attend Prentice for the remaining 18 1/2 days of the 22 school days during that period, for the primary purpose of gaining an advantage in District Court to obtain an injunction as to stay put. The loss of

instruction and related services for Student from April 19, 2018, through May 21, 2018, was attributable to Parents' strategic decision, not River Springs failure to implement the January 12, 2017 IEP, as amended on August 4, 2017. Accordingly, it would be inequitable for Student to receive compensatory education services or reimbursement of tuition and related costs for lost instruction and services at Prentice from April 19, 2018, to May 21, 2018, due to the calculated choices made by Parents to gain a strategic legal advantage in District Court.

Placement

16. River Springs met its burden of proving the February 9, 2018 IEP, with placement at Flabob, offered Student a FAPE in the least restrictive environment. Accordingly, River Springs is not obligated to continue funding placement at Prentice and may implement the February 9, 2018 IEP without parental consent if Student seeks to receive special education and related services from River Springs.

Order

1. River Springs shall provide Student with compensatory academic services in the amount of 45 hours in the area of English language arts and 83 hours in the area of mathematics, to be used by June 30, 2020, or the services will be deemed forfeited. The services will be provided by a certified nonpublic agency or certified nonpublic school of Parents' choice. Within 30 days of Parents providing River Springs with the name and contact information of a certified nonpublic agency or certified nonpublic school, River Springs shall contract with the identified provider, at a rate not to exceed \$75 per hour. The timing and delivery of the services shall be coordinated between Parents and the provider. River Springs shall reimburse Parents at the rate of \$.545 per mile for one round trip per session.

2. All other claims for relief by Student are denied.

3. River Springs may implement the February 9, 2018 IEP without parental consent if Student seeks to receive special education and related services from

River Springs.

Prevailing Party

Pursuant to 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. Here, Student prevailed on Issues 1(c), 2(a), and 2(b). River Springs prevailed on Issues 1(a), 1(b), 1(d), 1(e), 1(f), 3, 4, 5, and 6.

Right to Appeal

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

¹River Springs filed its response to Student's second amended complaint on June 4, 2018, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

²At the start of the hearing, Student withdrew Issues 1(d), 1(g), 1(i), 3, 7, 8, and 9 as originally set forth in the Order Following Prehearing Conference dated September 18, 2018. In addition, Student moved to rephrase Issue 2 to strike the language "in the least restrictive environment" and amend Issue 3 to reflect the time period of March 2016 to May 21, 2018. River Springs did not object and the ALJ granted Student's motion to rephrase Issues 2 and 3 as set forth in the Order Following Prehearing Conference dated September 18, 2018. Student also indicated she was no longer seeking independent educational evaluations as a remedy. In light of Student's withdrawal of any claims alleging a failure to assess Student, and any request for independent educational evaluations, River Springs withdrew what had been its Issue 2 as set forth in the Order Following Prehearing Conference dated September 18, 2018. The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive

changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.).

³The February 9, 2018 annual IEP was developed over two days, on February 9 and March 2, 2018. Therefore, Issues 4 and 5 are amended from how they were phrased in the Order Following Prehearing Conference dated September 18, 2018, to identify the IEP at issue as the February 9, 2018 IEP.

⁴No explanation was offered at hearing as why Mother's signature for consent to the IEP was dated the day before the December 18, 2015 IEP team meeting.

⁵The Stowell Learning Center's November 14, 2016 Functional Academic and Learning Skills Assessment report was admitted for remedies purposes only.

⁶The Lexile was a numeric measure that indicated the level of reading comprehension and correlated to levels of text and curriculum materials.

⁷Newsela was a collection of articles regarding current events.

⁸Dr. Nelson's April 3, 2018 letter was admitted for the purpose of remedies only.

⁹The September 7, 2018 i-Ready math results were admitted for remedies purposes only.

¹⁰Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

¹¹All subsequent references to the Code of Federal Regulations are to the 2006 version.

¹²Alleged violations by River Springs to offer appropriate goals and services in the area of attention was not specifically pleaded as an issue for hearing and therefore, is not addressed in this Decision.

¹³Parents did not consent to the January 12, 2017 Annual IEP, as reviewed on March 23, 2017, until April 5, 2017.

¹⁴California Education Code section 49066 refers to grades given as determined by the teacher of the course. Section 49067 discusses the evaluation of each pupil's achievement for each marking period and

requires a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course.

¹⁵Student was entitled to approximately 72 hours of specialized academic instruction from the start of the 2016-2017 school year to March 6, 2017, the date Ms. Moran began providing instruction. Student received five hours of instruction from Ms. Mason, resulting in 67 hours of lost instruction time. One third of instruction time was allocated for math, which amounts to approximately 22 hours. The remaining 45 hours of lost specialized academic instruction was in English language arts.

¹⁶Student should have received additional specialized math instruction from October 1, 2016, to June 13, 2017, of approximately three hours a week, totaling 96 hours. Ms. Moran and Ms. Croom provided math instruction starting March 6, 2017, through June 13, 2017, for a total of approximately 13 hours, resulting in a loss of 83 hours that should have been provided.

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RIVER SPRINGS CHARTER SCHOOL,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2018120978

DECISION

River Springs Charter School filed a due process hearing request with the Office of Administrative Hearings, State of California, on December 26, 2018, naming Student. OAH continued the matter for good cause on January 14, 2019.

Administrative Law Judge Rommel P. Cruz heard this matter in Temecula, California, on March 26 and 27, 2019.

Attorney Jim Sanft represented River Springs. Dr. Kathy Cox, Ph.D., Senior Director of Special Education, attended the hearing on all days on behalf of River Springs.

Mother and Student did not attend the hearing.¹

OAH granted a continuance at River Springs' request for the parties to file written closing arguments. River Springs filed a timely written closing argument. Student did not file a written closing argument. On April 22, 2019, the record was closed and the matter was submitted for decision.²

¹ At the March 15, 2019 Prehearing Conference, Mother indicated she would not be attending the hearing. On March 26, 2019, at approximately 8:18 a.m., OAH contacted Mother, left a voice message inquiring if she would be attending the hearing that day. OAH did not receive a response from her and the hearing commenced at 9:45 a.m.

² On March 28, 2019, OAH served the parties an Order for Written Closing Arguments, which stated the deadline for filing a written closing argument.

ISSUE³

1. Did the June 8, 2018 individualized education program, as amended on November 16, 2018, offer Student a free appropriate public education in the least restrictive environment?
2. May River Springs assess Student pursuant to the September 14, 2018 assessment plan without parental consent?

SUMMARY OF DECISION

This Decision holds that River Springs did not meet its burden in proving the June 8, 2018 IEP, as amended on November 16, 2018,⁴ offered Student a free appropriate public education in the least restrictive environment. The IEP failed to offer placement with supports and services to address Student's social-emotional and behavioral deficits. The level of services offered were inadequate. Further, the placement and services in River Springs' Homeschool program did not provide Student with the structure and support necessary to meet his needs. The June 8, 2018 IEP was not reasonably calculated to enable Student to make progress appropriate in light of his social-emotional and behavioral challenges. Therefore, River Springs may not implement the IEP without parental consent.

This Decision further holds that River Springs proved by a preponderance of the evidence that it had a right to assess Student and that the assessments proposed in the September 14, 2018 assessment plan were warranted. River Springs' assessment plan was appropriate, its proposed assessors qualified, and the assessments necessary to obtain information regarding Student's present levels of performance in the areas social-emotional functioning, behavior, and adaptive behavior, and to determine the need for educationally related mental health services and the impact his autism was having on his educational performance. Therefore, River Springs may assess Student pursuant to its proposed assessment plan without parental consent.

³ The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.).

⁴ This Decision will refer to the June 8, 2018 IEP, even as amended on November 16, 2018, simply as the June 8, 2018 IEP.

FACTUAL FINDINGS

Background

1. Student was 12 years old at the time of the hearing, and resided with Mother within Riverside County at all relevant times. He attended Riverside Unified School District during the 2016-2017 school year for his fifth grade year. Student was eligible for special education under the primary category of Other Health Impairment and a secondary category of Autism. He was placed in a mild-moderate special day class.

2. Student reported he hated attending school. He disliked every aspect of school, especially school work. He avoided doing his school work and failed to follow through with assignments. He ignored teacher instructions and was selective on which activities to complete. He had a significant history of behavioral and social-emotional problems at Riverside Unified. He yelled, hit, kicked, and attempted to bite others when frustrated and to avoid tasks. His physical aggression towards peers and adults resulted in 17 days of suspension and a total of 18 disciplinary incidents during the 2016-2017 school year.

3. Riverside Unified conducted a psychoeducational evaluation⁵ of Student and documented its findings, conclusions, and recommendations in a report dated May 15, 2017. An educationally related mental health services assessment was conducted and found Student had high levels of emotional dysregulation and poor coping skills, particularly when frustrated and angry, leading him to shut down or become aggressive towards others. He lacked the ability to make or maintain peer relationships and harbored feelings of isolation. As a result, he demonstrated internalized feelings of negative self-worth, which further decreased his frustration tolerance and elevated his aggression and task avoidance. Riverside Unified determined that Student's emotional needs impacted his educational performance, to such a significant degree, to warrant educationally related mental health counseling.

4. To address Student's behaviors, Riverside Unified recommended Student be provided, among other things, a highly-structured environment with lessons on coping strategies, appropriate ways of expressing anger, and self-regulation and self-monitoring strategies. Riverside Unified also recommended Student receive educationally related mental health services, to include individual counseling to develop additional coping skills to reduce incidents of aggression. It proposed Student be placed in a nonpublic school.

⁵ The terms "assessment" and "evaluation" are synonyms and are used interchangeably in this Decision. (Ed. Code, § 56302.5.)

June 6, 2017 Comprehensive Behavior Intervention Plan

5. Riverside Unified developed a comprehensive behavior intervention plan for Student dated June 6, 2017. The plan noted his hitting, punching, kicking and biting of others, hitting and kicking of furniture, and the throwing of objects and verbal threats, as a function of escaping from academic tasks and redirection from adults. To reduce the need for these behaviors, frequent preference assessment would be conducted and fewer demands placed on him in the mornings.

6. The plan sought to replace these behaviors by teaching Student strategies to control his anger and to use coping skills. The plan asked him to independently select a coping strategy, such as requesting a break and to apply social skills to control his anger. The behavior intervention plan listed the following teaching strategies: reinforcement when Student appropriately requested breaks; teaching him a self-monitoring system to help him identify his levels of escalation; reinforcing on-task behaviors, providing high quality reinforcers when engaging in academic tasks; demand fading, starting at a level that did not evoke behaviors; and teaching social skills steps of controlling his anger through modeling. The social skills steps involved 1) continuing to listen when a person was talking to him; 2) monitoring his feelings and his breathing; 3) telling himself to relax tense body parts and to incorporate relaxation strategies, such as progressive muscle relaxation, visualization, and deep breathing; 4) speaking in a neutral tone; 5) asking for time alone when he was very upset; and 6) brainstorming for reasons why he was upset. The teacher was responsible for implementing these strategies with the support of a behavior consultant or educationally related mental health services counselor to supervise the intervention each week. To establish, maintain, and generalize the replacement behaviors, the teacher was to conduct a preference assessment daily and establish a behavior contract based on the assessment.

7. If Student's problem behaviors continued, strategies such as prompting him to use a replacement behavior, go to a safe area to calm down, or to take a walk were to be used. If the behaviors persisted, he would be offered alternative tasks, and if physically acting out, the plan specified to move the target interest, keeping a physical distance, and to avoid his hits, bites, and kicks. Two compliance checks were to be used once Student de-escalated. After he calmed down, a positive discussion would be held where he would agree to a written plan on how to turn the day around and be reassured he could have a positive day.

8. The behavior intervention plan's functionally equivalent replacement behavior goal called for Student to independently select coping skills in a calm and complaint state when asked to do an academic task or when redirected by an adult, instead of physically acting out. He was expected to do this in four out of five days in a two-week period, as measured by observations and data collected. Also, the plan required Student to use strategies such as self-monitoring and requesting breaks to reduce instances of physical aggression. The plan sought to reduce instances of physical aggression to no more than one instance per day for 10 consecutive school days, as measured by daily behavior logs.

2017-2018 School Year

9. River Springs Director of Special Education Dr. Kathy Cox, Ph.D., testified and offered a description of River Springs' educational programs. River Springs was an independent study charter school, authorized by the Riverside County Office of Education as a county-wide benefit charter school. As an independent study charter school, River Springs accounted for a student's daily attendance based on the time the student spent on an educational activity and the work produced, as opposed to whether a student was seated in a classroom. River Springs offered several independent study programs. One program was its Homeschool program, in which parents provided the day-to-day instruction. A credentialed general education teacher, identified as an education specialist, was assigned to the student to oversee the home instruction. The education specialist met with the student and parent a minimum of every 20 days to review the student's work, review the curriculum, and develop the learning plan for the next 20 days. Students in the Homeschool program had the option of attending one of River Springs' "student centers" one or more days a week for enrichment classes. Classes included art, drama, or more intensive instruction in core subjects. Other programs River Springs offered were Academy programs, which resembled more traditional educational settings and Venture Online programs, where students meet with teachers regularly in an online learning environment, a virtual classroom. Academies offered onsite classes three to five days a week, where students received instruction from credentialed teachers. River Springs did not offer a self-contained special day class. Dr. Cox testified that River Springs would need to look outside of its programs and seek out programs from a local school district, a local county office of education, or a nonpublic school to provide a student a more restrictive educational setting.

10. For the 2017-2018 school year, his sixth grade year, Mother enrolled Student at River Springs. She chose to participate in the Homeschool program. Student received instruction by Mother in the home and was to receive specialized academic instruction, speech and language services, and counseling at the student center as part of his IEP. Mother was employed full-time, worked during the day, and had Mondays off. She taught Student in the evenings after returning home from work. During the day, Student was supervised by an adult sibling. Mother's work schedule limited her ability to transport Student to the student center, and Student was reluctant to attend services without Mother. Early in the fall of 2017, the student center services were scheduled on Mondays to accommodate Mother's schedule. However, Student still missed nearly all of his instruction and services at the student center.

11. Lisa Reightley was an educational specialist with River Springs since September 2015. Ms. Reightley held a California clear multi-subject teaching credential. She taught for 12 years as a general education teacher. Ms. Reightley testified at hearing.

12. Ms. Reightley was assigned to Student at the start of the 2017-2018 school year and remained his educational specialist until January 2019, when River Springs assigned another education specialist. As an education specialist, she was the credentialed general education teacher who signed off on the work Mother did in the home with Student.

Typically, she met with both the instructor-parent and a student during her home visits. However, she only met Student three times, and during those times he did not speak to her much and often placed his head down in his arms. She and Mother explored offering online programs to Student to work on while Mother was at work during the day; however, Student refused to participate in the online programs when Mother was not present.

13. River Springs special education teacher and case manager Teresa Moran testified at hearing. Ms. Moran had been employed by River Springs for 16 years, the first 14 years as an education specialist and the last two years as a special education teacher. Ms. Moran was a credentialed special education teacher since 1980. She was assigned to Student at the start of the 2017-2018 school year and was responsible for providing him with weekly specialized academic instruction at the student center. However, Student only attended three sessions the entire 2017-2018 school year, all occurring in the fall of 2017. Student had not attended any specialized academic instruction since.

14. River Springs speech-language pathologist Marissa Miller testified at hearing. Ms. Miller was a licensed speech-language pathologist for 19 years and joined River Springs in August 2007. Ms. Miller was assigned to provide Student with weekly speech and language services stated in his IEP. However, she only met with Student twice during the 2017-2018 school year, both occurring in the fall of 2017. Mother was present at both sessions and in each session Student got upset and refused to answer any of Ms. Miller's questions. Student had not attended speech and language services since.

15. Ms. Aghbashian had been a school psychologist since 2009 and joined River Springs in October 2015. She possessed a master's degree in school psychology. She conducted 60 to 70 psychoeducational assessments each year. Ms. Aghbashian was assigned to provide Student individual counseling two times each month, but only held one counseling session with him during the 2017-2018 school year. Student had not attended any counseling sessions since. In March 2018, Ms. Aghbashian proposed conducting counseling through video conference. Mother responded by email that Student was unwilling to participate and "[i]t would be an all out fight to get him to try." At hearing, Ms. Aghbashian expressed concern about Student not receiving the necessary services due to Mother's inability to meet the expectations placed on her in the Homeschool program.

2018 Academic and Behavior Assessments

16. On May 23, 2018, Ms. Moran administered the Kauffman Test of Educational Achievement, Third Edition, to measure Student's academic skills and prepared a report dated May 23, 2018. The Kauffman was a curriculum based instrument that was norm-referenced in the domains of reading, mathematics, written language, and oral language. Student scored in the average range as to reading, below average in math, below average in written expression, and average in spelling and the written language composite. Student's phonological processing and listening comprehension scores fell in the average range. Ms. Moran did not administer any fluency tests, as Mother informed her that he did not like doing timed tests, and Student did not wish to take the fluency tests. Therefore, no

data was obtained related to word recognition fluency, silent reading fluency, math fluency, and association fluency.

17. On May 21, 2018, Ms. Aghbashian assessed Student's behaviors to obtain a current estimate of the severity and intensity of his behaviors, to determine areas of concern, to assist the IEP team to determine if the current placement was appropriate, and to gather information to draft a new behavior intervention plan that addressed behaviors in the homeschool setting. She prepared a report dated June 8, 2018, documenting her findings, conclusions, and recommendation. Ms. Aghbashian did not recommend returning Student to the general education classroom. She opined that Student's externalizing behaviors would return to his previous levels of severity and intensity should he re-enter the general education classroom. She found that many of the supports and accommodations Mother used in the home setting, such as coaxing him to complete an assignment, providing a highly structured day, or offering prolonged breaks when needed, would be difficult to provide in a general education classroom, and his behaviors could return as a result. However, no evidence was offered at hearing as to how Student's day in the home was structured while Mother was at work during the day. Furthermore, no evidence was offered at hearing as to why Ms. Aghbashian only considered a general education classroom as the only alternative educational setting apart from the homeschool setting, and why no consideration was given to more restrictive settings, such as a self-contained special day class or a nonpublic school.

June 8, 2018 IEP

18. Student's annual IEP was developed over three days: June 8, 2018, and September 5 and 17, 2018. Mother, Dr. Cox, Ms. Reightly, Ms. Moran, Ms. Miller, and River Springs' attorney Jim Sanft attended in person on all three days. Ms. Aghbashian attended in person on June 8, 2018, and by phone the other two days. Student's advocate Cecily Marrable participated by phone on June 8, 2018 only. River Springs provided Mother with a copy of her procedural safeguards and rights.

19. The IEP team reviewed the May 23, 2018 academic report and June 8, 2018 behavior assessment report. River Springs IEP team members reported at the meeting that they did not observe any aggressive behaviors from Student. However, Mother stated that Student only behaved because she was present while he received services from River Springs, and he continued to act out aggressively in the home. Mother shared this aggressive behavior was not as significant as before, but he continued to act out about twice a week when he became frustrated with academic assignments. To calm him, she changed the assignment, rubbed his head, and/or restrained him. She was concerned of his inability to complete the amount of work required to meet grade-level expectations. Though he was completing more work at home compared to when he was in a traditional classroom, he still became very angry and frustrated with the work load, to the point of tears. Mother shared that he could retain information in the short-term, but had difficulty retaining information in the long-term.

20. At the meeting, Mother voiced her concern that the behavior intervention plan had not been implemented by River Springs. Mother and Student's advocate also expressed concerns regarding extended school year, the lack of occupational therapy services, and the discontinuation of counseling. However, the evidence offered at hearing established that counseling services remained available for Student during the 2017-2018 school year.

PRESENT LEVELS OF ACADEMIC AND FUNCTIONAL PERFORMANCE

21. Student did not achieve any of his prior IEP goals. Student made no progress on his writing goal, and made partial progress on the remaining goals that addressed his deficits in communication, reading, mathematics, anger management, remaining on-task, and using appropriate coping strategies. The prior IEP's "behavior reduction" goal, numbered "4", called for Student to use social skill steps to control his anger. At the meeting, Mother and Student's advocate indicated Mother was not trained to capture data regarding the behavior reduction goal, and therefore, the goal was described as only partially met because there was no data to support progress in the home environment, and River Springs staff indicated his behaviors were not witnessed at the school setting.

ACADEMICS

22. The IEP team reviewed Student's scores on the Kaufman and considered Student's i-Ready reading and math scores collected on September 14, 2018. According to his i-Ready diagnostic testing scores, Student's overall reading grade level was at fifth grade level, with a comprehension of informational text at the fourth-grade level. He was at grade level in comprehension of literature. Student's reading level improved one grade level, from fourth to fifth when comparing his i-Ready score in August 28, 2017, of 561 to his September 14, 2018 score of 578. Student's Kaufman scores in reading were in the average range. The IEP team had no data regarding his reading fluency.

23. Mother reported that Student improved his ability to correctly punctuate his writing. His score on the Kauffman Test of Educational Achievement's written expression subtest was in the below average range, equivalent to a third-grade level. He scored in the average range in spelling. He could write complex sentences and compose one to three paragraphs, demonstrating basic punctuation and capitalization skills.

24. In math, Student's i-Ready diagnostic test scores of September 14, 2018 were in the fifth-grade level overall. His scores on the Kauffman all were in the fourth-grade level, within the below average range in both math concepts and application, and math computation. The IEP team had no data regarding his math fluency. At the September 5, 2018 IEP team meeting, Mother reported that Student had received tutoring in math for several months over the summer from Professional Tutors of America, a nonpublic agency. Student received one hour of math tutoring each week. Student's i-Ready math scores in August 2017 to January 2018 improved only four points, but improved significantly more, 13 points, from January 2018 to September 2018.

COMMUNICATION

25. The IEP team relied primarily on Mother's input to determine Student's communication functioning. At the meeting, Ms. Miller asked Mother specific questions, which Mother answered. Mother shared that Student had difficulty inferring what a child was feeling in a story he read. She also reported Student could perform three conversational exchanges with family members, and possibly with others, once he was comfortable with the person. He had difficulty initiating a conversation and was afraid to return to school and having to talk to others.

GROSS AND FINE MOTOR SKILLS

26. Student had age-appropriate fine and gross motor skills. His handwriting was legible with appropriate spacing. He could participate in general education physical education.

SOCIAL-EMOTIONAL AND BEHAVIORAL FUNCTIONING

27. At the September 5, 2018 IEP team meeting, Mother shared that Student did not interact with children his age, and preferred to be alone. He was sensitive to lights and loud noises, and experienced a panic attack while at an amusement park. She also shared that Student could focus for 30 percent of his homeschool day. Over the summer, Student began using self-calming strategies when verbally reminded. When prompted, he continued to listen when spoken to, told himself to relax, and relaxed himself by using strategies such as deep breathing, and spoke in a neutral tone. Student was working on requesting time alone when he was upset and taking time to think about the reasons why he was angry. Mother reported Student continued to act out, became loud and agitated, and refused to do his work, specifically non-preferred tasks. However, he did not get physically aggressive and his maladaptive behaviors did not happen every day.

HEALTH, VOCATIONAL, AND ADAPTIVE/DAILY LIVING SKILLS

28. Student was in good general health, and as of September 2018, completing more assignments independently. At the meeting, Mother explained that most of Student's daily assignments were completed in the evening, with a schedule each day, taking breaks between tasks. He could bathe and dress independently, but Mother shared at the IEP team meeting on September 5, 2018, she had to brush his teeth as he did not like the sensation.

ANNUAL GOALS

29. The IEP team identified the following areas of need: reading, writing, mathematics, communication, social skills, and social emotional. To address these challenges, the June 8, 2018 IEP offered eight annual goals. The reading goal aimed to strengthen Student's reading comprehension; the writing goal sought to improve Student's ability to write a two-paragraph informative/explanatory text; and the math goal was

designed to help Student solve two-step word problems. The specialized academic instruction teacher and general education teacher were responsible for the academic goals, measuring progress using Student's work samples and his performance on tests. Though the goals also listed Student as a responsible person, Ms. Moran explained at hearing that was a typographical error.

30. River Springs developed three goals in the area of communication. The speech-language pathologist was responsible for each goal, using data collected, progress notes, and observations to measure progress. The first communication goal, identified as "inferencing skills," was designed to strengthen his ability to infer feelings and intent when given a short story, passages, or a video. The second communication goal addressed Student's struggles with conversations, with the goal requiring him to participate in turn-taking conversations by asking questions and making comments on a non-preferred or random topic with his peers or adults. The second communication goal focused on helping Student initiate conversation, by using a conversation starter when presented with a situation or topic during role playing with a therapist or a peer in a therapeutic setting.

31. River Springs developed two goals in the area of behavior. The first behavior goal required student to remain on task for 30 percent of a 60-minute instructional period across three consecutive classes. To meet the goal, Student had to accomplish the objective in three out of four trials. The responsible persons for the goal were the specialized academic instruction teacher, general education teacher, parent, and Student. Charts of data and observations would be used to measure progress.

32. The second behavior goal, identified as "Goal # 5," aimed to improve Student's ability to calm himself. The goal called for Student to deescalate within 15 minutes from maladaptive behaviors, such as raising his voice or refusing to do his work, by using a social skills strategy to control his anger when given verbal and visual prompts. The goal listed strategies, such as listening when spoken to; managing feelings and breathing with exercises practiced with a counselor; managing the tension of his body parts by incorporating strategies, such as deep breathing, visualization, and progressive muscle relaxation; speaking in a neutral tone; asking for time to be alone; and identifying why he was upset and changing his mood by thinking of something funny or taking a short walk. To meet the goal, Student had to demonstrate his ability to use the strategies to manage his anger across all settings over seven consecutive school days. The special education teacher, "specialists," and general education teacher were responsible for the goal, using a daily behavior log to measure progress. At hearing, Ms. Aghbashian explained that "specialists" were school counselors and psychologists.

SUPPLEMENTAL AIDS, SERVICES, AND SUPPORTS

33. To aid Student to achieve his goals, the June 8, 2018 IEP offered him the following supplemental aids, services, and supports from June 8, 2018, to June 8, 2019: consultation between parent-teacher and psychologist once a month for 30 minutes; consultation between parent and specialized academic instruction teacher 15 minutes each

month; consultation between the specialized academic instruction teacher and education specialist 15 minutes each month; warnings before transitions to occur daily for three to five minutes per occurrence; frequent breaks throughout the school day for five to 10 minutes each occurrence; additional time to complete assignments and tests up to 50 percent of the assigned time; shortened assignments with re-teaching as necessary, to demonstrate mastery of key standards throughout the school day; assignment modeling for five to 10 minutes for each academic assignment; and modeling of strategies for anger/frustration to reduce maladaptive behaviors for five to 10 minutes per occurrence daily as needed.

34. The Riverside Unified June 6, 2017 Comprehensive Behavior Intervention Plan was attached to the June 8, 2018 IEP and the IEP noted in the Special Factors section that implementation of the previous positive behavior intervention plan would continue. The IEP also noted “Goal(s) # 4, 6” as goals related to the behavior intervention plan, however it was clarified at hearing that it should have indicated “Goal # 5,” which Ms. Aghbashian testified was a combination of the previous IEP’s goals numbered four and six. The June 8, 2018 IEP offered behavior intervention services for 60 minutes twice a month for a total of 120 minutes monthly. However, that was only written to be in effect through September 17, 2018. The June 8, 2018 IEP offered to replace the direct behavior intervention service under the Special Education and Related Services section of the IEP with staff consultation to implement the behavior intervention plan, for 60 minutes twice a month under the Supplementary Aids, Services, and Other Supports section of the IEP.

35. Dr. Cox explained at hearing that the purpose of the behavior assessment conducted by Ms. Aghbashian in May 2018 was to determine appropriate behavior interventions that could be put in place in the homeschool setting. Ms. Aghbashian testified that the service was changed due to Student receiving instruction in the Homeschool program. Therefore, the June 6, 2017 Comprehensive Behavior Intervention Plan developed by Riverside Unified, designed to support Student in a mild-moderate special day class, no longer applied. River Springs did not propose any changes to the June 6, 2017 Comprehensive Behavior Intervention Plan as originally written.

SPECIAL EDUCATION AND RELATED SERVICES

36. In addition to the limited direct behavior intervention services offered, the June 8, 2018 IEP also offered group specialized academic instruction eight times a month for 45 minutes each session, for a total of 360 minutes monthly; group speech and language services 120 minutes a month; and individual counseling for 60 minutes twice a month. Mother explained at the September 5, 2018 IEP team meeting that scheduling services was difficult due to her working two jobs in addition to home schooling Student.

37. River Springs did not offer extended school year service as Student did not demonstrate regression over the summer break. However, Student received tutoring from Professional Tutors of America for one hour each week in the area of math over the summer.

PLACEMENT

38. The June 8, 2018 IEP offered Student continued placement in River Springs' Homeschool program. At the September 5, 2018 IEP team meeting, Mother requested Student be placed in River Springs' Magnolia Center, a four-day a week academy program, and on September 17, 2018, she informed the IEP team that she had made a formal request to transfer him to Magnolia Center.

39. Ms. Reightly testified that Mother reported to her that Mother had taken on more responsibilities at her job. At hearing, Ms. Reightly opined that the demands of Mother's work were impacting Mother's ability to instruct Student and it became increasingly taxing on Mother.

September 14, 2018 Assessment Plan

40. At the September 17, 2018 IEP team meeting, River Springs provided Mother with a proposed assessment plan dated September 14, 2018, in response to Mother's request to change Student's placement from the Homeschool program to an academy, and in light of the information she shared at the IEP team meeting regarding his sensitivity to loud noises, large crowds, sensations while brushing his teeth, and his panic attack.

41. The September 14, 2018 assessment plan was written in English, Mother's native language. The plan described the areas to be assessed and procedures to be conducted such as classroom observations, the use of rating scales, a review of Student's record, and one-to-one testing interviews. It also explained the information being sought through the evaluation of the various areas. The assessment plan was written clearly and in terms understandable by the general public. The plan was clear that no special education services would be provided to Student without a parent's written consent. The September 14, 2018 assessment plan proposed to evaluate Student in the areas of social-emotional functioning, behavior, adaptive behavior, perceptual and motor development, educationally related mental health services, and autism. A school psychologist and support staff were responsible for evaluating the areas of social-emotional functioning, behavior, adaptive behavior, educationally related mental health services, and autism. An occupational therapist would assess Student's perceptual and motor development.

42. Occupational therapist Corey Whigham provided occupational therapy services for River Springs, including direct services and assessments of students. Mr. Whigham was certified by the National Board of Certification for Occupational Therapy. Both he and Ms. Aghbashian opined at hearing that the proposed assessments were intended to examine the sensory-related concerns Mother shared at the IEP team meetings and to better determine the appropriate placement for Student in light of Mother's request to place him in a more traditional classroom setting.

November 16, 2018 IEP Amendment

43. On September 20, 2018, Dr. Cox emailed Mother a corrected version of the June 8, 2018 IEP, noting the following changes in addition to the numbering of the goals:⁶ adding Student's name in the Strengths/Preferences section, adding the date to identify the previous IEP, adding the exact date of the i-Ready diagnostic test scores, adding, "See note for additional information" under the Social/Emotional section of the present levels of performance. The corrected version also added start and end dates for the behavior intervention supplemental aide and noted the dates of participation for the IEP team members for the three meetings to develop the June 8, 2018 IEP.

44. On September 28, 2018, Dr. Cox emailed Mother an authorization for disclosure of information by Professional Tutors of America for Mother to review, sign, and return to River Springs. Dr. Cox also inquired whether Mother had any questions regarding the September 14, 2018 assessment plan, and sought her consent to allow River Springs to start the assessments. Mother replied the next day, indicating she did not agree to all the assessments, only for an assessment to address his sensitivity to noises. Mother requested a revised assessment plan. Mother did not authorize Professional Tutors of America to release information to River Springs.

45. On November 27, 2018, River Springs' attorney emailed Mother a prior written notice denying her request for an amended assessment plan. Attached to the email was an IEP amendment page dated November 16, 2018, with a further change to correct the service dates of the June 8, 2018 IEP to align with the next annual review.

Mother's Response to the June 8, 2018 IEP, and September 14, 2018 Assessment Plan

46. On February 1, 2019, Mother emailed River Springs the unamended version of the June 8, 2018 IEP with her consent, along with an attachment noting her disagreements. Mother disagreed with the date of the IEP, noting it should be dated September 17, 2018. Mother also indicated she did not receive the behavior intervention plan attached to the June 8, 2018 IEP. She also attached to her email tutoring reports from Professional Tutors of America and the May 15, 2017 psychoeducational evaluation report prepared by Riverside Unified. Mother attached to the email a signed copy of an assessment plan. However, the assessment plan with her consent dated January 31, 2019, was to a different assessment plan dated February 28, 2018, an assessment plan she previously consented to the year before. Mother did not provide consent to the September 14, 2018 assessment plan.

⁶ At the end of the September 17, 2018 IEP team meeting, Ms. Moran had difficulty numbering the goals on the electronic IEP document. Therefore, River Springs offered to send Mother a corrected version of the IEP with the goals numbered following the meeting.

47. On February 21, 2019, Mother emailed Dr. Cox indicating she needed time to review the amended version of the IEP and that her consent was only to the IEP provided to her on September 17, 2018. Mother also explained that she previously requested Student attend a regular school to receive services due to her limited availability in scheduling his services. Student had not attended services in the 20 days since Mother provided her consent to the original June 8, 2019 IEP on February 1, 2019. On February 26, 2019, Dr. Cox emailed Mother informing her that River Springs was going to treat Student's unavailability for services as a revocation of Mother's consent to the IEP.

LEGAL CONCLUSIONS

Introduction – Legal Framework under the IDEA⁷

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁸ et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an individualized education program is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general

⁷ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁸ All subsequent references to the Code of Federal Regulations are to the 2006 version.

education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.)

4. The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

5. In *Andrew F. v. Douglas County School Dist.* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000] (*Andrew F.*), the Supreme Court held that a child’s “educational program must be appropriately ambitious in light of his circumstances.” “[E]very child should have a chance to meet challenging objectives.” (*Ibid.*) *Andrew F.* explained that “[t]his standard is markedly more demanding than the ‘merely more than de minimis’ test [¶] . . . The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at pp. 1000-1001.) However, the Supreme Court did not define a new FAPE standard in *Andrew F.*, as the Court was “[m]indful that Congress (despite several intervening amendments to the IDEA) has not materially changed the statutory definition of a FAPE since *Rowley* was decided, we decline to interpret the FAPE provision in a manner so plainly at odds with the Court’s analysis in that case.” (*Id.* at p. 1001.) The Court noted that “[a]ny review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” (*Id.* at p. 999 [italics in original].) The Ninth Circuit affirmed that its FAPE standard comports with *Andrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

6. 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, evaluation, 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,

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. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Schaffer*); see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, River Springs requested the hearing in this matter, and therefore River Springs has the burden of proof on the issues.

Issue 1: Did the June 8, 2018 IEP, with Placement in the Homeschool Program, Offer Student a FAPE in the Least Restrictive Environment?

7. River Springs contends it complied with all procedural and substantive requirements of the IDEA in developing the June 8, 2018 IEP. River Springs argues the June 8, 2018 IEP's offer of FAPE was designed to address Student's unique needs, was reasonably calculated to allow Student to meaningfully benefit from his education, and offered placement in the least restrictive environment. No contentions were offered by Student.

8. When a school district seeks to demonstrate that it offered a FAPE, there are two parts to the legal analysis. First, the tribunal must determine whether the district complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) Whether a school district offered a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Educ.*, (3d Cir. 1993) 993 F.2d 1031, 1041 (*Fuhrmann*).)

9. Children with disabilities who attend public charter schools and their parents retain all rights under the IDEA and its regulations. (34 C.F.R. § 300.209(a).) A charter school that is a public school of a local educational agency must serve children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools. (*Id.* at subd. (b)(1)(i).)

10. Although charter schools have been granted independence to develop unique educational models, the California Legislature did not intend that the charter school statutes override or conflict with special education law. Education Code section 47646, subdivision (a), provides in pertinent part that a child with disabilities attending a charter school shall receive special education instruction "in the same manner as a child with disabilities who attends another public school of that local educational agency." It also imposes on the chartering local educational agency the duty to ensure that "all children with disabilities enrolled in the charter school receive special education . . . in a manner that is consistent with their individualized education program" and is in compliance with the IDEA and its regulations. (Ed. Code § 47646, subd. (a).)

PROCEDURAL COMPLIANCE

11. The IEP team is required to include as part of the team one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in the regular education environment; a special education teacher; and a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about available resources. (34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b).) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and, at the discretion of the parent or school district, include other individuals who have knowledge or special expertise regarding the child. (*Ibid.*) Finally, whenever appropriate, the child with the disability should be present. (*Ibid.*)

12. Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of a free appropriate public education to the child. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).)

13. A school district is required to conduct not just an IEP team meeting, but also a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485; *Fuhrmann, supra*, 993 F.2d at p. 1036.) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 960 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

14. The IEP team meetings to develop the June 8, 2018 IEP were attended by all required team members, including Mother. Mother was an active and welcomed participant at the meeting. River Springs provided Mother with a copy of her procedural safeguards and rights. The IEP team considered her input and concerns. Mother was afforded an opportunity to meaningfully participate in the development of Student's IEP. Hence, the IEP team meeting was conducted in accordance with the IDEA's procedural requirements.

CONTENTS OF THE IEP

15. The IEP is the “centerpiece of the [IDEA’s] education delivery system for disabled children” and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) It is the “modus operandi” of the IDEA, “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” (*School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996].)

16. An IEP is a written document for each child with a disability that includes a statement of the child’s present levels of academic achievement and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).) The IEP must also include a statement of measurable annual goals, including academic and functional goals, designed to meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child’s other educational needs that result from the child’s disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).)

17. Additionally, the IEP must contain statements of how the child’s goals will be measured and the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3), (4).) The IEP shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.) It must also contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and activities, as well as a statement of any individual appropriate accommodations necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments. (20 U.S.C. § 1414(d)(1)(A)(i)(V), (VI); 34 C.F.R. § 300.320(a)(5), (6); Ed. Code, § 56345, subd. (a)(5), (6).) Furthermore, the IEP must contain the projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).)

18. Here, River Springs failed to prove the June 8, 2018 IEP’s offer of services and placement in its Homeschool program was reasonably calculated to address Student’s unique social-emotional and behavioral needs to afford him an opportunity to meaningfully benefit from his education.

INADEQUATE SERVICES AND SUPPORTS TO MEET STUDENT'S SOCIAL-EMOTIONAL AND BEHAVIORAL CHALLENGES

19. In California, related services are called designated instruction and services, and must be provided “as may be required to assist an individual with exceptional needs to benefit from special education” (Ed. Code, § 56363, subd. (a).) The “educational benefit” to be provided to a child requiring special education is not limited to addressing the child’s academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child’s unique needs are to be broadly construed to include the child’s academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, abrogated in part on other grounds by *Schaffer, supra*, 546 U.S. 49.)

20. Whenever a child’s behavior impedes his learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (20 U.S.C. § 1414(d)(3)(B); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) The IEP team must consider the use of positive behavioral interventions and supports, and other strategies, but the implementing regulations of the IDEA do not require the team to use any particular method, strategy, or technique. (71 Fed. Reg. 46,683 (Aug. 14, 2006).)

21. The evidence demonstrated that the June 6, 2017 Comprehensive Behavior Intervention Plan Riverside Unified developed could not be successfully implemented by Mother in the home, with monthly consultation services of just twice a month by a counselor as proposed in the June 8, 2018 IEP. Student had significant behavioral problems due to high levels of emotional dysregulation and poor coping skills. He hated school, and he hit, kicked, and screamed when challenged to do school work or when redirected by adults. His social-emotional needs had a significant impact on his educational performance, and warranted a behavior intervention plan supported by intensive educationally related mental health counseling. The June 6, 2017 Comprehensive Behavior Intervention Plan, which River Springs proposed to continue as part of the June 8, 2018 IEP, was well crafted to improve Student’s behavior through skill acquisition and the reduction of problematic behavior in a self-contained special day classroom implemented full-time by trained professionals.

22. Furthermore, the weight of the evidence established that Mother was not equipped to respond to Student’s behaviors and to implement the strategies in the behavior intervention plan. Student continued to get angry and refused to comply when asked to perform non-preferred tasks, and Mother responded by changing the subject, rubbing his head, or restraining him. River Springs failed to prove Mother had the necessary training or expertise in implementing the behavior intervention plan and the June 8, 2018 IEP did not offer her daily or weekly support from a qualified educationally related mental health counselor or behavior consultant.

23. Moreover, River Springs failed to prove how the June 8, 2018 IEP’s fifth goal – aimed to help Student control his anger, and which the IEP associated with the behavior intervention plan – could be implemented in the Homeschool program. The goal was to be implemented by both the special education and general education teachers, and “specialists,” defined as school psychologists and counselors. In addition, data regarding Student’s daily behaviors would be collected and used to measure progress. However, the related services offered in the IEP only called for eight sessions of specialized academic instruction each month and just two counseling sessions a month, both to occur outside the homeschool setting. Furthermore, the education specialist was only required to visit the home every 20 days, and behavior intervention services on a consultation basis, not direct service, was offered just twice a month. River Springs failed to demonstrate how the responsible persons would implement the goal and collect daily behavior data with the limited time they were expected to work directly with Student. Mother was not identified as a responsible person for the goal, nor should she have been. The goal and the related behavior intervention plan called for teachers and a trained school psychologist, counselor, or behavior consultant to implement the goal, and there was no evidence to demonstrate Mother was qualified and able to implement or support this goal in the home based on her work commitments.

24. Furthermore, and more concerning, is the manner in which River Springs determined the level of behavior intervention services it would offer in the June 8, 2018 IEP to support the behavior intervention plan. River Springs did not propose any changes to the June 6, 2017 Comprehensive Behavior Intervention Plan as written by Riverside Unified. Instead, River Springs modified the behavior intervention services from direct service to consultation to fit its Homeschooling program. River Springs erroneously allowed the proposed placement to dictate the behavior intervention services, rather than identifying a placement that offered a combination of qualified personnel and a setting that could effectively implement the behavior intervention plan. The behavior intervention plan as written by Riverside Unified was reasonably calculated to address Student’s significant emotional dysregulation and poor coping skills through direct services from a credentialed teacher and highly trained educationally related mental health counselor or behavior consultant on a daily and weekly basis. The June 8, 2018 IEP was inadequate in that regards, failing to offer the necessary time, setting, and qualified personnel to properly implement the behavior intervention plan.

INDEPENDENT STUDY HOMESCHOOL PROGRAM PLACEMENT COULD NOT MEET STUDENT’S NEEDS

25. School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student’s disabilities 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.) The IDEA also requires, to the maximum extent appropriate, that a child with a disability must be educated with children who are not disabled. (*Ibid.*)

26. School districts, as part of a special education local plan area, must have available a continuum of program options to meet the needs of individuals with exceptional needs for special education and related services as required by the IDEA and related federal regulations. (34 C.F.R. § 300.115; Ed. Code, § 56360.) 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 in the home, hospitals or institutions. (34 C.F.R. § 300.115; Ed. Code, § 56361.) In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

27. The Ninth Circuit has stated a four factor evaluation to determine whether a placement is the least restrictive environment. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.) The four factors are: (1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of interaction with children who were not disabled; (3) the effect the child will have on the teacher and children in the regular class; and (4) the costs of mainstreaming the student. (*Ibid.*)

28. River Springs’ independent study Homeschool program could not meet Student’s needs. It was clear by the start of 2018 that the Homeschool program could not serve Student. At no point during the 2017-2018 school year did River Springs consider changing Student’s placement outside of the Homeschool program despite knowing early in the 2017-2018 school year that Mother could not make Student available for services at the student center as called for in his IEP. Even if Mother could regularly transport Student to services, there was no intervention offered in the June 8, 2018 IEP that would consistently address Student’s refusal to engage in his speech and language and counseling services, or instruction outside of the home by someone other than Mother. River Springs failed to prove that its Homeschool program was the least restrictive environment for Student, as Student’s behaviors presented significant challenges to himself, staff and peers, and limited his ability to benefit from the regular classroom, enrichment classes, and interactions with non-disabled peers. Thus, a highly structured educational setting with behavior supports and counseling services embedded in the program, readily available to Student throughout the school day, to be implemented by qualified staff on-site, should have been considered by River Springs.

29. River Springs’ contention that the June 8, 2018 IEP’s offer of placement in its Homeschool program would continue to provide Student with an educational benefit as the previous IEP had done during the 2017-2018 school year is unpersuasive. The prior IEP had little to do with any improvements in Student’s academics and behavior. Student’s improved behaviors while home schooled was expected, since he no longer had to endure attending school and all the things he disliked about it. Instead he was allowed to stay home, was not forced to speak to anyone he did not know or like, and had little to no academic demands placed on him during most of the day. Yet despite being in this seemingly ideal situation, he continued to act out when frustrated and angry, still harbored fears of attending school,

lacked the skills and confidence to interact with peers, refused to engage in specialized academic instruction, speech and language services, and counseling without Mother present, did not wish to participate in online programs, and refused to engage in counseling services through video conferencing. Furthermore, River Springs failed to demonstrate how any improvement in his behavior could not be attributed to the prior IEP, as he attended only one counseling session the entire school year, and no behavior intervention plan was effectuated.

30. As for academics, his refusal to do assignments was the biggest impediment to his educational performance. As his aggression lessened at home, he completed more work, and made some gains academically. However, he made no progress in writing and failed to meet any of his prior academic goals. Moreover, River Springs failed to demonstrate how any progress he made academically could be attributed to the supports, services, and placement offered in the prior IEP, as Student only attended three specialized academic instruction sessions the entire school year. Furthermore, no evidence was offered to demonstrate that Student could participate in, and benefit from, small group specialized academic instruction and speech and language services at the student center, considering his struggles in the mild-moderate special day classroom at Riverside Unified and his known insecurities with interacting with peers. River Springs failed to prove how continuing the same services and placement in the Homeschool program could confer Student an educational benefit that not only addressed his academic needs, but also his social and emotional needs that affected his academic progress, school behavior, and socialization.

31. River Springs had a duty to consider a continuum of placement options beyond the programs it had available, to include a special day class and a nonpublic school. Mother's initial choice for homeschool instruction did not relieve River Springs from its responsibility to consider other placement options outside of its programs, even before Mother made her intentions known to transfer Student out of the Homeschool program. River Springs had a duty to offer a placement that it deemed appropriate, regardless of Mother's preferred program. River Springs did not in this case, but rather negligently tailored its IEP offer to accommodate Mother's placement choice for home schooling.

32. River Springs failed to prove the June 8, 2018 IEP's offer of placement in its Homeschool program and related services were reasonably calculated to meet Student's unique social emotional and behavioral needs to assist him in benefiting from his education. The June 8, 2018 IEP did not offer Student a FAPE in the least restrictive environment, and therefore, River Springs may not implement the IEP without parental consent. Accordingly, it is unnecessary to evaluate every procedural and substantive component of River Springs' June 8, 2018 IEP offer that River Springs had the burden of proof. Even if River Springs had met its burden of proof as to all the other elements of a FAPE, the June 8, 2018 IEP fell short of offering Student a FAPE as it failed to afford Student services and placement to meet his social-emotional and behavioral needs.

Issue 2: May River Springs Assess Student Pursuant to the September 14, 2018 Assessment Plan without Parental Consent?

33. River Springs contends that its September 14, 2018 assessment plan as written was legally sufficient, its proposed assessors competent, and the proposed assessments warranted. Therefore, River Springs argues it is entitled to assess Student pursuant to the assessment plan without parental consent. Student did not offer any contentions.

CIRCUMSTANCES WARRANTING REASSESSMENT

34. The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and school district agree otherwise, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment must also be conducted if the local educational agency “determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil’s parents or teacher requests a reassessment.” (20 U.S.C. §1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

35. If the parents do not consent to a reassessment plan, the district may conduct the reassessment by showing at a due process hearing that it needs to reassess the student and it is lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(a)(3)(i), (c)(ii)(2006); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).)

36. Parents who want their children to receive special education services must allow reassessment by the district. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1315; *Dubois v. Conn. State Bd. of Ed.* (2d Cir.1984) 727 F.2d 44, 48.)

37. River Springs’ request to reassess Student was warranted. Mother’s request to place him in a more traditional classroom setting and her disclosures regarding his anxiety to loud noises and large crowds, his panic attack, and his sensitivity with brushing his teeth, warranted assessments to determine appropriate supports, services, and placement. Student had previously struggled in a mild-moderate special day class at Riverside Unified due to his high levels of emotional dysregulation and poor coping skills, and he had been homeschooled for the past year, with minimal opportunities to participate in instruction and services outside of the home. Assessments were necessary to obtain his current levels of functional performance to determine an appropriate placement in light of his social-emotional and behavioral needs.

NOTICING REQUIREMENT

38. Reassessments require parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To start the process of obtaining parental consent for a reassessment, the school district must provide proper notice to the student and his parents. (20 U.S.C.

§§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and companion state law. (20 U.S.C. §§ 1414(b)(1), 1415(c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must: appear in language easily understood by the public and the native language of the parent; explain the assessments that the district proposes to conduct; and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).) The district must give the parents and/or pupil 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

39. At the June 8, 2018 IEP team meeting, River Springs provided Mother with a copy of her procedural safeguards, and on September 17, 2018, a copy of the September 14, 2018 assessment plan. Both the assessment plan and the procedural safeguards were written in English, Mother's native language.

40. The proposed assessment plan outlined the areas to be evaluated and identified the titles of the examiners. The plan described the proposed assessments and procedures that may be conducted. It also explained the information being sought through the evaluation of the various areas. The plan was written clearly and in terms understandable by the general public. The plan was clear that no special education services would be provided to Student without parental written consent. All statutory requirements of notice were met, and the assessment plan itself complied with the applicable statutes.

COMPETENCY OF PERSONS TO CONDUCT ASSESSMENTS

41. Reassessments must be conducted by persons competent to perform them, as determined by the local educational agency. (20 U.S.C. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); Ed. Code, § 56322.) Any psychological assessments of pupils shall be made in accordance with Education Code section 56320 and shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, §§ 56322, 56324, subd. (a).)

42. All the assessments proposed by River Springs would be conducted by persons competent to conduct them. A school psychologist would assess Student in the areas of social-emotional functioning, behavior, adaptive behavior, educationally related mental health services, and autism. Furthermore, an occupational therapist was specified to conduct the perceptual and motor development assessments.

43. River Springs proved by a preponderance of the evidence that the September 14, 2018 assessment plan complied with all applicable statutory requirements regarding form, function, and notice. River Springs also established that assessments were warranted and its assessors were competent to perform them. Therefore, River Springs may assess Student without parental consent.

ORDER

1. River Springs may not implement the June 8, 2018 IEP, as amended on November 16, 2018, without parental consent.
2. River Springs is entitled to assess Student according to the September 14, 2018 assessment plan, without parental consent.
3. Within 10 business days of the date of this order, River Springs shall present Parent with an assessment schedule that details the dates, times, and locations for assessments. Parent must notify River Springs within 72 hours of receiving the assessment schedule if Parent cannot comply with the schedule, and River Springs shall then propose alternative dates and times. Parent shall reasonably cooperate in scheduling the assessments and presenting Student for assessment on the agreed upon dates and times at the identified locations.
4. Parent shall timely complete and return any documents reasonably requested by River Springs as a part of the assessments.

PREVAILING PARTY

Pursuant to 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. Here, River Springs prevailed on Issue 2 and Student prevailed on Issue 1.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: May 15, 2019

/s/

ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings

8.6 Prevention and Intervention Updates
Verbal Report, no materials

8.7 Compliance Update

Verbal report, no materials

**Desert/Mountain Charter SELPA
2019-20 Low Incidence Fund
November 4, 2019**

Beginning Balance	9,725.72
Current Year Projected Revenue	<u>5,590.00</u>
Total	15,315.72

LEA	Amount Approved	Amount Paid/Reimbursed	Balance
Allegiance STEAM Academy	1,398.60	-	1,398.60
Aveson Global Leadership Academy	2,986.52	-	2,986.52
Aveson School of Leaders	1,088.08	-	1,088.08
Ballington Academy	-	-	-
Desert Trails Preparatory Academy	-	-	-
Elite Academic Academy	-	-	-
Elite Academic Academy AWF1	-	-	-
Encore Hesperia	-	-	-
Encore Riverside	-	-	-
Julia Lee Performing Arts Academy	-	-	-
Laverne Elementary Preparatory Academy	2,209.64	-	2,209.64
Leonardo da Vinci Health Sciences Charter	-	-	-
Odyssey Charter	-	-	-
Odyssey Charter South	-	-	-
Pasadena Rosebud Academy	-	-	-
Pathways to College	-	-	-
Taylion High Desert Academy	-	-	-
Total LEA	7,682.84	-	7,682.84
Indirect Cost	500.00		500.00
Projected Fund Balance			7,132.88

LEA	Amount Approved	Amount Reimbursed	Amount Due to LEA
Allegiance STEAM Academy			
2020.001	1,398.60	-	1,398.60
Allegiance STEAM Academy Total	1,398.60	-	1,398.60
Aveson Global Leadership Academy			
2020.070	2,986.52	-	2,986.52
Aveson Global Leadership Academy Total	2,986.52	-	2,986.52
Aveson School of Leaders			
2020.003	1,088.08	-	1,088.08
Aveson School of Leaders Total	1,088.08	-	1,088.08
Laverne Elementary Preparatory Academy			
2020.049	2,209.64	-	2,209.64
Laverne Elementary Preparatory Academy Total	2,209.64	-	2,209.64
Grand Total	7,682.84	-	7,682.84